



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-108

For business meeting on September 20, 2024

Title

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

Agenda Item Type

Action Required

Effective Date

January 1, 2025

Rules, Forms, Standards, or Statutes Affected

Revise form CIV-165

Date of Report

August 15, 2024

Recommended by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Contact

Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising form CIV-165, *Order on Unlawful Use of Personal Identifying Information*, for a judicial officer to identify (1) the business entity at issue in the petition underlying the order and (2) its corresponding file number with the Secretary of State if identified in the petition. The recommendation responds to a request from the Secretary of State's office for more information to allow it to act on a court's determination that a petitioner's personal identifying information was used unlawfully in a business entity filing. The revisions are intended to assist the Secretary of State in locating the offending record so that Secretary of State staff can perform the steps necessary to comply with the court's order granting relief to a petitioner.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2025, revise *Order on Unlawful Use of Personal Identifying Information* (form CIV-165) to allow the court to identify the business entity and, if the information has been included in the petition underlying the order, the entity's file number with the Secretary of State.

The proposed revised form is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted form CIV-165 for mandatory use, effective September 1, 2019, to implement Senate Bill 1196 (Stats. 2018, ch. 696). Under SB 1196, a party may petition a court to stop the wrongful use of the party’s personal identifying information in a business record on file with the Secretary of State (called a “business entity filing” in SB 1196). SB 1196 required the council to adopt a form order for making the necessary statutory determinations.

Analysis/Rationale

To better serve victims of identity fraud whose personal identifying information has been used in documents filed with the Secretary of State, the committee recommends revising form CIV-165 by adding items 2 and 3 for a judicial officer to complete based on a successful petition for relief.¹ Item 2 asks the judicial officer to enter the name of the business entity identified in the victim’s petition. Item 3 allows the judicial officer to select either that the victim’s petition does not identify the business entity’s file number or to enter the entity’s file number if one has been identified in the petition. Victims will be better served if the Secretary of State can accurately and expeditiously locate the offending business entity filing and execute the relief granted by the court.

As background, Civil Code section 1798.201 allows a person to petition for relief from the wrongful use of their personal identifying information in a business entity filing.² Section 1798.202 provides that if the court determines a petition is meritorious and there is no reasonable cause to believe that the victim’s personal identifying information has been used lawfully, the court must make a finding that the victim’s personal identifying information has been used unlawfully and issue an order certifying this determination. On making the determination, the court must grant specific relief.³ A certified copy of form CIV-165 is then to be filed with the Secretary of State for it to carry out the order.⁴

In its present state, form CIV-165 asks the judicial officer to identify the petitioner, the hearing date, and the department in which the successful petition was heard. The form goes on to state the findings required under section 1798.202 and instructs the petitioner to file a certified copy of the order with the Secretary of State for the order to be carried out. The problem with the current version of the form, according to the Secretary of State’s office, is that their office cannot easily

¹ Business entity filings are any document required by law to be filed with the Secretary of State pursuant to the Corporations Code, the Financial Code, or the Insurance Code. (Civ. Code, § 1798.200(a).) Common examples of these filings are registrations of new corporations, limited liability companies, and limited partnerships.

² All references are to the Civil Code.

³ A victim’s relief from the court must include (1) redacting the victim’s name and personal identifying information from the filing or labeling the data to show that it is impersonated and (2) removing the data from its publicly accessible electronic indexes and databases. (§ 1798.202(c).)

⁴ § 1798.202(f).

carry out the order because business entity filings are not searchable by a person's name contained within a record. Instead, business entity filings are searchable by the entity's name or its file number. To obtain information about the business entity that is the subject of a meritorious petition, the Secretary of State's office would need to contact the petitioner (or petitioner's attorney) and request more information every time a certified copy of an order is filed with the Secretary of State. By supplying the business entity's name and, if available, its corresponding file number in form CIV-165, the Secretary of State should be able to carry out the court's order without having to ask for more details.

Policy implications

Form CIV-165 is used by courts to comply with section 1798.202. The new information called for in items 2 and 3 will assist the Secretary of State in accurately locating the business entity filing that is the subject of the court's order. With this additional information, the advisory committee believes that victims will more expeditiously be able to achieve the relief granted by courts under section 1798.202.

Comments

This proposal circulated for public comment from April 2 to May 3, 2024. Five comments were received, two agreeing with the proposal and three not indicating a position. The Secretary of State's office and the Superior Court of San Diego County, in response to a specific question in the invitation to comment, stated that the space allotted is sufficient for listing more than one business entity if needed. Both the Orange County Bar Association and the Superior Court of Riverside County noted that a court could use an attachment to the order form if the petition concerns multiple business entities. The Secretary of State's office also indicated that historically only one entity has been at issue in orders it has received. The committee recommends the council approve the form with a check box for the court to indicate an attachment has been used for listing additional business entities in the more uncommon situation in which a petition concerns more than one business entity.

The Secretary of State's office emphasized the importance of including a business entity's file number on form CIV-165 because business entities often have similar names. Supplying the file number in item 3 would facilitate the Secretary of State's accurate processing of form CIV-165. However, section 1798.201 does not require a victim to include a business entity's file number in their petition for relief. Because the statute does not require the information, the committee recommends an option that allows the court to indicate that the petition does not identify the file number. The committee believes this alternative is preferable, even though a file number would be helpful to the Secretary of State, because a court cannot supply information it does not have.

A chart of the comments and committee responses is attached at pages 6–12.

Alternatives considered

The committee considered taking no action but determined that the revisions would facilitate the Secretary of State's locating the business record at issue and ultimately expedite victims' access to justice. The committee also considered and rejected the alternative of combining the two new

items into one and using a numbered list to identify the business entity along with its file number, as suggested by the Secretary of State and others during public comment. The committee concluded that using multiple blank lines was not an optimal solution because most petitions involve just one business entity, and because providing multiple lines on the form could result in confusion if some lines are left incomplete. A blank line could be understood to mean the court did not have information to supply or it could be left blank by mistake, oversight, or for other reasons.

Fiscal and Operational Impacts

Any fiscal and operational impacts of revising form CIV-165 are limited to training court staff and possibly updating case management systems.

Attachments and Links

1. Form CIV-165, at page 5
2. Chart of comments, at pages 6–12

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY DRAFT 05/31/2024 Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PETITION OF (name): | |
| ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION | CASE NUMBER: |

1. The petition of (name):
 under Civil Code section 1798.201 came on for hearing on (date): at (time):
 in (department):

2. The petition concerns a business entity filing for (entity name):

3. The petition

- a. does not identify the business entity's file number with the Secretary of State.
- b. identifies the business entity as having Secretary of State file number (entity number):

Additional business entity names and corresponding Secretary of State file numbers (if identified in the petition) are listed in an attachment.

4. 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.

5. 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.

6. 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

SPR24-06

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

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

| | Commenter | Position | Comment | Committee Response |
|----|--|-----------------|--|---|
| 1. | Orange County Bar Association by Christina Zabat-Fran, President | A | The form meets its stated purpose. Completion of these newly created requests on the form is not required. The proposal also asks if longer blanks would be necessary if there is personal identifying information in more than one business entity filing. This would not be necessary as orders can always attach additional pages if needed. | The committee acknowledges the Orange County Bar Association’s support for the proposal. The committee appreciates the information provided. Based on the comment, the committee recommends adding a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers. |
| 2. | Secretary of State State of California by Lexi Howard, Attorney, Legal Affairs Office | NI | The following comments in response to the Invitation to Comment SPR24-06 (Form CIV-165 proposed changes) are provided on behalf of the California Secretary of State. The Secretary of State processes filings, maintains records and provides information to the public relating to business entities, such as corporations and limited liability companies. As part of this role, the Secretary of State files Form CIV-165 orders submitted to our office pursuant to Civil Code section 1798.202(f). These orders must be filed and placed on the Secretary of State’s business entity record. Updating and refining Form CIV-165 as proposed and below is anticipated to provide clarity that will assist parties, particularly self-represented parties, the Courts, and our office to complete and file Form CIV-165 more efficiently. Thank you for the opportunity to provide these comments. | See the committee’s responses to the Secretary of State’s comments below. |
| | | | 1. <u>Addition of New Item (2); business entity name.</u> | The committee acknowledges the Secretary of State’s support for item 2 |

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

SPR24-06

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|--|-----------|----------|---|---|
| | | | <p>The Secretary of State (SOS) supports this change. Adding the name of the business entity on Form CIV-165 will increase the likelihood that the SOS is able to file Form CIV-165 on the correct entity record without the need for external documentation from parties involved. Specifically, Form CIV-165 must be filed with the SOS within the record of the associated business entity(ies). Business entities registered with the SOS can be searched by business name or by their California SOS file number but are not capable of being searched by the names of individuals that may appear within an entity record. Accordingly, a Form CIV-165 submitted to the SOS without this information is incapable of being filed since our office cannot discern which business entity record to apply the order to.</p> <p>Additionally, because business entities may have similar names where sometimes only a letter or word distinguishes one from another, the absence of this information on the Form CIV-165 can result in inadequate or inaccurate identification of the subject business entity(ies) with enough certainty to comply with the Court’s order. In that event, it is likely the Form CIV-165 would be returned to the submitter for correction by the submitter and/or the Court, resulting in further delays and potentially further costs to the impacted party.</p> | <p>on the form. The committee thanks the Secretary of State for the information concerning how its records are organized and how form CIV-165 is used.</p> <p>No further response required.</p> |
| | | | <p>2. <u>Addition of New Item (3); business entity file number.</u></p> <p>The SOS supports this change. Adding the California SOS file number (SOS Entity Number) will accurately identify the business entity for the reasons in (1) above. Further, adding the SOS Entity Number is consistent with California laws that require parties that file documents with the SOS related to existing business entities to include the SOS Entity Number for each such entity for identification purposes (See e.g., Corp. Code sec. 110(d) and sec. 17702.02 et seq.).</p> <p>Nearly every person who first contacts the SOS because they have learned of an unauthorized filing for which they later seek Court relief provides at the</p> | <p>The committee acknowledges the Secretary of State’s support for item 3 on the form.</p> <p>The committee thanks the</p> |

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|--|-----------|----------|---|--|
| | | | <p>time of their inquiry to the SOS both the name and entity number of the business entity at issue. Typically, this is because the person was alerted to the filing that included their PII by documents received in the mail or some other manner and which contained both the business entity name and the SOS Entity Number. Further, the party has often already visited the public website of the SOS and viewed the filed business entity documents, which also provide both entity name and SOS Entity Number (see https://bizfileonline.sos.ca.gov/search/business). Last, when the SOS responds to these inquiries, our responses typically also include the business entity name and the SOS Entity Number, as well as other resources, including the Form CIV-165, to assist the impacted party.</p> <p>Though not specifically required by Civ. Code sec. 1798.200 et seq, the inclusion of the SOS Entity Number serves as an important accuracy and efficiency mechanism that facilitates accurate processing when a Court-certified copy of the order is transmitted to the SOS. Including the SOS Entity Number also serves as a safeguard to reduce the possibility of inaccurate identification and inaccurate, court-ordered modification of incorrect business records, which could cause damaging and costly results to a business entity that did not engage in wrongdoing.</p> | <p>Secretary of State for this information.</p> <p>The committee understands that from the Secretary of State’s standpoint including the entity’s file number on form CIV-165 would be helpful to its accurate and efficient processing of the form. Because a petitioner is not required to include a file number in their petition for relief, the committee does not recommend eliminating the option that allows a judicial officer to indicate that the petition does not identify a file number. The committee believes the best approach is for item 3 to include an option that indicates no file number has been identified because a</p> |

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|--|-----------|----------|--|--|
| | | | <p>3. <u>Use for more than one business entity; sufficient space for use.</u></p> <p>It appears that the space allotted in new Section 2 on the form would be sufficient for more than one business entity. Most submissions received by the SOS have historically been for only one entity, however allowing for more than one entity here seems reasonable and likely to be in the interest of judicial economy.</p> <p>If more than one entity is listed either in this Section 2 or in Section 3 below, there would need to be clear correlation between the applicable entity names and the corresponding SOS Entity Number for each, to avoid a list of each that did not correspond. To avoid error, care would need to be taken by the Court to ensure that every such entity referenced in the supporting papers was accurately and completely represented on the form.</p> <p>An alternate approach to address this may be to combine new Sections 2 and 3 into one, two-column, Section 2, allowing also for the attachment of an additional page, if needed, as follows:</p> <p>2. The petition concerns a filing for the following business entity(ies)(list the business entity name and its corresponding California Secretary of State filing number (SOS Entity Number) below for the business entity, or for each business entity, if more than one):</p> <p>Business entity name: SOS Entity Number:</p> <p>_____ _____</p> <p>_____ _____</p> <p>_____ _____</p> | <p>judicial officer cannot identify a number if it was not included in the petition.</p> <p>The committee thanks the commenter for this information and for suggesting an alternate approach. The committee considered the alternative of two columns of information with rows listing each business entity name and a corresponding file number. Because the committee understands most petitions involve only one business entity, the committee has decided to recommend a check box in item 3 for indicating, if required by the circumstances, an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers. The committee also had concerns about including multiple lines on the form, which might create confusion or ambiguity.</p> |

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|----|---|----------|---|--|
| | | | <p>(attach additional page if more space is needed)</p> <p>4. <u>Alternatives considered.</u></p> <p>The proposed changes to Form CIV-165, together with our comments here, are likely to support the efforts of the submitting parties, many of them victims of the theft of their PII and some who have experienced related harmful resulting effects of identity theft. Most of these victims are self-represented. The SOS anticipates that the revision of Form CIV-165 to allow for the full and accurate provision of business entity name(s) and SOS Entity Number(s) will facilitate access to justice, judicial economy, and the accuracy and effectiveness of filings.</p> <p>Thank you for your time and consideration and that of the Civil and Small Claims Advisory Committee. Please do not hesitate to contact us if you have questions or need further information.</p> | <p>The committee thanks the Secretary of State for this information.</p> <p>No response required.</p> |
| 3. | <p>Superior Court of Orange County Training & Analyst Group, Civil, Probate and Language Access Services by Sean Lillywhite, Operations Analyst</p> | NI | <p>Paragraph 5 of the proposal discusses the possibility of multiple business entity filings, and to accommodate, increasing the blank space for said multiple entity filings. This could create confusion in the event Secretary of State filing numbers are also identified. Perhaps consider creating a numbered list to identify the business entity with their filing number (if provided)</p> | <p>The committee considered including a numbered list on the order but concluded that most cases can be resolved without one. The committee believes that an attachment could be used if required by the circumstances and recommends a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers.</p> |

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|----|--|----------|---|---|
| 4. | Superior Court of Riverside County by Sarah Hodgson, Chief Deputy of Legal Services / General Counsel | NI | <p>No additional comments nor suggestions.</p> <p>Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> It does address the stated purpose. <p>The form’s proposed new items each ask for one piece of information. Do petitions under Civil Code section 1798.202 sometimes involve the use of personal identifying information in more than one business entity filing such that an option to identify more than one business entity name and more than one file number would be helpful? If so, are longer blanks sufficient to address this situation?</p> <ul style="list-style-type: none"> Suggestion: Have an attachment so that #2 and #3 can be listed together which is the business and the Secretary of State File name (if known) <p>Would the proposal provide cost savings? If so, please quantify.</p> <ul style="list-style-type: none"> No cost saving associated with this change for the Court. <p>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?</p> <ul style="list-style-type: none"> Notifying staff of form revisions <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> Yes <p>How well would this proposal work in courts of different sizes</p> <ul style="list-style-type: none"> It would not adversely affect our Court | <p>No response required.</p> <p>The committee appreciates the information provided. With respect to the suggestion, the committee agrees that an attachment could be used if required by the circumstances and recommends adding a check box in item 3 for indicating an attachment is being used to list additional business entity names and corresponding Secretary of State file numbers.</p> |

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|----|---|----------|--|--|
| 5. | Superior Court of San Diego County by Mike Roddy, Executive Officer | A | <p>Q: Does the proposal appropriately address the state purpose? A: Yes.</p> <p>Q: The form’s proposed new items each ask for one piece of information. Do petitions under Civil Code section 1798.202 sometimes involve the use of personal identifying information in more than one business entity filing such that an option to identify more than one business entity name and more than one file number would be helpful? If so, are longer blanks sufficient to address this situation? A: It appears that the space provided is sufficient.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: 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? A: Minimal. Implementation will require training affected staff.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes</p> <p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p> | The committee appreciates the information provided and acknowledges the San Diego Superior Court’s support for the proposal. |

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