

**Chapter 3**  
**DEFAULT BY DEFENDANT**

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### § 3.1 Vocabulary

<b>Default</b>	failure to respond to a complaint or appear at trial or other hearing
<b>Default judgment</b>	decision as to the rights of the parties to a lawsuit after defendant fails to respond to a complaint
<b>Due date</b>	date by which a pleading or document must be filed and served
<b>Entry of default</b>	notation by the clerk of the court regarding defendant's failure to appear

### § 3.2 Introduction

The course of a lawsuit can vary greatly. The quickest end to a lawsuit can be when the defendant fails to respond to the Complaint by the due date (i.e., 30 days from service of the Summons and Complaint unless an extension of time is obtained from opposing counsel or granted by court order). The plaintiff can then ask the court to enter the defendant's default in the court file. This prevents the defendant from filing a late response unless and until the default is set aside as a result of the defendant prevailing on a motion to set aside default. (See C.C.P. §§ 473 and 473.5 for grounds and time limitations.)

If the default is not set aside, the plaintiff can request that Judgment be entered in favor of the plaintiff and against the defendant for the amount prayed for in the Complaint. This is done by the clerk in some instances (C.C.P. § 585(a)) and by the judge in others (C.C.P. § 585(b)). Generally the clerk can only enter Judgment when the amount of damages is certain, as on a written contract, and the judge has to do it in any case where service was made by publication or where the sum has to be computed and proved, such as personal injury cases.

The procedures described in this section for entering default and obtaining default Judgment for a defendant are equally applicable to a cross-defendant who fails to respond to a Cross-Complaint.

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### **§ 3.3 Entry of Default**

The first step is to enter the defendant's default on the court record. This is done with a form entitled "Request for Entry of Default." (The form has another purpose as well – it allows the plaintiff (or cross-complainant) to request the clerk to enter a default judgment or request the court either to enter a default judgment or a set a hearing to do so.)

#### **NOTES RE FILING REQUEST FOR ENTRY OF DEFAULT:**

- **UNTIL THE REQUEST FOR ENTRY OF DEFAULT FORM IS FILED, A RESPONSIVE PLEADING MAY BE FILED EVEN THOUGH THE DUE DATE IS PASSED.**
- **IF THE PLAINTIFF DOES NOT FILE THE REQUEST FOR ENTRY OF DEFAULT WITHIN TEN DAYS AFTER THE DEFENDANT'S RESPONSE TO THE COMPLAINT WAS DUE, THE COURT MAY FILE AN ORDER TO SHOW CAUSE WHY SANCTIONS SHOULDN'T BE IMPOSED AGAINST THE PLAINTIFF. (C.R.C., RULE 3.110(g))**

Form  
renumbered  
1/1/07

**“Request for Entry of Default” (Mandatory Judicial Council Form CIV-100)**

- 1▶ Complete the top portion of the form as on the Civil Case Cover Sheet, but add the attorney’s email address, if available, in the top box, and the case number to the right of the title of the form.
- 2▶ Check the box before “Entry of Default” in the title. A decision about whether to choose the “Clerk’s Judgment” box or “Court Judgment” box depends on which of C.C.P. § 585(a) or (b) applies to your case, and whether default judgment is being sought at this juncture at all.
- 3▶ Enter the date the Complaint was filed. (Check the conformed copy of the Complaint in your file.)
- 4▶ Enter the name of the plaintiff in all caps.
- 5▶ Check the box and enter, in all caps, the name(s) of the defendant(s) who failed to respond to the Complaint.
- 6▶ The next step depends on whether you are seeking entry of a court judgment or a clerk’s judgment.
  - If you chose the “Court Judgment” box in the title, then check #1d, and enter, in all caps, the name(s) of the defendant(s) against whom a court judgment is sought.
  - If you chose the “Clerk’s Judgment” box in the title, then check #1e and (2).
- 7▶ #2a-g: Fill this part in to conform to your particular case, entering the amount claimed, any amounts paid by the defendant, and the balance due.
- 8▶ Enter the date the Request will be signed.
- 9▶ Enter the preparing attorney’s name in all caps.



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### **§ 3.4.1      Obtaining Default Judgment from the Clerk**

As noted above, you can obtain default Judgment from the clerk when the amount of damages is certain, as on a written contract. Although it is not obtainable in our hypothetical personal injury case, we provide a sample form. The form used for this purpose is a multi-purpose Judicial Council form entitled “Judgment.”

#### **“Judgment” [by Default by Clerk] (Judicial Council Form No. JUD-100)**

- 1▶ Complete the top portion of the form as on the Request to Enter Default.
- 2▶ In the title, check the box before “By Clerk” and the box before “By Default.”
- 3▶ Check the box before “By Default.”
- 4▶ Check 1d for “Clerk’s Judgment.”

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**Judgment [by Default by Clerk] - (page one)**

<b>JUD-100</b>																				
1▶	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">                 ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  <b>JOE LAWYER, ESQ. (State Bar #7756324)</b>                  1000 Colorado Boulevard, Suite 555                  Los Angeles, California 90001-1234                   TELEPHONE NO.: (213) 462-0000      FAX NO. (Optional): (213) 462-0001                  E-MAIL ADDRESS (Optional): joelawyer@joelawyerlaw.com                  ATTORNEY FOR (Name): FRED A. WRONGED             </td> <td style="width: 40%; text-align: center; vertical-align: top; font-size: small;">FOR COURT USE ONLY</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>                  STREET ADDRESS: 111 North Hill Street                  MAILING ADDRESS:                  CITY AND ZIP CODE: Los Angeles, California 90012                  BRANCH NAME:             </td> </tr> <tr> <td colspan="2" style="padding: 5px;">                 PLAINTIFF: FRED A. WRONGED                   DEFENDANT: JAMES A. WRONGDOER             </td> </tr> <tr> <td style="width: 15%; vertical-align: top;">2▶</td> <td> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;"> <table style="width: 100%; text-align: center;"> <tr> <td colspan="3"><b>JUDGMENT</b></td> </tr> <tr> <td><input checked="" type="checkbox"/> By Clerk</td> <td><input checked="" type="checkbox"/> By Default</td> <td><input type="checkbox"/> After Court Trial</td> </tr> <tr> <td><input type="checkbox"/> By Court</td> <td><input type="checkbox"/> On Stipulation</td> <td><input type="checkbox"/> Defendant Did Not Appear at Trial</td> </tr> </table> </td> <td style="width: 40%; padding: 5px;">                 CASE NUMBER:                   C 126447             </td> </tr> </table> </td> </tr> </table>	ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JOE LAWYER, ESQ. (State Bar #7756324)</b> 1000 Colorado Boulevard, Suite 555 Los Angeles, California 90001-1234  TELEPHONE NO.: (213) 462-0000      FAX NO. (Optional): (213) 462-0001 E-MAIL ADDRESS (Optional): joelawyer@joelawyerlaw.com ATTORNEY FOR (Name): FRED A. WRONGED	FOR COURT USE ONLY	<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME:		PLAINTIFF: FRED A. WRONGED  DEFENDANT: JAMES A. WRONGDOER		2▶	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;"> <table style="width: 100%; text-align: center;"> <tr> <td colspan="3"><b>JUDGMENT</b></td> </tr> <tr> <td><input checked="" type="checkbox"/> By Clerk</td> <td><input checked="" type="checkbox"/> By Default</td> <td><input type="checkbox"/> After Court Trial</td> </tr> <tr> <td><input type="checkbox"/> By Court</td> <td><input type="checkbox"/> On Stipulation</td> <td><input type="checkbox"/> Defendant Did Not Appear at Trial</td> </tr> </table> </td> <td style="width: 40%; padding: 5px;">                 CASE NUMBER:                   C 126447             </td> </tr> </table>	<table style="width: 100%; text-align: center;"> <tr> <td colspan="3"><b>JUDGMENT</b></td> </tr> <tr> <td><input checked="" type="checkbox"/> By Clerk</td> <td><input checked="" type="checkbox"/> By Default</td> <td><input type="checkbox"/> After Court Trial</td> </tr> <tr> <td><input type="checkbox"/> By Court</td> <td><input type="checkbox"/> On Stipulation</td> <td><input type="checkbox"/> Defendant Did Not Appear at Trial</td> </tr> </table>	<b>JUDGMENT</b>			<input checked="" type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial	<input type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER:  C 126447
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3▶	<p>1. <input checked="" type="checkbox"/> <b>BY DEFAULT</b></p> <p>a. Defendant was properly served with a copy of the summons and complaint.</p> <p>b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.</p> <p>c. Defendant's default was entered by the clerk upon plaintiff's application.</p> <p>4▶ d. <input checked="" type="checkbox"/> <b>Clerk's Judgment</b> (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.</p> <p>e. <input type="checkbox"/> <b>Court Judgment</b> (Code Civ. Proc., § 585(b)). The court considered          (1) <input type="checkbox"/> plaintiff's testimony and other evidence.          (2) <input type="checkbox"/> plaintiff's written declaration (Code Civ. Proc., § 585(d)).</p> <p>2. <input type="checkbox"/> <b>ON STIPULATION</b></p> <p>a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and</p> <p>b. <input type="checkbox"/> the signed written stipulation was filed in the case.</p> <p>c. <input type="checkbox"/> the stipulation was stated in open court      <input type="checkbox"/> the stipulation was stated on the record.</p> <p>3. <input type="checkbox"/> <b>AFTER COURT TRIAL</b>. The jury was waived. The court considered the evidence.</p> <p>a. The case was tried on (date and time):          before (name of judicial officer):</p> <p>b. Appearances by:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><input type="checkbox"/> Plaintiff (name each):</td> <td style="width: 50%; border: none;"><input type="checkbox"/> Plaintiff's attorney (name each):</td> </tr> <tr> <td style="border: none;">(1)</td> <td style="border: none;">(1)</td> </tr> <tr> <td style="border: none;">(2)</td> <td style="border: none;">(2)</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Continued on Attachment 3b.</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Defendant (name each):</td> <td style="border: none;"><input type="checkbox"/> Defendant's attorney (name each):</td> </tr> <tr> <td style="border: none;">(1)</td> <td style="border: none;">(1)</td> </tr> <tr> <td style="border: none;">(2)</td> <td style="border: none;">(2)</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Continued on Attachment 3b.</td> <td style="border: none;"></td> </tr> </table> <p>c. <input type="checkbox"/> Defendant did not appear at trial. Defendant was properly served with notice of trial.</p> <p>d. <input type="checkbox"/> A statement of decision (Code Civ. Proc., § 632) <input type="checkbox"/> was not <input type="checkbox"/> was requested.</p>	<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):	(1)	(1)	(2)	(2)	<input type="checkbox"/> Continued on Attachment 3b.		<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):	(1)	(1)	(2)	(2)	<input type="checkbox"/> Continued on Attachment 3b.				
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### **§ 3.4.2 Obtaining Default Judgment from the Court**

Generally, to obtain a default Judgment from the court, the plaintiff must prove entitlement to all or part of the damages (amount of money) prayed for in the Complaint. In personal injury cases, the plaintiff must prove entitlement to all or part of the damages set forth in the Statement of Damages served on the defendant. Courts prefer that evidence on damages be submitted by declaration as provided for in C.C.P. § 585(d), and an oral “prove-up hearing” will be scheduled only if the court orders one or the applicant requests one.

C.R.C., Rule 3.1800 lists all of the documents required to be submitted for default judgment upon declaration:

- Except in unlawful detainer cases, a brief summary of the case identifying the parties and the nature of the claim
- Declarations or other admissible evidence in support of the judgment requested
- Interest computations as necessary
- A memorandum of costs and disbursements – [this would be included in the Request for Entry of Default]
- A declaration of nonmilitary status – [this would be included in the Request for Entry of Default]
- A proposed form of judgment - [this would be Judicial Council Form No. 100]
- A dismissal of all parties against whom judgment is not sought or an application for separate judgment against specified parties
- Exhibits as necessary
- A request for attorneys fees if allowed by statute or by agreement of the parties

To obtain a default Judgment from the court, you use the Judicial Council JUD-100 previously discussed, but you complete it slightly differently.