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References

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CCP – Code of Civil Procedure

GC – Government Code

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• 6-13/000.00 Miscellaneous Remedies of Plaintiffs

Certain remedies are available to a plaintiff in case. A plaintiff may obtain an order to examine a third party concerning the defendant's properly (CCP 491.110), file a creditor's suit against a third party. (CCP 491.310), or obtain a lien in a pending action or proceeding. (CCP 491.410)

• 6-13/100.00 Order for Examination of Debtor of Defendant

The plaintiff in a writ of attachment case may obtain an Order to Appear for Examination (AT-138/EJ-125) to examine a third party in possession of the defendant's property. The order may be issued ex parte upon application of the plaintiff with proof to the satisfaction of the court that the third person has possession or control of property in which the defendant has an interest or is indebted to the defendant in an amount exceeding $250.

The third party may be charged with contempt for failure to appear. The defendant must also be served (personally or by mail.) (CCP 491.110) An order for examination of a corporation, partnership or other organization may be directed to a specified individual or the organization. (CCP 491.140)

The defendant may file a claim of exemption in response to the order. The claim must be in writing and filed with the court (not the Sheriff's Department) and personally serve a copy on the plaintiff. Except to facilitate the examination of a third person, a defendant under a writ of attachment cannot be required to be examined to aid the plaintiff in locating assets. (CCP 491.120) (Ex Parte Rickleton, 51 C 316)

Since failure to appear may result in arrest for contempt, service may not be made on the attorney of record. If the debtor of defendant is out of the state or avoiding service, the court may make an order directing service on the defendant's attorney of record. (CCP 1016 and In re Meyer, 131 CA 41)

• • 6-13/100.10 Court Seal Not Required

CCP 153 Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except to the following:

(a) A writ.

(b) A summons.

(c) A warrant of arrest.

• • 6-13/100.20 Service

Written instructions, the fee deposit and a copy of the order are required for service. The order must be served personally on the third party at least 10 days before the hearing. The defendant must also be personally served, or by mail. (CCP 491.110)

• • 6-13/100.30 Distance of Travel

The third party may not be required to appear before a court outside the county of the third party's residence unless the distance is less than 150 miles. (CCP 491.150(b))

Mileage fees at the rate of $0.20 a mile to and from the third party's residence must be tendered at the time of service. The fees shall be in the same amount generally provided for witnesses when legally required to attend civil proceedings in the court where the examination proceeding is to be conducted. (GC 68093)

• • 6-13/100.40 Failure to Appear

If an order requiring a person to appear for an examination was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear, the court may issue a warrant pursuant to CCP 1993, find the person in contempt, or both. A person who willfully makes an improper service of an order for an examination which subsequently results in the person's arrest is guilty of a misdemeanor. (CCP 491.160)

• • 6-13/100.50 Protective Order

In any proceeding under this article, the court may, on motion of the person to be examined or on its own motion, make such protective orders as justice may require. (CCP 491.180)

• • 6-13/100.60 Order Directing Transfer

The court may issue an order forbidding the transfer of the property to the defendant until its ownership is determined or until a creditor's suit is filed. (CCP 491.170) If the court determines that the debtor has an interest in the property, the court may order the property paid to the levying officer if the levying officer has a writ of attachment. (CCP 491.190(a)(1))

• • 6-13/100.70 Lien

Service of the order creates a lien on the defendant's property for one year unless extended by the court. (CCP 491.190(a)(1)) The lien continues on property notwithstanding the transfer of the property unless the transfer is made to a person listed in CCP 697.740. (CCP 491.200)

• • 6-13/100.80 Return of Service

Most courts, by court rule, require the original order, unless kept in the court file, and the proof of service be filed with the court a specific number of court days prior to the hearing, and will not issue a warrant for failure to appear or allow any costs if the return is not filed timely. Unless specifically requested otherwise, send the return directly to the clerk of court as soon as possible after service rather than the party requesting service. In Limited Civil court cases, send the return directly to the referee who presides in these matters, or the referee's clerk. Most courts, however, will proceed with the examination whether or not the return has been filed, if all the parties are present and ready to proceed at the time set.

• 6-13/200.00 Creditorâ€™s Suit

The plaintiff in a writ of attachment case may file a creditor's lawsuit against a third party in possession of the defendant's property. The court may issue an order restraining the third party from transferring the property. If the plaintiff prevails in the lawsuit, the court may order the property delivered to the court or held by the levying officer. (CCP 491.310, 491.340, 491.360)

• 6-13/300.00 Pending Action

The plaintiff in a writ of attachment case may obtain a lien on money or property owed the defendant in a cause of action. The court may restrain the transfer of the property or order it held by the court or the **levying officer. If the property is transferred, the court may render judgment against the transferring third party. The defendant may file a claim of**

exemption with the court. (CCP 491.410, 491.415, 491.420, 491.440, 491.460, 491.470)