



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 17, 2019

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**Title**

Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information

**Agenda Item Type**

Action Required

**Effective Date**

September 1, 2019

**Rules, Forms, Standards, or Statutes Affected**

Adopt form CIV-165

**Date of Report**

April 24, 2019

**Recommended by**

Civil and Small Claims Advisory Committee  
Hon. Ann I. Jones, Chair

**Contact**

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### Executive Summary

Legislation effective January 1, 2019, authorizes a person who believes that his or her personal identifying information has been used unlawfully in a business entity filing to petition a court for a determination of unlawful use and issuance of an order certifying that determination and ordering specified actions. Senate Bill 1196 (Jackson; Stats. 2018, ch. 696) requires the Judicial Council to develop a form for issuing the order. The Civil and Small Claims Advisory Committee recommends that new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) be used for that purpose.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019, adopt *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to provide a form for issuing an order required under Senate Bill 1196.

The new form is attached at page 5.

## Relevant Previous Council Action

The Judicial Council has taken no previous action relevant to this proposal.

## Analysis/Rationale

Under SB 1196, a party may petition a court to stop the wrongful use of the party's identity in a business entity filing with the Secretary of State and the council must adopt a form that may be filed with the Secretary of State.

SB 1196 added in part, new Civil Code section 1798.201 to authorize a person who has learned or reasonably suspects that his or her personal identifying information has been used unlawfully<sup>1</sup> in a business entity filing, and who has initiated a law enforcement investigation into the unlawful use, to petition the superior court for an order directing the person who acquired the information with the intent to defraud, if known, and the person using the personal identifying information in the business entity filing, to appear at a hearing before the court. The alleged perpetrator and the person using the personal identifying information must show cause for (1) why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity, and (2) why the personal identifying information should be associated with the business entity. (Civ. Code, § 1798.201(a) & (b).)

SB 1196 also added new Civil Code section 1798.202, which provides that if the court determines the petition is meritorious and there is no reasonable cause to believe that the victim's personal identifying information has been used lawfully in the business entity filing, the court must make a finding that the victim's personal identifying information has been used unlawfully in the business entity filing and issue an order certifying this determination. On making the determination, the court must order that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases. (Civ. Code, § 1798.202(c).)

This advisory committee recommends the adoption of new *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to comply with the requirement of SB 1196. Form CIV-165 includes the findings necessary under new Civil Code section 1798.202 for a judicial determination that the petitioner's personal identifying information was used unlawfully and the action that a judge must order on such a determination: that the name and identifying information be redacted or labeled to show that it is impersonated and that it be removed from publicly accessible electronic indexes and databases. The new form requires the petitioner to file a certified copy of the order with the Secretary of State. (See Civ. Code, § 1798.202(f).)

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<sup>1</sup> Unlawful use is defined in Penal Code section 530.5(a) as "any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of [another] person."

## **Policy implications**

The advisory committee did not discuss policy concerning this proposal, except as described in the alternatives considered, below. The form is required by legislation and will be used by courts to comply with new Civil Code section 1798.202.

## **Comments**

This proposal circulated for public comment from December 11, 2018, to February 12, 2019. Three comments were received, all agreeing with the proposal. The Superior Courts of Los Angeles and San Diego Counties, in response to a specific question in the invitation to comment, further commented that the findings listed in item 2 of form CIV-165, which stated what the court relied on in finding no reasonable cause to believe that the petitioner's personal identifying information had been used lawfully, should follow the language of the statute. The committee agreed and recommends the council adopt the form as circulated.

## **Alternatives considered**

Before the proposal circulated for comment, the advisory committee considered how to word item 2 on form CIV-165. In stating that the court found no reasonable cause to believe that the petitioner's personal identifying information had been used lawfully, three alternatives were considered: (1) to set out the types of information the court relied on in making the finding by tracking the language of the statute, which provides that the petition is to be determined based on declarations, affidavits, police reports, or other material, relevant, and reliable information; (2) to state only that the court relied on relevant and reliable information in making its finding; or (3) to state only that the court made the finding.

Some members were concerned that if one of the types of reliable information—as listed in the statute—includes police reports, petitioners may attach them or include them when their petitions are filed. Doing so could require a filing under seal. Others noted that police reports and other documents that petitioners might show to judicial officers did not necessarily need to be filed. After discussion of the alternatives, the committee decided to track the language of the statute and to seek comments on this specific question. As noted above, the two commenters who addressed the question agreed that the form language should follow the statutory language.

## **Fiscal and Operational Impacts**

The fiscal and operational impacts of adopting a form order that must be filed by the petitioner with the Secretary of State are limited. The authority and procedures for setting and holding a hearing on the petition are required by statute and not created by this proposal. The Superior Court of San Diego County identified two implementation requirements: training staff (business office and courtroom clerks) and updating case management system internal procedures. The court determined that three months from council approval of the proposal to its effective date was sufficient time for implementation. The Superior Court of Los Angeles County identified four implementation requirements: revising current procedures; training its clerical, supervisory, and management staff; modifying its case management system; and updating its website. The court stated that at least six months would be needed for implementation. Because the legislation

this proposal implements was effective January 1, 2019, the committee does not recommend delaying the effective date of form CIV-165 beyond September 1, 2019.

### **Attachments and Links**

1. Form CIV-165, at page 5
2. Chart of comments, at page 6–7
3. Link A: Senate Bill 1196,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB1196](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1196)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>name</i> ): _____	FOR COURT USE ONLY  <b>DRAFT</b>  <b>03-11-2019</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITION OF ( <i>name</i> ): _____	
<b>ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION</b>	CASE NUMBER: _____

1. The petition of (*name*): \_\_\_\_\_ under Civil Code section 1798.201 came on for hearing  
 on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 in Dept.: \_\_\_\_\_
  
2. THE COURT FINDS, based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court, that the petition is meritorious and there is no reasonable cause to believe that the petitioner's personal identifying information has been used lawfully in the business entity filing. The court finds that the victim's personal identifying information has been used unlawfully in the business entity filing.
  
3. THE COURT ORDERS that the name and associated personal identifying information in the business entity filing is to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity and the name and personal identifying information is to be removed from publicly accessible electronic indexes and databases.
  
4. For this order to be carried out, the petitioner must file a certified copy of this order with the Secretary of State.

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

\_\_\_\_\_ JUDICIAL OFFICER

**W19-05****Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (form CIV-165)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association By Deirdre Kelly President	A	None	No response necessary.
2.	Superior Court of Los Angeles County	A	<p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Yes.</p> <p><b>Should the language in item 2 include the types of information, as set out in new Civil Code section 1798.202, that the court may have relied on in making its findings?</b></p> <p>Yes.</p> <p><b>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b></p> <p>Implementation would require revising current policy/procedure, training of clerical, supervisory and management staff, modifying case management system and updating website.</p> <p><b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p>	<p>The committee appreciates the comments.</p> <p>The language in item 2 tracks the statutory language, consistent with this comment. It is unchanged from the version that circulated for comment.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

