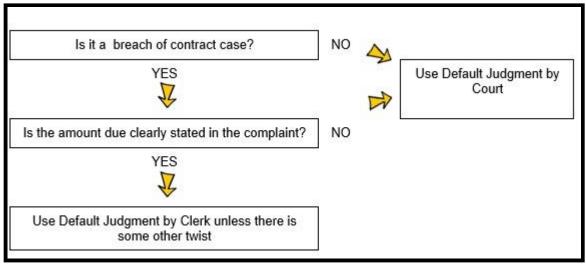
Request a Default Judgment by Clerk

WARNING

Unless the case is a clear-cut breach of contract case with a written amount due, you will probably need a Default Judgment by Court. Visit <u>Default Judgment by Court (https://www.saclaw.org/resource_library/request-adefault-judgment-by-court/)</u> for the correct guide.



Flow chart to select between judgment by clerk and judgment by court

A defendant has 30 days from the date he or she is personally served with your summons and complaint to file a written response, or 40 if you served them by substituted service. (California Code of Civil Procedure (CCP) § 412.20(a) (3) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=412.20.)).

This is not an automatic cutoff. The court will still accept a response from the defendant after 30 days, until you file a *Request for Entry of Default*. Once the clerk enters a default in the court record, the defendant is no longer able to file a response or otherwise participate in the case.

Templates and Forms

 Request for Entry of Default (CIV-100)

(https://www.courts.ca.gov/documents/civ100.pd (https://www.courts.ca.gov/documents/civ100.pd

 Judgment of Default by Clerk (CV/E-121) Sacramento Cases Only

(https://www.saccourt.ca.gov/forms/docs/cv-121.pdf)

(https://www.saccourt.ca.gov/forms/docs/cv-121.pdf)

- Judgment (JUD-100) Non-Sacramento Cases Only (https://selfhelp.courts.ca.gov/jcc-form/JUD-100)
- Request for Dismissal (CIV-110) (https://selfhelp.courts.ca.gov/jccform/CIV-110)
- Declaration Re: Accrual of Interest (MC-30) (https://selfhelp.courts.ca.gov/jcc-form/MC-030)

 Declaration Re: Accrual of
- Memorandum of Costs (MC-010) (https://selfhelp.courts.ca.gov/jccform/MC-010)
- Declaration of Venue PDF
 (https://saclaw.org/wpcontent/uploads/2023/04/form-declaration-revenue.pdf)
- Proof of Service by First-Class
 Mail (MC-030)
 (https://selfhelp.courts.ca.gov/jcc-form/POS

The plaintiff can also request a judgment entered in his or her favor, at the same time as the default, or later. This is known as requesting a default judgment. The clerk can grant this judgment in breach of contract cases where a specific monetary amount is stated in the complaint. In other cases it must be done by the judge ("default judgment by court"). We have a separate guide for that; the process is more complicated.

Background

CLERK OR COURT JUDGMENT?

Unless the case is a clear-cut breach of contract case with a written amount due, you will probably need a Default Judgment by Court. Visit Default Judgment by Court (https://www.saclaw.org/resource_library/request-adefault-judgment-by-court/) for the correct guide.

Warning: Declaration of Venue Requirement Can Trip You Up

If your lawsuit is for a *loan for personal or household use*, you must serve the defendant with a Declaration of Venue before obtaining a default. If you think there's any chance of a default, be sure to serve this with the Summons. If it is not served with the Summons, **later service gives the defendant another 30 days to respond** (40 if by substituted service). (CCP § 396a(a)

(http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=396a.&lawCode=CCP)
). (This requirement also applies to car dealers and retail installment contracts.) You can serve this at the same time you serve the complaint, but if you did not, you must have the Declaration of Venue served now. It must be served in the same way as a Summons and Complaint (personal service).

If your case requires a Declaration of Venue, the Clerk will reject your Request for Default unless you include proof of service of one.

You can find a *Declaration of Venue* form and instructions here (https://www.saclaw.org/resource_library/declaration-of-venue/).

Step-by-Step Instructions

1



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Make sure defendant has actually missed their deadline

Deadline:

Personal service—30 calendar days from service

• Substituted service – 40 calendar days from follow-up mailing (longer if outside Cal.)

The defendant has 30 days from the date of personal service to file his or her response. If the defendant was served by substituted service, service is considered complete on the 10th day after the follow-up mailing required to complete substituted service (CCP § 415.20(a)

(http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=415.20.)), so, as a practical matter, the default cannot be taken until more than 40 days have passed after this mailing.

If the last day is a weekend or holiday, the deadline extends until the next business day. The first day you can file your Request for Default is the 31st (or 41st) day.

Declaration of Venue: As discussed above, you must also have served the Declaration of Venue, either with the complaint or later, and waited 30 (or 40) days if served separately.

2

Choose entry of default only, or entry of default and clerk's judgment

Obtaining a default judgment involves two steps: the request for entry of default and the request for entry of clerk's judgment. You can request both at the same time, or you can take these steps at different times.

Entry of Default only: If you want to cut off the defendant from responding as soon as possible, but you need additional time to get all the paperwork ready for the judgment, file the Request for Entry of Default (CIV-100) now and the request for judgment later. Here are the steps:

- Fill out Request for Entry of Default (CIV-100) (http://www.courts.ca.gov/documents/civ100.pdf) and sign it. A sample filled-in form with instructions is available in the Forms section of this guide.
- Make three copies.
- Have someone else (a person over 18 who is not a party to the case) serve (mail) one copy to the
 defendant. On the rest of the copies, have the server fill out and sign Item 6 on page 2 ("Declaration of
 Mailing").
- File the original and both copies with the Clerk.
- Complete the rest of this guide when you are ready to request the judgment. Your deadline is within 45 days after entry of default, unless you ask the court for an extension.

Entry of Default and Clerk's Judgment: If you have all the paperwork you need to request the judgment as well, you can request it at the same time as the entry of default, on the same form. The additional paperwork is fairly simple.

For the rest of this guide, we will assume you are filing both steps simultaneously.

3

Complete the necessary forms

The Judicial Council and local Sacramento County forms commonly used in this procedure are:

- Request for Entry of Default (CIV-100) (http://www.courts.ca.gov/documents/civ100.pdf)
- Judgment by Default by Clerk (CV/E-121) (http://www.saccourt.ca.gov/forms/docs/cv-121.pdf)
- (If you are not in Sacramento County, use <u>Judgment (JUD-100) (http://www.courts.ca.gov/documents/jud100.pdf)</u> or your local form)
- Request for Dismissal (CIV-110) (http://www.courts.ca.gov/documents/civ110.pdf), if dismissing other parties (see Step 4)
- Declaration re: Accrual of Interest (MC-030) (http://www.courts.ca.gov/documents/mc030.pdf), if claiming pre-judgment interest (see Step 5)

Sample filled-in forms with instructions are available at the end of this Guide.

You will also need to provide:

- The original Summons if not yet filed, or a file-stamped copy, if already filed
- The original Proof of Service of Summons, if not yet filed, or a file-stamped copy if already filed
- Proof of Service of Declaration of Venue, if not listed on the Proof of Service of Summons
- A copy of the contract, with caption cover sheet, if it was not attached to the complaint. Use <u>Declaration</u> (MC-030) (http://www.courts.ca.gov/documents/mc030.pdf) as the cover sheet.

4

Dismiss any other parties (DOES)

Before you can obtain a judgment, you must dismiss any parties other than the party(ies) in default. This usually means any DOES you included in the Complaint. If you did not name anyone other than the party(ies) in default, skip this step.

To dismiss parties, fill out Request for Dismissal (CIV-110) (http://www.courts.ca.gov/documents/civ110.pdf). A sample filled-in form with instructions is available at the end of this Guide.

5

Complete your Declaration re: Accrual of Interest

Many contracts include interest on a loan or on overdue payments in addition to the principal amount owed. To obtain any pre-judgment interest you claimed in your Complaint, you must prepare a declaration to the court



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showing how you calculated that amount. You may use <u>Declaration (MC-030) (http://www.courts.ca.gov/documents/mc030.pdf)</u> for this declaration. A sample is included at the end of this Guide, which you can adapt to fit your own facts and circumstances.

In breach of contract cases, pre-judgment interest will accrue at the rate of interest specified in the contract; if no rate is specified, interest will accrue at 10% per year. Civ § 3287(c)
(http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=3287.)
caps pre-judgment interest in cases against a government entity at 7% per year.

To calculate your pre-judgment interest, you must determine the daily rate of interest and multiply that by the number of days for which interest should accrue. For example, if a loan of \$15,000 with a 10% interest rate was breached 200 days ago, the prejudgment interest calculation would be:

\$15,000 x 10% = \$1500 interest per year \$1500 ÷ 365 = \$4.11 interest per day \$4.11 x 200 = \$822 prejudgment interest

You may use the judgment calculator on the San Diego Court's website (https://ijcalc.sdcourt.ca.gov/) to determine the amount of interest. When using this calculator, enter the date the contract was breached in the field for "judgment date." This will calculate interest from that date to the date you run the calculation. The calculator will show you the daily interest rate, which you can use if you need to adjust your calculations.

6

Complete Memorandum of Costs, any

If you have court costs that you want to recover, fill out the Memorandum of Costs portion of the Request for Entry of Judgment (CIV-100), which is item 7 on that form. If you were granted a fee waiver, you will probably not need to do this part.

If you do use the form, it should be simple. Since the case is ending with a default, you should not have many costs to list – probably filing fees and the cost of service.

7

Copy and assemble documents

Make three (3) copies of each:

- Request for Dismissal (CIV-110), if applicable
- Request for Entry of Default (CIV-100)
- Declaration re: Accrual of Interest (MC-030)



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Judgment by Default by Clerk (CV/E-121)

Staple each photocopy, but **leave the originals unstapled**. The originals will be scanned into the court's filing system, and the staple will damage the scanner. Set aside one photocopy of each document for service on the other party. For the remaining copies of each document, place the original on top of its photocopies, and paperclip them together.

8

Have your documents served

You must have someone over the age of 18 who is not a party in the case mail a set of the photocopies you made in Step 7 to the defendant. This person must then complete a <u>Proof of Service by Mail (POS-030)</u> (http://www.courts.ca.gov/documents/pos030.pdf). Make two photocopies of the signed proof of service. See the Step-by-Step guide on Serving Documents by Mai (https://www.saclaw.org/resource_library/serving-documents-by-mail/) I for more information.

9

File your documents

You must file the original and two (2) remaining photocopies of:

- Request for Entry of Default (CIV-100)
- Declaration re: Accrual of Interest (MC-030)
- Judgment by Default by Clerk (CV/E-121) (or JUD-100 if outside Sacramento)
- Request for Dismissal (CIV-110), if applicable
- Proof of Service (POS-030) for all of the above documents, from Step 8
- Memorandum of Costs (MC-010) with Proof of Service (p2) complete, if you are using it
- Original Summons (SUM-100) (if not yet filed), or filed endorsed (stamped) copy
- Proof of Service of Summons (POS-010) (if not yet filed), or filed endorsed (stamped) copy

In Sacramento, if you do not have filed endorsed copies of the Summons and Proof of Service of Summons, you may download them from the court's online Public Case access system_(https://prod-portal-sacramento-ca.journaltech.com/public-portal/) (free) or by using the courthouse kiosks.

If needed, you must also file:

- Copy of written contract, with cover sheet (use <u>Declaration (MC-030) (http://www.courts.ca.gov/documents/mc030.pdf)</u>
 as cover sheet) (this is required if it was not attached to complaint)
- Proof of Service of Declaration of Venue (if served separate from Summons)

In Sacramento, file your documents in the drop box in Room 102 in the Sacramento Superior Court at 720 Ninth Street. Fill out and attach the *Civil Document Drop-Off Sheet* (http://www.saccourt.ca.gov/forms/docs/cv-drop-off-sheet.pdf),



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and date stamp the back of each original document. A supply of *Civil Document Drop-Off Sheets* and a date stamp are located near the drop box. Include a self-addressed stamped envelope with enough postage to mail your documents back to you.

Although the court cannot tell you exactly when your default will be processed, every Friday they publish a list of dates that they have reached in processing particular document types. You may see this list on the Court's civil webpage. (https://www.saccourt.ca.gov/civil/civil.aspx)

10

After you receive your Judgment, serve Judgment and Notice of Entry of Judgment on defendant

If your judgment is approved, the court will mail you a signed copy. Fill out a Notice of Entry of Judgment.

Make one photocopy of Judgment and Notice of Entry of Judgment, and have them served on the defendant by mail, by someone over the age of 18 who is not a party in the case. The server must then complete a <u>Proof of Service by Mail (POS-030) (http://www.courts.ca.gov/documents/pos030.pdf)</u>.

Make a photocopy of the signed proof of service, and file the original and photocopy with the court. See our Step-by-Step guide on <u>Serving Documents by Mail (https://www.saclaw.org/resource_library/serving-documents-by-mail/)</u> for more information.

For More Information

For help

SH@LL (Self-Help at the Law Library) (https://saclaw.org/services/civil-self-help/) 609 9th Street, Sacramento CA 95814

(916) 476-2731 (Appointment Request Line)

Services Provided: SH@LL provides general information and basic assistance to self-represented litigants on a variety of legal issues. All assistance is provided by telephone. Visit "What we can help with (https://saclaw.org/services/civil-self-help/#canhelp)" for a list of qualifying cases.

Eligibility: Must be a Sacramento County resident or have a <u>qualifying case (https://saclaw.org/services/civil-self-help/#who)</u> in the Sacramento County Superior Court.

At the Law Library:

Win Your Lawsuit KFC 968 .Z9 D86 (Self Help) Chap. 9

California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Ref) Chap. 165 Electronic Access: On the Law Library's computers, using *Lexis Advance*.



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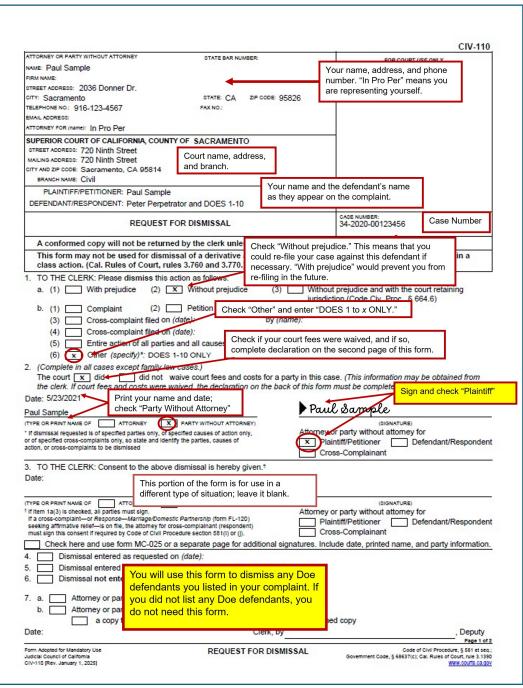
California Civil Procedure Before Trial KFC 995 .C34 Chap. 38

Electronic Access: On the Law Library's computers, using OnLaw.

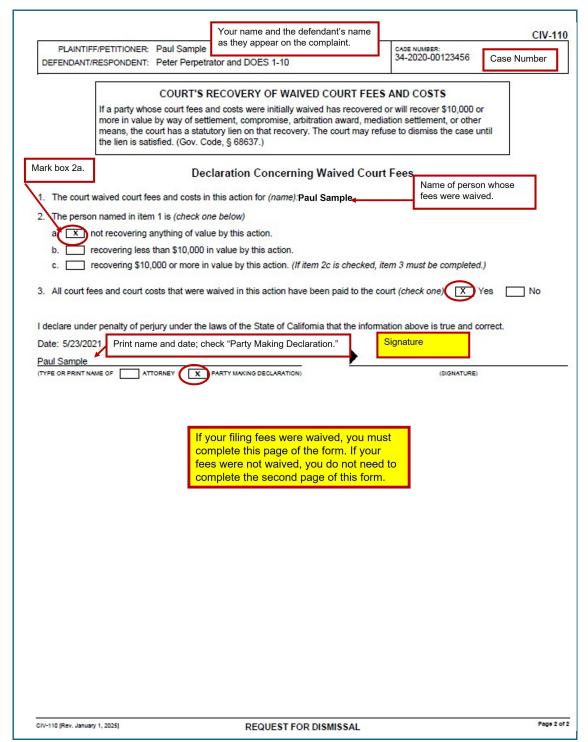
If you have questions about this guide, or if you need help finding or using the listed materials, don't hesitate to ask a reference librarian.

Samples

Request for Dismissal

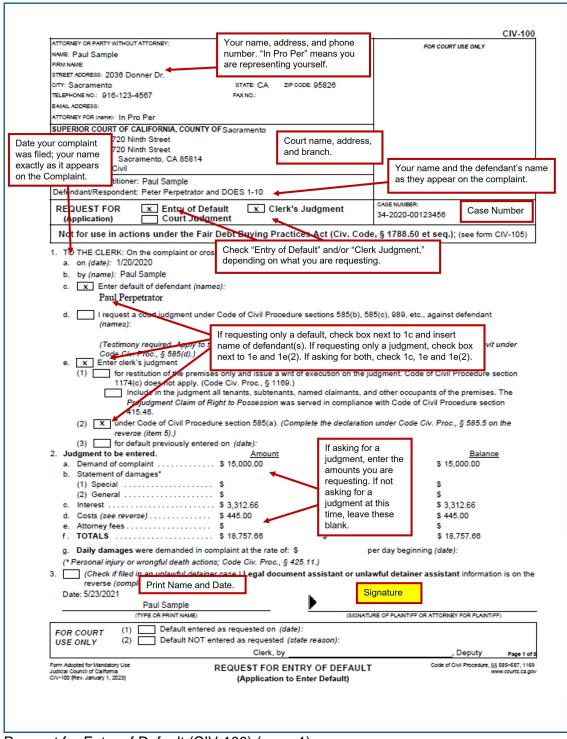


Request for Dismissal (CIV-110) (page 1)



Request for Dismissal (CIV-110) (page 2)

Request for Entry of Default



Request for Entry of Default (CIV-100) (page 1)



a. Assistant's name:	sistant (Bus. & Prof.	34-2020-00123456	
unlawful detainer assistant did _x did not received any help or advice for pay from a legal da. Assistant's name:		C-d- 8 0400 -4 \	
a. Assistant's name:	l l		
	Check "did not. "	c. Telephone no.:	
 Street address, city, and zip code: 		d. County of registration:	
	Check	e. Registration no.:	
	appropriate	f. Expires on (date):	
x Declaration under Code Civ. Proc., § 585.5	boxes in 5a, 5b, and 5c.	der Code Civ. Proc., § 585(a)). This	action
a. is X is not on a contract or installme	nt sale for goods or se	ervices subject to Civ. Code, § 1801	et seq. (Unruh Act).
b. is X is not on a conditional sales con			
and Finance Act). c. is x is not on an obligation for goods	s, services, loans, or e	extensions of credit subject to Code (Civ. Proc., § 395(b).
Declaration of mailing (Code Civ. Proc., § 587). A	copy of this Request	for Entry of Default was	
a not mailed to the following defendants,	Check box next to 6	ôb and insert date of mailing, , and address where served.	y (names):
b. x mailed first-class, postage prepaid, in a se to each defendant's last known address as		sed to each defendant's attorney of r	ecord or, if none,
(1) Mailed on (date): 5/23/2021		specify names and addresses showner Perpetrator	on the envelopes):
		Main St. #22	
	Sac	ramento, CA 95814	
Print name and data	tate of California that	the foregoing items 4, 5, and 6 are to	rue and correct.
Paul Sample	•	Signature	
(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
Memorandum of costs (required if money judgment	t requested). Costs an	d disbursements are as follows (Coo	le Civ. Proc.,
§ 1033.5): a Clerk's filing fees \$	205.00		
	385.00 60.00	Amount paid for	
c. Other (specify):	•	filing and process	
d. \$		server fees; total.	
e. TOTAL\$	445.00	_	
f. Costs and disbursements are waived.	T. 16. 6	-f	
g. I am the attorney, agent, or party who claims the correct and these costs were necessarily incurred		or my knowledge and belief this mem	orandum of costs is
eclare under per te: 5/23/2021 Print name and date.	State of California that	the foregoing item 7 Signature	ct.
Paul Sample	<u> </u>		•
(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT	7
-100 (Rev. January 1, 2023) DEOLES	T FOR ENTRY OF		Page 2 of

Request for Entry of Default (CIV-100) (page 2)



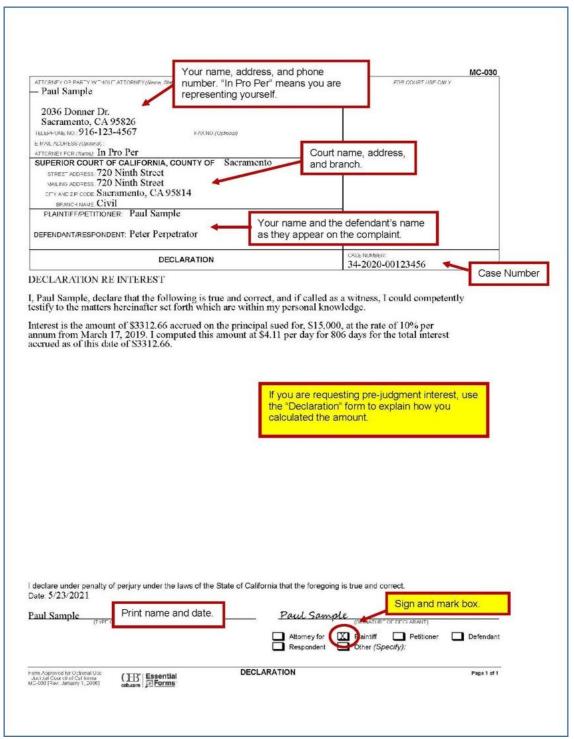
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Plaintiff/Petitioner: Paul Sample	CASE NUMBER:
Defendant/Respondent: Peter Perpetrator and DOES 1-10	34-2020-00123456
Declaration of nonmilitary status (required for a judgment). No defendant/respondent named in item 1c is in the military service of the Unit Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Co	
I know that no defendant/respondent named in item 1c is in the U.S. military set a. X the search results that I received from https://scra.dmdc.osd.mil/ say	
service. b. I am in regular communication with the defendant/respondent and known in the service.	
c. I recently contacted the defendant/respondent, and they told me that	
 I know that the defendant/respondent was discharged from U.S. milita the defendant/respondent is not eligible to serve in the U.S. military b 	•
incarcerated a business entity	
f. other (specify):	You must verify that the defendant isnot currently in the military before obtaining a judgment by default.
	Choose the box that explains how you
U.S. military status can be checked online at https://scra.dmdc.osd.m If the defendant/respondent is in the military service, or their military service.	learned that defendant
 For more information, see https://selfhelp.courts.ca.gov/military-defau 	

Request for Entry of Default (CIV-100) (page 3)

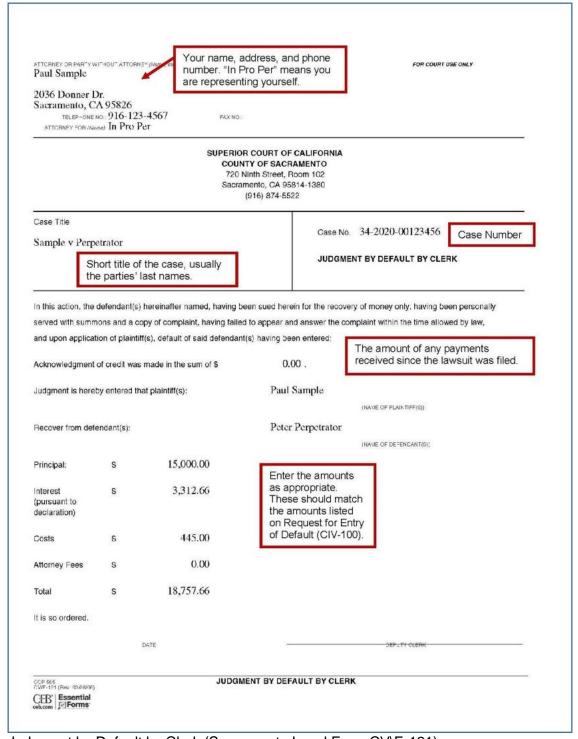


Declaration re Interest



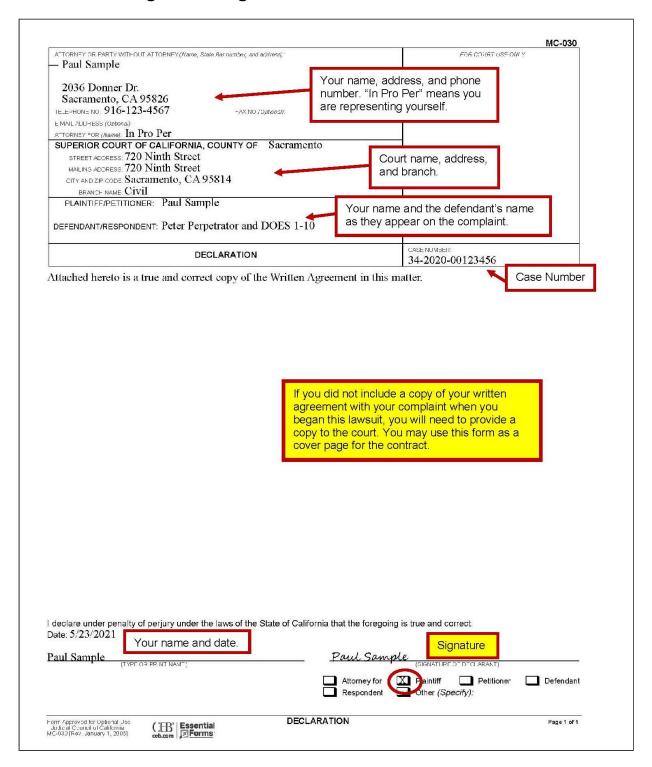
Declaration re Interest (MC-030)

Judgment by Default By Clerk



Judgment by Default by Clerk (Sacramento Local Form CV\E-121)

Declaration Attaching Written Agreement



Optional: Declaration Attaching Written Agreement



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