

KATHARINE  
& GEORGE  
ALEXANDER  
COMMUNITY  
LAW CENTER  

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SANTA CLARA LAW

Collection Lawsuit Defense Guide

# COLLECTION LAWSUIT DEFENSE GUIDE

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## SHOULD I ANSWER THE COMPLAINT? DO I NEED TO ANSWER THE COMPLAINT?

If you don't owe the debt over which you are being sued or have a complete defense (see **“Most Common Defenses to Collection Complaints”** on page 2), you should of course answer the complaint.

If you have no assets, you might not need to answer the complaint. See **“What does it mean to be ‘Judgment-Proof’”** on page 8.

QUESTION: What if I feel I owe the debt and want to settle? Should I still file an answer?

ANSWER: You MAY get a better deal if you answer, so you **should** probably answer if you want to work out a settlement agreement. BUT filing an answer typically requires you to pay the court a fee, which can range from \$225 to \$435 depending on the amount claimed in the lawsuit. Therefore you may want to explore an extension of time to answer while you negotiate. See ‘Requesting an Extension to Answer’ on page 3.

QUESTION: What can they take from me if I do not answer?

ANSWER: Banks and collection agencies historically have enforced judgments in the following three ways, and only the following three ways:

- **Wage Garnishment:** the company holding the judgment can garnish up to 25% of your post-tax wages. There are additional protections for low-wage workers; see pages 9 & 10 for additional details.

- **Bank Levy:** if the company holding the judgment knows (or finds out) where you bank they can completely drain your bank account. There are protections for individuals who get federal benefits and some types of state welfare benefits. See page 11 for additional details.

- **Real Property Lien:** A lien is a kind of security interest like a mortgage. It allows the company holding the judgment to get paid if your house gets sold or refinanced.

QUESTION: Can the company holding the judgment use it to take my house or car?

ANSWER: This is *theoretically* possible but it almost surely won't happen. The KGACLC is not aware of a single instance of this happening to enforce a credit card debt against a Santa Clara County resident.

## MOST COMMON DEFENSES TO CREDIT CARD COLLECTION SUITS

### A. The Statute of Limitations

A suit based on your credit card account is probably subject to California's statute of limitations, which is four years. The four years starts to run from the later of: A) the date of your last payment; or B) the last time you used the card. Let's say you last used your card in July of 2014 and last paid in October of 2014. A suit filed in December of 2018 is more than four years from either of those dates and therefore you can completely defeat the suit by asserting the defense that the claim is barred by the statute of limitations.

If you have a copy of your credit card terms and conditions (or can get it online) you should check to see if the terms say that Delaware or Virginia law applies. If so, the statute of limitations is just **three** years.

### B. Identity theft

If you are being sued about a debt you know nothing about, you are probably a victim of identity theft. In addition to answering, you should file a police report with the police department in the town or city in which you live. In addition, you should visit:

<https://www.identitytheft.gov/> .

### C. Special Rule for Credit Card Purchases

Do you have a dispute about a specific charge on your credit card statement? For example, did a merchant fail to deliver the goods you charged, or were the goods defective? The Special Rule, which is set out at 15 USC §1666i (just google '15 USC 1666i') allows you to raise these defenses in the credit card collection suit.

If you think you have a good defense, you should answer. See pages 3 & 4 below

## HOW LONG DO I HAVE TO ANSWER THE COMPLAINT?

Your last date to answer depends on when and how you were ‘served’. If someone handed you the summons and complaint (personal service) you have 30 days from the day the papers were handed to you. If the 30<sup>th</sup> day falls on a weekend or holiday, you can file your answer on the next day the courthouse is open.

If someone handed the papers to a housemate or co-worker and then mailed a second copy to you (‘subservice’) you were served on the tenth day after the papers were mailed to you (if you still have the envelope, check the postmark). **Your answer should be filed within 30 calendar days after you were served.** If the 30<sup>th</sup> day after service falls on a weekend or holiday, you have until the next day the courthouse is open to file the answer with the court. Even if you missed the deadline, you can still file your answer until the plaintiff has filed a Request for Entry of Default. You should know whether or not an Entry of Default has been requested because the plaintiff is required to send you a copy in the mail. You can also check online at <https://cmportal.sccourt.org/Portal/>

## REQUESTING AN EXTENSION OF TIME TO ANSWER

The Santa Clara County Code of Professionalism (Section 4) tells lawyers they should grant reasonable requests for extensions of time. Lawyers regularly seek and receive two week extensions to answer complaints. Therefore, **you** should expect to get such an extension too. If you can find the plaintiff’s lawyers email address that is probably the easiest way to request an extension. The lawyer’s email address is sometimes on the summons and/or complaint and is usually listed on the bar website here:

<http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch> Put the short title and case number in the subject line and just type something simple like “I am requesting a two-week extension to respond to the above-referenced complaint. Please let me know.” If you are considering making a settlement offer it will often makes sense to request an extension of time while you explore settlement (see examples on pages 6, 7 and & 23).

## SETTLING THE COLLECTION LAWSUIT FILED AGAINST YOU

First off, make sure you don't have a defense to the suit against you before you to decide to settle (see page 2). Also, you should not offer to settle if you are judgment-proof (see page 8).

There are two ways most collection suits get settled: in a lump sum, or in payments.

### Advantages of lump sum settlements:

\* **SAVINGS:** You can usually get a substantial discount off the debt if you offer one large payment. Discounts of up to 33% are common for original creditors and discounts of up to 70% for debt buyers are common.

\* **FINALITY:** You can get the case against you dismissed with prejudice (forever) almost as soon as you make your payment.

Disadvantages of lump sum settlements: The only real disadvantage is that the savings described above technically constitutes "debt forgiveness". IRS regulations *require* the plaintiff to send you a 1099 for the amount of the forgiveness if it is above \$600. The IRS considers 'debt forgiveness' to be the same as income.

*Example:* You owe \$2,000 and agree to pay \$1,000 to settle. The plaintiff will report to the IRS that you received income in the form of debt forgiveness in the amount of \$1,000.

If you decide to make a lump sum settlement offer, it is crucial that you get the agreement IN WRITING. See pages 6 & 7 for examples of how to get an agreement in writing.

Advantages of payment plans: In truth, there are not as many advantages to payment plans but most consumers simply don't have the money to make a lump sum payment. However, most plaintiffs will agree to waive (give up) the right to interest, court costs and attorneys fees if a defendant agrees to a payment plan and makes all the payments on time. Payment plans allow consumers to make affordable monthly payments over months or years.

Disadvantages of payment plans: Most plaintiffs will not agree to a payment plan unless you agree that if you miss a payment, judgment will be entered for the full amount of the debt (including interest, court costs and attorneys fees) immediately. This means that you can make timely payments for years but miss one payment and have judgment entered for the full amount of the debt (minus the payments that you did make). Therefore it is crucial that you are able to **afford** any payment you agree to make. Plaintiffs will not usually agree to substantially reduce the debt as part of a payment plan, but they will sometimes agree to small discounts. (For example, if you owe \$3,135, you can ask the plaintiff to accept payment totaling \$2,000, but it is **highly unlikely** such an offer would be accepted; it is much more likely that a plaintiff would accept payments totaling \$3,000).

### Negotiating tips

- If offering a lump sum, start by offering to pay a portion of the original debt. Creditors will sometimes accept as little as 1/3 of the debt.
- Some collection employees get bonuses based on their collections in a month; therefore you may get a better deal toward the end of the month if you promise to pay before the last day of the month.
- If offering a payment plan decide beforehand the most you can pay, and don't go any higher than you can afford. If you miss a payment, a judgment will be entered against you.
- Make sure that any agreement you make is in writing. Send your agreement by mail or email, and request the debt collector respond to your agreement in writing.
- If you are seriously considering bankruptcy, say so.
- Never disclose where you work or bank. If you do make a payment, don't send a check from your own bank. Send a money order.

Review the sample letters below.

You should use these letters only if you are willing and able to negotiate a settlement. Do not offer to pay more than you can. Rewrite the letter as necessary to fit your situation. Keep a copy of your letter and all communications with your creditor / debt collector.

A sample lump sum settlement offer is on page 6.

A sample payment plan settlement offer is on page 7.

You should address either letter to the lawyer who is representing the plaintiff.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_  
(Case Number or Lawyer's File Number)

To Whom it May Concern:

This letter is to inform you that I am experiencing significant financial hardship and I am unable to pay on my account as obligated. I propose the following settlement agreement.

I offer to pay a lump sum amount of \$\_\_\_\_\_ to satisfy my obligation to you. This is all that I can pay due to my financial situation, and I do not foresee my situation improving in the near future. Please respond by mail to my offer. If you choose to accept it, please indicate in writing that you are releasing me from any further obligation on this account in exchange for my payment of the above-referenced amount.

Please cease all communication by phone regarding this matter. I thank you in advance for your anticipated cooperation and understanding in this matter.

Sincerely,

\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_  
*(Case Number or Lawyer's File Number)*

To Whom it May Concern:

This letter is to inform you that I am experiencing significant financial hardship and am unable to pay on my account as obligated. I propose the following settlement agreement.

I offer to pay the entire principal balance in monthly payments in the amount of \$\_\_\_\_\_ to satisfy my obligation to you. This is all that I can pay due to my financial situation, and I do not foresee my situation improving in the near future. Please respond in writing to my offer.

Please cease all communication by phone regarding this matter. I thank you in advance for your anticipated cooperation and understanding in this matter.

Sincerely,

\_\_\_\_\_

## **ARE YOU ‘JUDGMENT-PROOF’?**

‘Judgment-proof’ is a bit of misleading term because it doesn’t mean the plaintiff can’t get a judgment against you; it means the plaintiff can’t **collect** a judgment against you. A ‘typical’ judgment-proof person is an individual with no real property and no wages who receives Social Security and keeps less than two months’ worth of Social Security in his/her bank account. However, some wage-earners are also judgment-proof. The next few pages describe how creditors enforce judgments and should give you enough information to know whether or not you are judgment-proof. If you are permanently judgment-proof, you can safely ignore any lawsuits that are filed against you. If, after reading this guide, you are not sure whether or not you are judgment-proof, call us for an advice appointment.

## **ENFORCEMENT OF JUDGMENTS**

As stated above, the collection industry focuses exclusively on three judgment enforcement methods: wage garnishments, bank levies and real property liens.

### **Real Property Liens**

If you own real property, you can be sure that the judgment creditor will record an ‘abstract of judgment’, which places a lien on your home. As a practical matter, a judgment creditor cannot force the sale of your home because of an unpaid judgment<sup>1</sup>. However, the lien will remain on your home until you pay the underlying judgment OR sell OR refinance the home. If you sell or refinance, the judgment creditor will receive payment on the judgment out of escrow. Judgments bear interest at a high rate: ten percent. This means a \$10,000 lien will create a \$20,000 lien after ten years.

On the one hand, you are not judgment-proof if you have a lot of equity in your home. This is because the creditor will get paid when the house is eventually sold or refinance. On the other hand, you may decide to allow a plaintiff to get a judgment against you if you don’t have a defense and can’t afford to settle the debt. You can still send the ‘judgment-proof letter’ on page 24 to stop collection communications.

Depending on the amount of equity in your home you may or may not be a good candidate for Bankruptcy. If you want advice on whether or not you are a good candidate for bankruptcy, you can call the Law Center for an appointment<sup>2</sup> (408) 288-7030 or you can call the Santa Clara County Bar’s Lawyer Referral Service: 408.971-6822.

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<sup>1</sup> (*Dang v. Smith* (2010) 190 Cal.App.4th 646, 663)

<sup>2</sup>The Law Center won’t represent you in a Bankruptcy case but we will advise you as to whether or not you are a good candidate for Bankruptcy.

### CALIFORNIA WAGE PROTECTIONS<sup>3</sup>

**The forty times the minimum wage rule:** Nobody can garnish your wages unless you are earning more than forty times the minimum wage **per week** at *that* particular job. For instance, if you are making minimum wage at two jobs and you work 30 hours a week at each job, **neither** paycheck can be garnished. Because many cities have minimum wage rates that are higher than the California minimum wage, the amount of wages that are protected depends on **where** you work. Please consult the chart below to determine how much of your wages are protected.

Where you work	2018			2019			2020		
	Hourly	Weekly	Monthly	Hourly	Weekly	Monthly	Hourly	Weekly	Monthly
California	\$10.50- \$11*	\$420- \$440*	\$1,820 - \$1,906*	\$11 - \$12*	\$440 - \$480*	\$1,906 - \$2,080*	\$12 - \$13*	\$480 - \$520*	\$2,080 - \$2,253*
Cupertino	\$13.50	\$540	\$2,340	\$15	\$600	\$2,600	TBD**	TBD**	TBD**
Los Altos	\$13.50	\$540	\$2,340	\$15	\$600	\$2,600	TBD**	TBD**	TBD**
Milpitas	\$12	\$480	\$2,080	\$13.50	\$540	\$2,340	\$15	\$600	\$2,600
Mountain View	\$15	\$600	\$2,600	TBD**	TBD**	TBD**	TBD**	TBD**	TBD**
Palo Alto	\$13.50	\$540	\$2,340	\$15	\$600	\$2,600	TBD**	TBD**	TBD**
San Jose	\$13.50	\$540	\$2,340	\$15	\$600	\$2,600	TBD**	TBD**	TBD**
Santa Clara	\$13	\$520	\$2,253	\$15	\$600	\$2,600	TBD**	TBD**	TBD**
Sunnyvale	\$15	\$600	\$2,600	TBD**	TBD**	TBD**	TBD**	TBD**	TBD**

\* Use the bottom end of the range if your employer has 25 or fewer employees; use the top end if it has 26 or more

\*\* TBD means there IS an increase planned but it is To Be Determined by the Consumer Price Index. A good estimate would be about 2% higher than the prior year's numbers.

If you work in Santa Clara County and you don't see the city where you work, use the California figures. If you work outside of Santa Clara County you should perform an internet search to determine if the city you work in has a higher minimum wage than California.

If your after-tax (net) pay is less than 40 times the minimum wage your wages are *automatically* protected. That means a wage garnishment notice will essentially be ignored by your employer so long as you earn less than 40 times the minimum wage per week.

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<sup>3</sup> We focus on your rights under California law because when it comes to wage garnishment, all of your protections are as strong or stronger under state law than federal law.

### **The Seventy-Five Percent Rule**

If you are sued on a consumer debt and a judgment is entered against you, a wage garnishment can never be for more than 25% percent of your net (after tax) wages. The rule protecting 75% of your wages is automatic. Unfortunately most consumers cannot afford to live on 75% of their wages. The necessities rule may protect more than 75% of your net wages.

### **The Necessities Rule**

The good news is that if you can prove you need more than 75% of your wages to pay for necessities for yourself and those that depend on you, you can protect that amount, up to your entire paycheck. But this protection is NOT automatic. You must wait until your wages are garnished and then - within ten days - submit forms to prove that your wages are needed for necessities<sup>4</sup>. If your claim is unopposed by the judgment creditor, you will stop the garnishment and get your garnished wages back. But if the claim is opposed, there will be a hearing in court where you will be expected to bring evidence of all your income and expenses. This procedure could take a month or two, during which time the garnishment will continue. Finally, many judges seem reluctant to allow a judgment debtor to keep all of their wages. In summary, even if you feel you can prove that you need all your wages to support yourself today, you should not assume the necessities rule will protect you in the future because:

- \* your wages may increase
- \* your expenses may decrease
- \* the court has broad discretion to decide what your necessities budget should be.

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<sup>4</sup> To see an example of completed forms to stop a garnishment, see <https://saclaw.org/wp-content/uploads/sbs-claim-of-exemption-wage-garnishment.pdf>

## BANK ACCOUNT PROTECTIONS

### **The Two Months' Worth of Federal Benefits Rule**

This rule protects individuals who get direct deposit of federal benefits in their account. The most commonly received federal benefits are Social Security and/or SSI and Veterans Benefits. If a judgment creditor tries to levy on your bank account and you have less than two months' worth of Social Security benefits in your account, the bank will **automatically** protect all of your funds.

Example: You are single and get \$900 in Social Security deposited in your account each month. So long as you keep your balance under \$1,800, your bank account is completely protected.

Example: You are married and get \$1,000 in Social Security deposited in your account each month and your spouse gets \$900 directly deposited in the **same account**. So long as you keep your balance under \$3,800, your bank account is completely protected.

Note that this rule **ONLY** protects accounts which receive direct deposit of federal benefits. If you have other accounts, they are not protected by the rule.

### **The Tracing Rule**

The legislature protects certain kinds of income from being seized by a judgment. Among the income protected are:

- \* unemployment insurance benefits
- \* most retirement benefits
- \* wages in an amount under 40 times the minimum wage per week (see pp. )
- \* disability benefits

For a complete list of protected income and property, see 'Exemptions from the Enforcement of Judgments': <http://www.courts.ca.gov/documents/ej155.pdf>

If you can trace the funds in your bank account back to an exempt (protected) category, you can protect those funds. This protection is **NOT** automatic. You must fill out forms **within ten days** of a Notice of Levy proving that the money in the bank is exempt.<sup>5</sup>

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<sup>5</sup> For an example of completed forms to get funds back after a bank levy, see <https://saclaw.org/wp-content/uploads/sbs-claim-of-exemption-bank-levy.pdf>

## WHAT TO DO IF YOU ARE JUDGMENT-PROOF

If you are judgment-proof and you don't expect your financial situation to improve in the future, there is no need to file an answer to any collection complaints you receive. There is no such thing as debtor's prison, and you can safely ignore complaints and other court-related documents.<sup>6</sup>

If you are receiving unwanted phone calls or other communications that you want to stop, send the letter on page 24 to the creditor or debt collector who is contacting you. Be sure to:

- make a copy of the filled-out, signed letter before you mail it
- send the letter in such a way that you can prove it was **received** such as by
  - sending the letter certified mail, return receipt requested
  - faxing the letter and saving the transmission sheet
  - emailing the letter, if the creditor/debt collector maintains an email address

If the creditor or debt collector contacts you after receiving your letter, you are entitled to monetary penalties. Document those contacts on the collection log on page 26.

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<sup>6</sup> There is one exception to this rule. It is theoretically possible you will be served with an Order for Examination (see sample on page 27) in which case you must appear in court on the day indicated on the Order. Fewer than 1% of consumer judgments result in an Order for Examination, so it is **highly unlikely** you will receive one.

HOW DO I FILE AN ANSWER?

Q: I know I want to file an answer. What do I have to do?

A: The clerk of the court at 191 N. First Street will need three things from you:

- 1) a completed General Denial form (see page 4 with attachment pages);
- 2) a completed Proof of Service (see page 17. Note that the person who serves your answer and signs the Proof of Service must be A) over 18 years old; and B) not a party to the action); and,
- 3) payment of the appropriate fee OR a completed fee waiver application with a proposed order.

*A sample completed answer packet including a fee waiver application appears on pages 14-21*

Fees

As of the date of publication, the fee for filing an answer as follows:

- |  |              |
|--|--------------|
| * if you are being sued for LESS THAN \$10,000:                        | <b>\$225</b> |
| * if you are being sued for MORE than \$10,000 but LESS than \$25,000: | <b>\$370</b> |
| * if you are being sued for MORE THAN \$25,000:                        | <b>\$435</b> |

If you receive public benefits, have a very low income, or cannot afford to pay the fee, fill out a fee waiver application and proposed order as shown on pages 18-21.

THE FOLLOWING PAGES SHOW YOU  
HOW TO FILE AN ANSWER AND, IF  
NECESSARY, AN APPLICATION TO  
WAIVE THE COURT FILING FEE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
**Carla Consumer**  
 123 The Alameda, Apt. 12  
 San Jose, CA 95126

TELEPHONE NO.: (408) 555-1213 FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): **In Pro Per**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara**  
 STREET ADDRESS: 191 North First Street  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: San Jose, CA 95126  
 BRANCH NAME: DTS

PLAINTIFF/PETITIONER: Debt Buyer  
 DEFENDANT/RESPONDENT: Carla Consumer

FOR COURT USE ONLY

Type in your name, address and phone number here. "In Pro Per" means you are representing yourself.

Use this information if you are being sued in Santa Clara County

This is called a 'short title'. If there is more than one defendant you should just type the name of the first person listed as a defendant.

**GENERAL DENIAL**

CASE NUMBER:  
18cv123456

Be sure to type in the case number here

If you want to file a general denial, you MUST use this form if the amount asked for in the complaint or the value of the property involved is \$1,000 or less.

You MAY use this form for a general denial if:

1. The complaint is not verified; **or**
2. The complaint is verified and the case is a limited civil case (the amount in controversy is \$25,000 or less), BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 85-86, 90-100, 431.30, and 431.40.)

1. DEFENDANT (name): Carla Consumer generally denies each and every allegation of plaintiff's complaint.
2.  DEFENDANT states the following FACTS as separate pages if necessary:  
See attached

Type your name again but make sure it matches the complaint EXACTLY. For example type "Carla T. Consumer AKA Carla Consumer" if so named on the complaint. If the plaintiff made a mistake with your name you should put your actual name first and then type "erroneously sued as Carla T. Consumer". Each defendant who wants to answer will have to complete their own form.

We recommend that you print out and attach the affirmative defenses on the following pages rather than trying to type them all in here.

Type your name one more time, type the date, sign and don't forget to attach the affirmative defenses.

Date: October 30, 2018

Carla Consumer  
(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10-426.40.) The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

**GENERAL DENIAL**

Carla Consumer



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ATTACHMENT 1 TO GENERAL DENIAL

(Failure to State a Cause of Action)

**AS AND FOR A FIRST AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that the complaint and each cause of action thereof fails to state a cause of action.

(Statute of Limitations)

**AS AND FOR A SECOND AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that each and every cause of action is barred by the applicable statute of limitations.

(Laches)

**AS AND FOR A THIRD AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that each and every cause of action is barred by the doctrine of laches.

(Failure to Exhaust Remedies)

**AS AND FOR A FOURTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that Plaintiff has failed to exhaust administrative and/or contractual remedies.

(Rescission)

**AS AND FOR A FIFTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that the underlying contract - if any - was rescinded or is subject to rescission pursuant to each of the subsections of Cal. Civil Code §1689(b), including but not limited to fraud in the inducement, duress, and mistake.

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(Payment)

**AS AND FOR A SIXTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that the amount owing on the contract, if any, was paid in full or in part.

(Offset/Recoupment)

**AS AND FOR A SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that Plaintiff's claims are offset by any damages recoverable by Defendant.

The amount of offset which Defendants are entitled to recoup will be according to proof at trial.

(Waiver)

**AS AND FOR AN EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that Plaintiff has waived - in whole or in part - its right to recover on the alleged contract.

(Estoppel)

**AS AND FOR A NINTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that Plaintiff is estopped from recovering on the alleged contract.

(Special Rule for Credit Card Purchases)

**AS AND FOR A TENTH AND SEPARATE AFFIRMATIVE DEFENSE,**

Defendant alleges that Plaintiff is subject to all claims and defense that Defendant could assert against the merchant(s) who honored the credit card, pursuant to 15 USC §1666i.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Carla Consumer</b> 123 The Alameda, Apt. 12 San Jose, CA 95126  TELEPHONE NO.: (408) 555-12134 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>In Pro Per</b>	<b>FOR COURT USE ONLY</b>           CASE NUMBER: <b>18cv123456</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara</b> STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95126 BRANCH NAME: DTS	
PETITIONER/PLAINTIFF: Debt Buyer  RESPONDENT/DEFENDANT: Carla Consumer	
<b>PROOF OF SERVICE BY FIRST-CLASS MAIL - CIVIL</b>	

Even though you won't be the one mailing this, your information still goes here.

**(Do not use this Proof of Service to show service of a Summons and Complaint.)**

- I am **over 18 years of age** and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
- My residence or business address is:  
123 The Alameda, Apt. 13  
San Jose, CA 95126
- On (date): **September 1, 2018** I mailed from (city and state): San Jose CA  
the following documents (specify):  
General Denial

You will need to find a friend or relative who meets the two highlighted criteria. We'll call him/her 'the server'. It is that person's information that goes in section 2 and the rest of the form.

You may want the server to complete the date in section 3, since he/she will be doing the mailing.

The documents are listed in the Attachment to Proof of Service by First-Class Mail - Civil (Documents Served) (form POS-030(D)).

- I served the documents by enclosing them in an envelope and (check one):
  - depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
  - placing** the envelope for collection and mailing 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.

- The envelope was addressed and mailed as follows:
  - Name** of person served: Lionel Hutz, Esq.
  - Address** of person served:  
Dewey, Cheatem & Howe  
123 Wall Street  
Los Angeles, CA 99999

This goes to the attorney representing the plaintiff. If there is more than one attorney listed, you can pick any one to mail it to.

The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail-Civil (Persons Served) (POS-030(P)).

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

Date: September 1, 2018

Nancy Neighbor  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ \_\_\_\_\_  
(SIGNATURE OF PERSON COMPLETING THIS FORM)

# FW-001 Request to Waive Court Fees

**CONFIDENTIAL**

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you

This form is **ONLY** for folks who can't afford to pay the court filing fees listed on page 4. Skip this form and the order on pp. 21-22 if you can pay the court fee.

Type the information into the box to the right and type your information into section 1.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of Santa Clara  
191 North First Street  
San Jose, CA 95126  
DTS

Fill in case number and name:

Case Number:  
18cv123456  
Case Name:  
Debt Buyer v. Consumer

**1 Your Information** (person asking the court to waive the fees):

Name: Carla Consumer  
Street or mailing address: 123 The Alameda, Apt. 12  
City: San Jose, State: CA Zip: 95126  
Phone: (408) 555-1234

**2 Your Job**, if you have one (job title): Waitress

Name of employer: Circle M Restaurant  
Employer's address: 12 Main Street, Campbell, CA 95551

**3 Your Lawyer** (if you have a lawyer, provide the lawyer's name, phone number, and State Bar number):

If you are 'unemployed' or 'retired' or 'disabled' say so in section 2. Otherwise provide your work information.

Type your case number and short title into the box above.

b. (If yes, your lawyer must sign here) Lawyer's signature: \_\_\_\_\_  
If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

**4 What court's fees or costs are you asking to be waived?**

- Superior Court (See Information Sheet)
- Supreme Court, Court of Appeal, or Appellate Court Fees (form APP)

If you receive any of the benefits listed in section 5.a. below check the boxes and sign below. You don't have to fill out the 2nd page or parts 5.b. or 5.c if you receive any of these benefits.

**5 Why are you asking the court to waive your court fees?**

- a.  I receive (check all that apply; see form FW-001-INFO for definitions):  Food Stamps  Supp. Sec. Inc.  SSP  Medi-Cal  County Relief/Gen. Assist.  IHSS  CalWORKS or Tribal TANF  CAPI
- b.  My gross monthly household income (before deductions for taxes) is less than the amount indicated by the chart on the left. If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income
1	\$1,264.59	3	\$2,164.59	5	\$3,064.59
2	\$1,714.59	4	\$2,614.59	6	\$3,514.59

If your GROSS monthly earnings are lower than the amount indicated by the chart on the left, check box b and complete all of page 2. If you earn more but you still can't afford to pay the filing fee, check box c and complete all of page 2.

- c.  I do not have enough income to pay for my household's basic needs and the court fees. (check one and you **must** fill out page 2):
  - waive all court fees and costs
  - waive some of the court fees
  - let me make payments over time

**6**  Check here if you asked the court to waive your court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check the box.)

I declare under penalty of perjury under the laws of the State of California that the information on this form and all attachments is true and correct.

Date: October 30, 2018

Carla Consumer  
Print your name here

\_\_\_\_\_  
Sign here

Your name: Carla Consumer

Case Number:  
18cv123456

If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

7  Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 **Your Gross Monthly Income**  
a. List the source and amount of **any** income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.  
(1) Earnings \$ 2,500.00  
(2) \_\_\_\_\_ \$ \_\_\_\_\_  
(3) \_\_\_\_\_ \$ \_\_\_\_\_  
(4) \_\_\_\_\_ \$ \_\_\_\_\_  
b. **Your total monthly income:** \$ 2,500.00

9 **Household Income**  
a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.  

	Name	Age	Relationship	Gross Monthly Income
(1)	<u>Janie</u>	<u>13</u>	<u>Daughter</u>	\$ _____
(2)	<u>Tommy</u>	<u>11</u>	<u>Son</u>	\$ _____
(3)	<u>Zuzu</u>	<u>9</u>	<u>Daughter</u>	\$ _____
(4)	_____	_____	_____	\$ _____

  
b. **Total monthly income of persons above:** \$ 0.00

**Total monthly income and household income (8b plus 9b):** \$ 2,500.00

10 **Your Money and Property**  
a. Cash \$ 50.00  
b. All financial accounts (List bank name and amount):  
(1) Bank of the West \$ 1,250.00  
(2) \_\_\_\_\_ \$ \_\_\_\_\_  
(3) \_\_\_\_\_ \$ \_\_\_\_\_  
c. Cars, boats, and other vehicles  

Make/Year	Fair Market Value	How Much You Still Owe
(1) <u>2007 Prism</u>	\$ <u>1,000.00</u>	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

  
d. Real estate  

Address	Fair Market Value	How Much You Still Owe
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____

  
e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):  

Describe	Fair Market Value	How Much You Still Owe
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____

11 **Your Monthly Deductions and Expenses**  
a. List any payroll deductions and the monthly amount below:  
(1) Taxes \$ 250.00  
(2) \_\_\_\_\_ \$ \_\_\_\_\_  
(3) \_\_\_\_\_ \$ \_\_\_\_\_  
(4) \_\_\_\_\_ \$ \_\_\_\_\_  
b. Rent or house payment & maintenance \$ 1,200.00  
c. Food and household supplies \$ 600.00  
d. Utilities and telephone \$ 175.00  
e. Clothing \$ 200.00  
f. Laundry and cleaning \$ 50.00  
g. Medical and dental expenses \$ 50.00  
h. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_  
i. School, child care \$ \_\_\_\_\_  
j. Child, spousal support (another marriage) \$ \_\_\_\_\_  
k. Transportation, gas, auto repair and insurance \$ \_\_\_\_\_  
l. Installment payments (list each below):  
Paid to:  
(1) \_\_\_\_\_ \$ \_\_\_\_\_  
(2) \_\_\_\_\_ \$ \_\_\_\_\_  
(3) \_\_\_\_\_ \$ \_\_\_\_\_  
m. Wages/earnings withheld by court order \$ \_\_\_\_\_  
n. Any other monthly expenses (list each below):  
Paid to: How Much?  
(1) \_\_\_\_\_ \$ \_\_\_\_\_  
(2) \_\_\_\_\_ \$ \_\_\_\_\_  
(3) \_\_\_\_\_ \$ \_\_\_\_\_

**Total monthly expenses (add 11a-11n above):** \$ 2,525.00

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.  
*Check here if you attach another page.*   
**Important! If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.**

The court is not likely to waive your fee unless you 'total monthly expenses' equal or exceed your 'total monthly income and household income'.

# FW-003 Order on Court Fee Waiver (Superior Court)

Clerk stamps date here when form is filed.

1 Person who asked the court to waive court fees:  
Name: Carla Consumer  
Street or mailing address: 123 The Alameda, Apt. 12  
City: San Jose State: CA Zip: 95126

2 Lawyer, if person in 1 has one (name, address, phone number, e-mail, and State Bar number): n/a

3  The court made a previous fee waiver order in this case on (date): \_\_\_\_\_

The only parts of this form that you need to fill out are section one and the two boxes to the right.

Fill in court name and street address:  
**Superior Court of California, County of Santa Clara**  
191 North First Street  
San Jose, CA 95126  
DTS

Fill in case number and name:  
**Case Number:**  
18cv123456  
**Case Name:**  
Debt Buyer v. Consumer

Read this form carefully. All checked boxes  are court orders.

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **\$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

4 After reviewing your:  Request to Waive Court Fees  Request to Waive Additional Court Fees the court makes the following orders:

a.  The court grants your request, as follows:

(1)  **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. (Cal. Rules of Court, rule 3.55. and 8.818.) You do not have to pay the court fees for the following:

- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone hearing
- Reporter's fee for attendance at hearing or trial, if reporter provided by the court
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter in small claims court

(2)  **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. (Cal. Rules of Court, rule 3.56.) You do not have to pay for the checked items.

Jury fees and expenses  Fees for a peace officer to testify in court  
 Fees for court-appointed experts  Court-appointed interpreter fees for a witness  
 Other (specify): \_\_\_\_\_

Your name: \_\_\_\_\_

Case Number:  
18cv123456

b.  The court **denies** your fee waiver request, as follows:

**Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1)  The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the items listed below (*specify incomplete items*):

(2)  The court **denies** your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested (*specify reasons*): \_\_\_\_\_

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c. below, or
- Ask for a hearing in order to show the court more information. (*Use form FW-006 to request hearing.*)

c.  The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about (*specify questions regarding eligibility*): \_\_\_\_\_

Bring the following proof to support your request if reasonably available: \_\_\_\_\_

Name and address of court if different from above: \_\_\_\_\_



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

Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**Warning!** If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

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

Signature of (check one):  Judicial Officer  Clerk, Deputy



**Request for Accommodations.** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

### Clerk's Certificate of Service

I certify that I am not involved in this case and (*check one*):  A certificate of mailing is attached.

I handed a copy of this order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from (city): \_\_\_\_\_, California on the date below.

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

Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**

**Order on Court Fee Waiver (Superior Court)**

FW-003, Page 2 of 2

## **YOUR RIGHTS WHEN DEALING WITH CREDITORS AND DEBT COLLECTORS**

Here are some of the rights you have with respect to creditors and debt collectors:

- You have the right to protection from harassment. No debt collector may use obscene or profane language in addressing you. They may not threaten you with force. They may not lie about who they are; call you collect; call you early in the morning or late at night; or, call repeatedly ring and hang up. Collectors are not able to contact anyone other than you or your spouse other than to locate you. A debt collector can never tell a third party that the collector thinks you owe a debt.
- You have the right to be left alone. If you do not want to receive phone calls regarding your debts, you can request that a debt collector cease communications with you. See page 24 for an example of ‘cease communications’ letter. Be aware that if you send a debt collector a ‘cease communication letter’, the collector may feel it has no choice but to sue you. Therefore unless you are judgment proof (see page 9), you may wish instead rather than ask them to cease all communication only contact you in writing.
- You have the right to the truth. No debt collector may lie to you to convince you to pay a debt. This means, for example, that they cannot tell you a suit is about to be filed against you unless that is true.
- You have the right to make the collector validate the debt. The debt collector must inform you of your right to obtain written “verification” of any debt. If you request such verification, the debt collector must stop trying to collect the debt until they provide it to you so long as you make the request within 30 days of the collector notifying your of your validation rights. However, you must make your request for verification IN WRITING. There is an example of such a request on page 28.
- You do not have to reveal where you work or where you bank. If you are asked for this information, you do not have to answer, and you should not answer.

### **HOW TO ENFORCE YOUR RIGHTS**

You can sue for penalties and actual damages you have suffered if a debt collector violates the law. You may be able to find a lawyer AT NO COST TO YOU, since the law says the debt collector must pay your lawyer if you win. Because the lawyer will only get paid if you win, they will look for solid proof that the debt collector broke the law. Most lawyers won’t rely on verbal statements unless you taped them, or you have witnesses. Therefore, if possible, you should tape conversations with debt collectors, but you must tell the debt collectors you are taping the conversations. It is not legal in California to tape a confidential conversation without the other party’s knowledge. Also, you should ALWAYS save ALL letters you receive from a debt collector. **For a referral of Consumer Rights attorneys contact the Santa Clara County Bar Associations Lawyer Referral service at (408) 971-6822. If you reside outside Santa Clara County, contact your local Bar Association.**



SAMPLE

*Jane Doe*  
450 E. Fifth St. Apt. #4  
San Jose, CA 95116

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

**VIA FAX [(111) 111 - 1111] & FIRST CLASS MAIL or**  
**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED or**  
**VIA EMAIL ONLY AT \_\_\_\_\_**

John Smith  
ACME Law Group APC  
125 W. Hedding Street, Ste. 100  
San Jose, CA 95110

Re: ACME Investments LLC v. Jane Doe  
Case No.: 17-CV-111111

Dear Mr. Smith:

I am the defendant in the above-referenced matter. I understand my answer is due on or about December 9, 2018. I am writing to seek a two-week extension to December 23, 2018, to answer the complaint. Please send an e-mail to jane\_doe2@yahoo.com to let me know whether or not this is acceptable.

Sincerely,

Jane Doe

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: \_\_\_\_\_  
Acct.#: \_\_\_\_\_

To Whom It May Concern:

I am writing to request that you cease all contact with me pursuant to California Civil Code §1788.17 and/or 15 USC §1692c(c), which require you to cease all contact with a consumer when you receive a written request to do so.

I do not concede that I owe any “debt” to you. Even if I did, I could not afford to pay you. Therefore, I will no make ANY further payments on the above-referenced account. I have consulted with an attorney and I have been informed that I am “judgment-proof”. You may sue me if you wish, but you will not be able to collect any money from me because I have no assets or income that can be attached with a judgment.

I recognize that you may choose to refer this account to a collection agency, or some other entity. Should you choose to do so, YOU MUST INCLUDE A COPY OF THIS LETTER IN MY FILE, AND THE ACCOUNT MUST BE NOTATED THAT I DO NOT WISH TO BE CONTACTED IN AN ATTEMPT TO COLLECT A DEBT. If you fail to comply with this request, I will consider it an intentional attempt to circumvent California’s Fair Debt Collection Practices Act.

Thank you for your anticipated cooperation with respect to my request that you cease any further contacts with me.

Sincerely,

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Re: \_\_\_\_\_

Acct.#: \_\_\_\_\_

To Whom It May Concern:

Please note for your records that I dispute the alleged debt. Therefore, you are directed not to report any negative credit information regarding this account to any credit reporting agency without also reporting that the account is disputed, as required by California Civil Code Section 1785.25(c).

I request validation of the alleged debt to \_\_\_\_\_. I specifically request that you send me an accounting showing that I owe the above-mentioned amount on the above-mentioned account.

Sincerely,

\_\_\_\_\_

Date of call? (MM/DD/YY)	Time of Call?	Identify the company and/or caller here if you know their identity	Check this box if you picked up the call and told the caller not to call anymore	Check this box if they left you a voice mail message (save the message)	Check this box if the caller hung up	Make a note of anything of interest the caller said here
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE:      ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		If you are 'judgment-proof' as explained on page 8 you can ignore every legal document EXCEPT this one. It is HIGHLY UNLIKELY you will receive this document but if you do, you must appear in court on the date indicated. Call (408) 288-7030 if you want advice about how to handle such an appearance
PLAINTIFF DEFENDANT		
<b>APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION</b> <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person		CASE NUMBER:

**ORDER TO APPEAR FOR EXAMINATION**

1. TO (name):
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
  - a.  furnish information to aid in enforcement of a money judgment against you.
  - b.  answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
  - c.  answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date:	Time:	Dept. or Div.:	Rm.:
Address of court <input type="checkbox"/> is shown above <input type="checkbox"/> is:			

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):

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

JUDGE

**This order must be served not less than 10 days before the date set for the examination.**

**IMPORTANT NOTICES ON REVERSE**

**APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION**

4.  Original judgment creditor     Assignee of record     Plaintiff who has a right to attach order applies for an order requiring (name):  
to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
  - a.  the judgment debtor.
  - b.  a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7.  This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8.  The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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)

(Continued on reverse)

(SIGNATURE OF DECLARANT)