



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title	Agenda Item Type
Civil Practice and Procedure: Writ of Execution Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms EJ-130 and MC-012; approve form MC-013-INFO	January 1, 2018
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	August 25, 2017
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revisions to two forms and approval of a new information sheet to facilitate use of the *Writ of Execution* (form EJ-130). The committee's recommendation responds to suggestions received over several years, including suggestions made in response to proposed revisions to form EJ-130 that were circulated for comment in 2016.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective January 1, 2018:

1. Approve the new form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).
2. Revise *Writ of Execution* (form EJ-130), and *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012).

The new and revised forms are attached at pages 9–15.

Previous Council Action

The Judicial Council first approved the *Writ of Execution* (form EJ-130) for optional use in January 1978. It has been revised several times, most recently in 2011 to implement new legislation that required a writ of execution, possession, or sale to specify certain additional information. (See Code Civ. Proc., § 699.520.)

Rationale for Recommendation

Most writs of execution are prepared by parties on the Judicial Council’s *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. Although the use of the form is not mandated, the form is the most frequently used format in which such writs are presented to the court. Over the years, the committee has received a number of suggestions for revising this form from court administrators, levying officers, private practitioners, and legal aid offices.

The committee initially circulated a proposal with revisions to form EJ-130 for public comment in 2016. The form was revised in three areas: (1) the boxes under the case number on the front, for identifying cases as limited or unlimited; (2) the reorganization of the monetary items (items 11 through 20); and (3) revision of item 24a regarding the possession of real property. Comments were received on all three sets of revisions from a variety of commentators.

In particular, the committee received multiple comments suggesting additional revisions be made, or new forms developed, to address the calculation of credits to interest and principal when partial payments are made over time, and also suggesting revisions to form MC-012. The committee concluded that further revisions and/or new forms would be necessary for the EJ-130 form to be completed correctly, especially if used by self-represented parties. The committee decided to recirculate a second proposal, with all revisions to form EJ-130 together with a proposed revisions to *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), as well as a new information sheet it developed in response to comments received in 2016.

The committee’s recommendation for the new optional *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO), similarly responds to concerns raised by comments received on the proposal circulated in 2016 that the monetary computation of interest and credits on form EJ-130 is confusing, particularly for self-represented litigants and where partial payments are made at different times.

Revise form EJ-130, *Writ of Execution*

Several sets of revisions are recommended for this form: some minor changes to the beginning of the forms; some textual changes to the items in which the amount to be executed on is set out; and revisions to the sections regarding writs of possession, to address issues relating to unlawful detainers due to property foreclosures. The revisions are discussed below.

Minor changes to first page

Identifier for limited versus unlimited case, check boxes at the top of the form. Form EJ-130 was amended a few years ago to implement a bill that required that a writ of execution, possession, or sale to specify, among other things, whether the case is a “limited or unlimited” civil action. (Code Civ. Proc., § 699.520.) The intent of this latter designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) to the underlying case. In an effort to make the form easier for self-represented litigants to use, and based on comments received on proposed form changes, check boxes were added to the form, next to the title, to indicate the type of case: limited, unlimited, small claims, or other (with a blank space to fill in what kind, such as family or probate).

The committee has been informed that some sheriff’s offices refuse to accept a form that has the “small claims” box checked even though, by law, a small claims case is a limited civil action; or one that has “other” checked with “family” written in, even though all family law cases are unlimited. The proposal circulated in 2016 included a revision to these check boxes, eliminating the separate check box for small claims cases and revising the check box for limited civil cases to state “limited cases (including small claims).” The proposed revision also eliminated the “other” check box. This proposed revision was well received by commentators in 2016, and is incorporated into the recommended form. A further minor revision was made to the “unlimited civil case” check box to indicate that it includes “family and probate cases.” This should help self-represented litigants determine the correct box to check.

“Attorney For.” The caption on form EJ-130 currently has the required “ATTORNEY FOR (name)” line. Unlike on other forms, there is currently a check box next to this item in the caption. The purpose of the check box is unclear and may be creating confusion. The committee therefore recommends deleting the check box next to “ATTORNEY FOR (name)” in the caption.

Item 3, identifying judgment creditor or assignee of record. One of the comments the committee received in response to the proposal circulated in 2016 was that assignees of record are confused about how to fill out item 3 of the form, which currently asks the filer to indicate if he or she is a judgment creditor or an assignee of record. The assignees of record consider themselves to have become the “judgment creditor” by acquiring all rights to an interest in the judgment. Therefore, some of the assignees check both boxes, as judgment creditor and assignee of record, which can cause confusion in the clerk’s office. To address this concern, the committee recommends adding the word “original” in front of “judgment creditor” both in item 3 and in the attorney box at the top of the form. This is intended to clarify that assignees should check only the assignee box.

Item 4, identifying type of legal entity. Another comment received in 2016 suggested that confusion arises because item 4 (and corresponding items 21 and 23b) requires a party to identify—for judgment debtors not a natural person—the type of legal entity “stated in judgment.” That information, while typically listed in the complaint, is not always included in the judgment itself. The statute that led to the addition of this item on the form, Code of Civil

Procedure section 699.510(c), does not require that the information regarding type of business entity be found in the judgment. The committee therefore recommends removing the reference to “stated in judgment” from the form.

Calculation of monetary items

Items 11–20, calculations of amount on which to execute

A central problem with this section of the current EJ-130 form is that it instructs the levying officer to add ongoing daily interest at the legal rate (item 19a) on a “subtotal” (item 13) that includes the total judgment amount minus *all* credits (item 14) for payments received. That calculation does not take expressly require consideration of whether some of the payments received should be applied to accrued interest rather than to principal. (See Code Civ. Proc., §§ 680.633 and 695.220(c) and (d)). The recommendation for revisions to form EJ-130 respond to this problem by clarifying the terms and computation of the amounts enforced by the levying officer.

The committee recommends the following revisions to this section of form EJ-130 to make it easier to understand and complete:

- Above item 11, add the following heading: “For Items 11–17, see form MC-012 and form MC-013-INFO,” to advise parties of other forms that contain information to be used in completing this form.
- Item 11: add a clarifying parenthetical so the item reads “Total judgment (*as entered or renewed*).”
- Item 12: add a statutory reference following “Costs after judgment” to the code section that provides what costs may be added and how (Code Civ. Proc., § 685.090).
- Item 14: add text and a parenthetical, so the item reads “Credits to principal (*after credit to interest*),” clarifying that credit from partial payments should be applied first to interest and only then to principal. The recommended information sheet helps explain how to calculate this amount, and the amount for item 16.
- Item 15: revise “Subtotal (*subtract 14 from 13*)” to “Principal Remaining Due (*subtract 14 from 13*),” to clarify what the subtotal represents.
- Item 16: revise from “Interest after judgment” to “Accrued interest remaining due” to clarify that the item does not include all interest, even if partial payments have already been made that have been credited against the interest accrued.

Writ of possession or sale of real property

Item 24, unlawful detainer resulting from foreclosure sale

This section has been revised to clarify the rights of an occupant of rental housing that has been in a foreclosure sale to resist eviction, and to advise the levying officer that such a tenant may raise a claim for a right of possession up to the time of the enforcement of the writ. (See Code Civ. Proc., § 1174.3(a)(2).) The following text has been added as new item 24a(3), to be checked in foreclosure cases:

The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect an eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) (See Code Civ. Proc., § 415.46 and 1174.3(a)(2).)

Instructions have also been added to make the items regarding daily rental value and hearing on objections to enforcement of the judgment applicable to such cases, as well as to cases in which the Prejudgment Claim of Right to Possession was not served in compliance with Code of Civil Procedure section 415.46.

“Notice to Person Served,” page 3

Information about the rights of tenants in properties that have been foreclosed on has also been added to the “Notice to Person Served” that currently appears at the bottom of page 2 of form EJ-130 and will be on the new third page of the revised form. This notice currently focuses on the negative consequences if one fails to vacate real property. In response to the proposal circulated in 2016, several commentators, noted that, without any mention of a right to remain in foreclosed property, the “person (tenant) served” will not be informed of some important rights to resist immediate eviction, including the potential right to remain in possession under Code of Civil Procedure section 1161b, or to object to eviction if he or she was not named in the judgment up to the time of the actual eviction. (See Code Civ. Proc., §§ 415.46, 1174.3(a)(2).)

Revise form MC-012, Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest

Commenters to 2016 circulation of revisions to form EJ-130 noted that current form MC-012 (often filed in conjunction with EJ-130) is also confusing because it includes an acknowledgment of “credit” for the *total* amount of payments received by the judgment creditor without providing any breakdown of payments credited to accrued interest and principal. The committee’s recommended revisions to form MC-012 are intended to show the calculation and breakdown of payments credited towards interest and then towards principal. The revisions further assist parties to comply with the statutory requirement of providing this information to the court in a declaration signed under penalty of perjury. (See also Code Civ. Proc., § 695.220(c) and (d).) Other revisions to form MC-012 make the language on the form less confusing and more consistent with information requested on form EJ-130.

The committee recommends the following revisions to form MC-012:

- Item 2: adding an acknowledgment showing how the payments received are being credited first towards *interest* and then to *principal* with a breakdown of these amounts. Currently, this item, “Acknowledgment of Credit,” does not indicate how the “credit” for payments received must be calculated. The computation of the amount of “credit” claimed (i.e., *credit* for payments that reduce the judgment *principal* after crediting interest) is required on item 14 of form EJ-130. (See Code Civ. Proc., § 695.220(c), (d).)

- Item 2: adding a new item, “Principal remaining due.” This amount is defined by statute as the “principal amount of the judgment” (including costs after credits) and the computation is required on item 15 of form EJ-130. (See Code Civ. Proc., § 680.300.) By requiring inclusion of this information on form MC-012, which is mandatory, the calculation of the principal balance remaining due is provided by the declarant under penalty of perjury.
- Item 3 (formerly 5): revising this item to clarify that the declaration of “accrued interest” means the amount that has accrued but remains *unpaid and due* at the present date (i.e., after credits for partial satisfactions and other credits). (See Code Civ. Proc., §§ 685.010–685.050, 695.220(c).)
- Reorganizing the form, in response to comments received in 2017, into three discrete sections: (1) “Post judgment costs,” (2) “Credits to interest and principle,” and (3) “Accrued interest remaining due,” with check boxes in front of each section. This revision will expressly allow litigants to choose among the items for which they are using the form at any point in time. The committee has also added a cross-reference to this form on form EJ-130.

Approve form MC-013-INFO, *Information Sheet for Calculating Interest and Amount Owed on a Judgment*

The committee’s recommendation for the new information sheet, form MC-013-INFO, similarly responds to concerns raised by comments received on the proposal circulated in 2016, that the monetary computation of interest and credits on form EJ-130 is confusing, particularly for self-represented litigants and where partial payments are made at different times. This new form provides information regarding the amounts that can be recovered by the judgment creditor under the law. It also describes how to credit payments received from the debtor towards interest, costs, and judgment principal, and refers the creditor to form MC-012 to request that interest and costs be included in the enforceable amount. The form also explains how accrued interest on a judgment is calculated with various formulas and examples, including the steps for crediting partial payments.

Comments, Alternatives Considered, and Policy Implications

Comments: spring 2016

Three bar groups and two of the four courts (the Superior Courts of Los Angeles and Riverside Counties) that provided comments on the original revisions to form EJ-130 agreed that the proposed revisions to the monetary computation items on the *Writ of Execution* would be helpful. However, two other courts (the Superior Court of San Diego County, and the Family and Juvenile Court Managers of the Superior Court of Orange County) did not agree, and commented that the reorganized items would be just as confusing, if not more so, than the current format.

The California Association of Judgment Professionals (CAJP) also provided a detailed comment opposing the reorganization of the items, the breakdown of the credit item, and the inclusion of

any reference on form EJ-130 to form MC-012. CAJP requested that form MC-012 no longer be mandatory.

The Superior Court of San Diego pointed out that form MC-012, from which some of the figures that go on the writ form must be taken, should really be revised and suggested that doing so would be a better solution than the proposed revision of writ of execution. The court pointed out that, for example, the item on form MC-012 regarding acknowledgement of credits should also be broken down into two parts (credit being applied to interest and credits being applied to principal), if that breakdown is being required on the writ of execution form.

After reviewing the history of form MC-012, the committee concluded that the form was indeed intended to be a mandatory form for purposes of claiming interest and as a supporting document for the writ of execution. However, the committee, like both CAJP and the Superior Court of San Diego County, also concluded that current form MC-012 is not sufficient for serving in this way when partial payments are made over time on a judgment. Specifically, the form does not allow a party to show how the calculations are done to account for crediting partial payments, and how the interest is calculated over time in light of partial payments. With the exception of CAJP, the commenters who responded agreed that references should be added to form EJ-130 to expressly refer to mandatory form MC-012.

In light of the comments received, the committee deferred the proposed revisions to form EJ-130 and continued to work on the proposal in the following rules cycle.

Comments: spring 2017

The committee's proposal for further revisions to form EJ-130, new revisions to form MC-012, and new form MC-013-INFO were circulated for comment during the spring 2017 comment period. Comments were received from four superior courts (for the counties of Los Angeles, Orange, San Diego, and Ventura), the California State Sheriff's Association, the Standing Committee on the Delivery of Legal Services of the State Bar, the Orange County Bar Association, the California Association of Judgment Professionals, a professional judgment enforcer, and an attorney with a private law firm.

The commenters were generally in favor of the proposal, with a few suggesting minor modifications to the forms, some of which the committee implemented and others that were outside the scope of the proposal. Specifically, three commenters responded that they agreed with the proposal; four commentators responded that they agreed with the proposal if modified, and three commentators did not indicate any position in response to the proposal.

The commenters who responded to specific questions from the Invitation to Comment all agreed that the proposal appropriately addressed its stated purpose, and that the revisions to forms EJ-130 and MC-012—relating to the computation of accrued interest and credits—would make the forms easier for parties to complete and courts to review. The California State Sheriff's Association strongly opposed specific revisions to the real property items of the EJ-130 form,

which led to the committee making changes on other grounds.¹

Alternatives considered

The committee considered not taking any action but decided that the revised forms and new optional form, as recommended, will make the forms clearer and easier to use, particularly for self-represented parties. The committee considered recommending adoption of the previously circulated revisions to form EJ-130. However, it determined that additional revisions to the items relating to the computation of interest and credits, and other form proposals received in the comments were important to facilitate use of form EJ-130.

The committee also considered recommending an optional, separate form affidavit and/or worksheet to support the amount of interest and credits listed on the writ of execution. However, it determined that doing so could create further confusion, as form MC-012, adopted for mandatory use, includes a declaration of interest and acknowledgment of credits and is signed under penalty of perjury.

In addition, the recommendation for revisions to the form includes a breakdown of the calculation for partial payments and also reorganizes the form into three discrete parts, so a party can use only those sections that are necessary. The committee determined that a worksheet may be useful in the future but would require additional time to develop to ensure it adequately addresses the various rules for calculating interest on different types of judgments.

Implementation Requirements, Costs, and Operational Impacts

These forms are completed by the parties, but must be reviewed and issued by court clerks. Therefore, court clerks will need training to recognize and understand the revised items. To the extent self-help centers assist parties in completing the forms, they too will need training on the new forms. Should the writ of execution forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those systems.

Attachments and Links

1. Forms EJ-130, MC-012, and MC-013-INFO, at pages 9–15.
2. Chart of comments, at pages 16–36.

¹ A chart containing all the comments received in spring 2017 and the committee's responses to them is attached.

<div>ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:</div> <div>NAME:</div> <div>FIRM NAME:</div> <div>STREET ADDRESS:</div> <div>CITY: STATE: ZIP CODE:</div> <div>TELEPHONE NO.: FAX NO.:</div> <div>E-MAIL ADDRESS:</div> <div>ATTORNEY FOR (name):</div> <div><input type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD</div>		<div>FOR COURT USE ONLY</div> <div>DRAFT</div> <div>07/11/17</div> <div>Not Approved by Judicial Council</div>
<div>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</div> <div>STREET ADDRESS:</div> <div>MAILING ADDRESS:</div> <div>CITY AND ZIP CODE:</div> <div>BRANCH NAME:</div>		
<div>Plaintiff:</div> <div>Defendant:</div>		<div>CASE NUMBER:</div>
<div><input type="checkbox"/> EXECUTION (Money Judgment)</div> <div>WRIT OF <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property</div> <div><input type="checkbox"/> SALE <input type="checkbox"/> Real Property</div>		<div><input type="checkbox"/> Limited Civil Case (including Small Claims)</div> <div><input type="checkbox"/> Unlimited Civil Case (including Family and Probate)</div>

1. To the Sheriff or Marshal of the County of:

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. (Name):

is the ☐ original judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.

4. **Judgment debtor** (name, type of legal entity if not a natural person, and last known address):

9. ☐ See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.

10. ☐ This writ is issued on a sister-state judgment.

For Items 11–17, see form MC-012 and form MC-013-INFO

11. Total judgment (as entered or renewed) \$

12. Costs after judgment (CCP 685.090) \$

13. Subtotal (add 11 and 12) \$

14. Credits to principal (after credit to interest) \$

15. Principal remaining due (subtract 14 from 13) \$

16. **Accrued interest remaining due** per CCP \$
685.050(b) (not on GC 6103.5 fees)

17. Fee for issuance of writ	\$
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18. Total (add 15, 16, and 17) **\$**

19. Levying officer:

a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) \$

b. Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(i)) \$

20. ☐ The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

Issued on (date): _____ Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Plaintiff: Defendant:	CASE NUMBER:
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21. ☐ Additional judgment debtor (name, type of legal entity if not a natural person, and last known address):

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22. ☐ Notice of sale has been requested by (name and address):

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23. ☐ Joint debtor was declared bound by the judgment (CCP 989–994)

a. on (date):

a. on (date):

b. name, type of legal entity if not a natural person, and last known address of joint debtor:

b. name, type of legal entity if not a natural person, and last known address of joint debtor:

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c. ☐ Additional costs against certain joint debtors are itemized: ☐ Below ☐ On Attachment 23c

24. ☐ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a. ☐ Possession of real property: The complaint was filed on (date):

(Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)

(1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) (See CCP 415.46 and 1174.3(a)(2).)

(4) If the unlawful detainer resulted from a foreclosure (item 24a(3)), or if the Prejudgment Claim of Right to Possession was not served in compliance with CCP 415.46 (item 24a(2)), answer the following:

(a) The daily rental value on the date the complaint was filed was \$

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

b. ☐ Possession of personal property.

☐ If delivery cannot be had, then for the value (itemize in 24e) specified in the judgment or supplemental order.

c. ☐ Sale of personal property.

d. ☐ Sale of real property.

e. The property is described: ☐ Below ☐ On Attachment 24e

Plaintiff: Defendant:	CASE NUMBER:
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NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 6/29/2017 Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff: _____ Defendant: _____	
MEMORANDUM OF COSTS AFTER JUDGMENT, ACKNOWLEDGMENT OF CREDIT, AND DECLARATION OF ACCRUED INTEREST	CASE NUMBER: _____

1. ☐ **Postjudgment costs**

- a. I claim the following costs after judgment incurred within the last two years (indicate if there are multiple items in any category):
- | | <u>Dates Incurred</u> | <u>Amount</u> |
|---|-----------------------|---------------|
| (1) Preparing and issuing abstract of judgment | _____ | \$ _____ |
| (2) Recording and indexing abstract of judgment | _____ | \$ _____ |
| (3) Filing notice of judgment lien on personal property | _____ | \$ _____ |
| (4) Issuing writ of execution, to extent not satisfied by Code Civ. Proc., § 685.050 (specify county): _____ | _____ | \$ _____ |
| (5) Levying officers fees, to extent not satisfied by Code Civ. Proc., § 685.050 or wage garnishment | _____ | \$ _____ |
| (6) Approved fee on application for order for appearance of judgment debtor, or other approved costs under Code Civ. Proc., § 708.110 et seq. | _____ | \$ _____ |
| (7) Attorney fees, if allowed by Code Civ. Proc., § 685.040 | _____ | \$ _____ |
| (8) Other: _____ (Statute authorizing cost): _____ | _____ | \$ _____ |
| (9) Total of claimed costs for current memorandum of costs (add items (1)–(8)) | _____ | \$ _____ |
| b. All previously allowed postjudgment costs | _____ | \$ _____ |
| c. Total of all postjudgment costs (add items a and b) | _____ | \$ _____ |

2. ☐ **Credits to interest and principal**

- a. I acknowledge total payments to date in the amount of: \$ _____ (including returns on levy process and direct payments). The payments received are applied first to the amount of accrued interest, and then to the judgment principal (including postjudgment costs allowed) as follows: credit to accrued interest: \$ _____; credit to judgment principal \$ _____.
- b. **Principal remaining due:** The amount of judgment principal remaining due is \$ _____. (See Code Civ. Proc., § 680.333.)

3. ☐ **Accrued interest remaining due:** I declare interest accruing (at the legal rate) from the date of entry or renewal and on balances from the date of any partial satisfactions (or other credits reducing the principal) remaining due in the amount of \$ _____.

4. I am the: ☐ judgment creditor ☐ agent for the judgment creditor ☐ attorney for the judgment creditor.
 I have knowledge of the facts concerning the costs claimed above. To the best of my knowledge and belief, the costs claimed are correct, reasonable, and necessary, and have not been satisfied.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

NOTICE TO THE JUDGMENT DEBTOR

If this memorandum of costs is filed at the same time as an application for a writ of execution, any statutory costs, not exceeding \$100 in aggregate and not already allowed by the court, may be included in the writ of execution. The fees sought under this memorandum may be disallowed by the court upon a motion to tax filed by the debtor, notwithstanding the fees having been included in the writ of execution. (Code Civ. Proc., § 685.070(e).) A motion to tax costs claimed in this memorandum must be filed within 10 days after service of the memorandum. (Code Civ. Proc., § 685.070(c).)

Page 1 of 2

Short Title:

CASE NUMBER:

PROOF OF SERVICE
☐ **Mail** ☐ **Personal Service**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is:
3. ☐ I mailed or personally delivered a copy of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* as follows (complete either a or b):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mail occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) ☐ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I personally delivered a copy as follows.
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)

 _____
(SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR CALCULATING INTEREST AND AMOUNT OWED ON A JUDGMENT

What can the judgment creditor recover?

Under California law, the amount recoverable by a judgment creditor includes:

- The total amount of the judgment entered by the court (principal), plus costs;
- Costs after judgment under Code of Civil Procedure section 685.070; and
- Accrued interest on the total amount.

DRAFT

06/29/17

Not Approved by
Judicial Council

Costs After Judgment

A judgment creditor is entitled to reimbursement for the “reasonable and necessary” costs of enforcing a judgment. These costs must be reported to the court within two years of the date incurred. The judgment amount includes costs ordered by the court after the judgment. (For information on recovering costs and a detailed list of costs that can be recovered see Code of Civil Procedure sections 685.040, 685.050 et seq., 685.070(b), and 685.090; see also “Requesting Costs and Interest” below).

Accrued Interest (See Code Civ. Proc., §§ 685.010, 685.020(a), and Cal. Const., art. XV, § 1.)

Interest accrues on an unpaid judgment amount at the legal rate of 10% per year (7% if the judgment debtor is a state or local government entity) generally from the date of entry of the judgment. Interest begins to accrue on the amount of costs added to a judgment from the date ordered by the court or from the date costs are allowed following expiration of the time to object. (Code Civ. Proc., § 685.070(d).) Also, upon renewal of a judgment, interest begins to accrue on the day the renewed judgment is entered. If the judgment is payable in installments, interest accrues from the date each installment is due.

Requesting Costs and Interest

To have costs and interest added to the enforceable amount owed, the judgment creditor must file and serve a *Memorandum of Costs After Judgment* (form MC-012). On this form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments.

Crediting Payments Received

Any payments received by the judgment creditor must be “credited” in a specific order. (Code Civ. Proc., § 695.220.) After specific costs go directly to the levying officer and to the court for fees, the judgment creditor is required to credit payments received first toward *accrued interest* and then toward the *judgment principal* (including costs approved by the court after entry of the judgment).

Calculation of Interest on Judgment and Amount Due

Following are various formulas and examples to assist with the calculation of interest on a judgment using a 10% interest rate:

- **Calculating Daily Interest on a Judgment Using 10% Interest Rate**

Following is the formula for figuring out the amount of interest earned per day on a judgment.

Formula: Total amount of judgment owed x 10% (or 0.10) = interest earned per year.

Divide that number by 365 = daily interest earned.

Example: Judgment debtor owes the judgment creditor \$5,000 (the “judgment principal”).

$$\$5,000 \times 0.10 = \$500$$

$$\$500/365 = \$1.37 \text{ daily interest}$$

The amount of interest earned will be \$1.37 per day as long as the unpaid amount remains \$5,000.

Calculating the Total Amount Due, Including Interest, on the date of payment

Step 1: Calculate the amount of interest owed on the date of payment. This amount will equal the daily interest rate calculated above, multiplied by the number of days since the court entered the final judgment.

1. Figure out the total number of days that have passed since the court entered the final judgment up to the day of payment.
2. Multiply the total days by the amount of daily interest. The result is the amount of interest owing on the day of payment.

Example: Assume a \$5,000 judgment was entered on June 1 and paid on September 8; 100 days from the entry of the judgment have passed.

The daily interest is \$1.37 (see above calculation).

$\$1.37 \text{ per day} \times 100 \text{ days} = \137 interest owed on the date of payment.

The judgment debtor owes \$137 in interest on the principal of \$5,000 on the date of payment.

Step 2: Add the amount of interest that has accrued to the amount of the judgment.

$\$5,000 \text{ judgment amount} + \$137 \text{ interest} = \$5,137$.

The judgment debtor owes a total of \$5,137 on the 100th day after the court entered the judgment.

- **Crediting Partial Payments and Recalculating the Amount Due**

If the judgment debtor does not pay all that is owed at one time, the partial payments the debtor makes are credited to the interest *first* and then to the judgment amount (the principal) owed.

Example: Judgment principal of \$5,000.

- **First Payment: After 200 days, the judgment debtor pays \$1,000**

Step 1: Calculate the amount of interest owed on the date of payment

Following the above example: $\$1.37 \text{ per day} \times 200 \text{ days}$. After 200 days, \$274 in interest will have accrued on the \$5,000 judgment ($200 \text{ days} \times \1.37 per day).

Step 2: Apply payment to interest

The debtor paid \$1,000, which must first be used to credit the \$274 of accrued interest.

That leaves a balance of \$726 to be credited toward the \$5,000 principal ($\$1,000 - \$274 = \726).

Step 3: Apply remainder to principal

The remaining credit of \$726 is applied to the \$5,000 judgment principal ($\$5,000 - \$726 = \$4,274$).

The judgment debtor now owes \$4,274 on the judgment principal.

Step 4: Calculate the new daily interest rate

Daily interest would then accrue at a rate of \$1.17/day.

$\$4,274 \times 10\% = \427.40 interest earned per year.

$\$427.40/365 = \1.17 interest earned per day.

- **Second Payment: After 100 days, a payment of \$500 is made (calculate using steps 1–4)**

1. The amount of interest that accrues in the next 100 days:
 $100 \text{ days} \times \$1.17 = \$117$.
2. The payment of \$500 must first be credited towards the interest of \$117, leaving a balance of \$383 to be credited against the principal ($\$500 - \$117 = \$383$).
3. The credit of \$383 is then subtracted from the judgment principal of \$4,274, leaving an unpaid balance of \$3,891.
4. The new daily interest would then accrue on the principal going forward at a rate of \$1.07/day:
 $\$3,891 \times 10\% = \$389.10/365$.

SPR17-08**Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)**

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

	Commentator	Position	Comment	Committee Response
1.	Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	A	I have read the proposed changes and concur with them. See specific comments below.	
2.	California Association of Judgment Professionals by Gretchen D. Lichtenberger, Legislative Chairperson	NI	See specific comments below.	
3.	California State Sheriffs' Association by Cathy Coyne, Deputy Executive Director	AM	See specific comments below.	
4.	Richard Morrison Black Widow Financial Redwood City, CA	NI	See specific comments below.	
5.	Orange County Bar Association Michael L. Baroni, President	AM	See specific comments below.	
6.	Standing Committee on the Delivery of Legal Services, State Bar of California By Sharon Djemal, Chair	A	See specific comments below.	
7.	Superior Court of Los Angeles County	A	No specific comment	The committee notes the commentator's support for the proposal; no response required.
8.	Superior Court of Orange County by Civil and Probate Operations Managers	NI	See specific comments below.	
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	See specific comments below.	
10.	Superior Court of Ventura County by Julie Camacho, Court Manager	AM	See specific comments below.	

SPR17-08**Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)**

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

Does the proposal appropriately address the stated purpose?		
Commentator	Comment	Committee Response
Superior Court of Ventura County by Julie Camacho, Court Manager	I agree with the changes to the EJ-130 and the MC-012. The proposed new form, MC-013-INFO will be helpful to self-represented litigants in completing the EJ-130.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	Request for Specific Comments: Does the proposal appropriately address the stated purpose? Yes, to the degree that the three forms proposed work together to better explain what is, and remains, a complicated process. The proposed new form MC-013-INFO is a much-needed addition to this process.	The committee appreciates this input.
Sharon Djemal, Chair, Standing Committee on the Delivery of Legal Services The State Bar of California	Specific Comments • <u>Does the proposal appropriately address the stated purpose?</u> Yes, the revisions to form EJ-130 will make the form easier for self-represented litigants to use. Additional Comments The current proposed revisions made in response to comments to last year's proposal SPR16-10 (Civil Practice and Procedure: Writ of Execution) greatly improve the understanding of the eviction process for self-represented litigants, especially tenants in foreclosed properties. Also, the proposal is likely to reduce errors by self-represented litigants. Referencing required form MC-012 will help self-represented litigants properly exercise their rights to post judgment costs and interest.	The committee appreciates this input.
Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	I believe the changes will assist the court, counsel and levying officers in enforcement proceedings.	The committee appreciates this input.

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Does the proposal appropriately address the stated purpose?		
California State Sheriffs' Association by Cathy Coyne, Deputy Executive Director	1. Identifier for limited v. unlimited case, check boxes at the top of the form. a. No opposition – The proposed changes will remove confusion. 2. "Attorney For." a. No opposition – The proposed changes will remove confusion. 3. Item 3, Identifying judgment creditor or assignee of record. a. No opposition – The proposed changes will remove confusion. 8. Making the Items regarding daily rental value and hearing on objections to enforcement of the judgement applicable to foreclosed property. a. No opposition – The proposed changes will remove confusion.	The committee appreciates this input.

SPR17-08**Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)**

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

Will the revisions to items 11–20 on the <i>Writ of Execution</i> (form EJ-130) make the form easier for parties to complete and for courts to review?		
Commentator	Comment	Committee Response
Standing Committee on the Delivery of Legal Services, State Bar of California, By Sharon Djemal, Chair,	Yes, the reorganization of items 11 through 21 will make it significantly easier for self-represented litigants to properly complete the form and to understand how the total judgment has been calculated and how any credits have been applied to the judgment.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	Will the revisions to items 11-20 on the <i>Writ</i> (form EJ-130) make the form easier for parties to complete and for courts to review? Yes, in that the revisions to certain items provide explanations or guidance as to the information each seeks. This would seem to make the form easier to complete and review. The problem is, however, that considerations of space on the form, together with the number or complexity of the issues to be addressed work against making the form “easy” to complete or review.	The committee appreciates this input.

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Will the specific reference on the <i>Writ of Execution</i> (form EJ-130), above items 11–20, to the <i>Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest</i> (form MC-012) make the EJ-130 form easier to complete?		
Commentator	Comment	Committee Response
Standing Committee on the Delivery of Legal Services, State Bar of California, By Sharon Djemal, Chair	Yes. There is currently nothing to indicate that in order to claim costs and interest on this form, it must be filed along with form MC-012. Because EJ-130 is also used for small claims cases, there are many self-represented litigants who use this form to try to collect on their judgment and are likely to be unaware of the required form. Therefore, SCDLS supports referencing form MC-012 in a manner that indicates that it must be filed along with EJ-130 in order to claim additional costs and/ or interest after judgment.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	Will the specific reference to the <i>Writ</i> (form EJ-130), above items 11-20, to the <i>Memorandum</i> (form MC-012) make the EJ-130 form easier to complete? Yes, as now the parties are informed as to what is meant by the “memo” and “affidavit.” This should make each of these documents more responsive, and accordingly, help in the completion of form EC-130. Again, however, it is unfortunate that space does not allow the name of form MC-012 to be set forth, as well as, its number.	The committee appreciates this input.

Will the revisions to items 1 through 6 on the <i>Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest</i> (form MC-012) make the form easier for parties to complete both forms and easier for courts to review?		
Commentator	Comment	Committee Response
Orange County Bar Association Michael L. Baroni, President	Yes, as any guidance in form completion would likely lead to more accuracy and so, ease the process for parties and courts, overall.	The committee appreciates this input.

SPR17-08**Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)**

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Will the revisions to item 24(a)(1) make it easier to understand which tenants in possession can raise a claim of a right to possession for purposes of Code of Civil Procedure section 1174.3(a)(2)?		
Commentator	Comment	Committee Response
Orange County Bar Association Michael L. Baroni, President	Yes, however, the whole of item 24 itself remains somewhat confusing. With regard to tenants in possession, the additional language proposed for inclusion in the “Notice to Person Served” section is very helpful in providing additional information in this area.	The committee appreciates this input, and notes that it has further revised this item in an attempt to clarify it further .
Standing Committee on the Delivery of Legal Services, State Bar of California, by Sharon Djemal, Chair,	Yes. There is currently nothing to indicate that tenants in foreclosed properties have a special right to contest the writ of possession when a prejudgment claim form is served. The revisions to item 24(a)(1) and the notice to persons served will help self-represented litigants, court staff, and sheriffs understand these rights.	The committee appreciates this input.

Suggestions?		
Commentator	Comment	Committee Response
Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	<p>I am in the process of enforcing a judgment for a client and came across issues with the Judicial Council form Writ of Execution. I offer the following.</p> <p>The Judicial Council form Writ of Execution requires that the principal amount of the judgment be reduced by any credit given to the judgment (lines 11-15). The interest accrued after judgment is provided on line 16 and the writ does not allow a line to credit the interest before crediting the principal. Daily interest is to be noted on line 19 of the writ of execution. However, Code of Civil Procedure section 695.220 requires that credits to judgments be credited first to certain levy costs, second credit to certain fees, third credit to interest accrued and then any credit leftover be credited to the principal amount of the judgment. Further daily interest continues to accrue often times on the original principal</p>	<p>EJ-130, Items 11-16</p> <p>These comments appear addressed to the current EJ-130 form. In this regard, the commentator’s suggestions regarding the calculation of credits to interest and principal are similar to those received over the years and precisely what the committee has endeavored to correct and address through the current proposal. As the commentator suggests, the revisions to the EJ-130 form clarify and use the statutory language from CCP 695.220 for purposes of the calculation of credits and interest on the forms.</p>

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	<p>amount of the judgment.</p> <p>I attempted to proceed to enforce a money judgment through the Alameda County Sheriff's office and the writ of execution was returned. I spoke with a Deputy Sheriff handling the civil matters and he tells me that if his calculation of daily interest is in excess of 10% of line 15 on the writ of execution (the principal minus credits), they cannot proceed to levy on the writ. This means that the sheriff is calculating interest on a reduced principal amount of judgment when the principal should not be reduced by a credit. It appears that an adjustment should be made to the writ of execution form to comply with section 695.220.</p> <p>Further the Memorandum of Costs After Judgment also is deficient in a similar way because it only requires that the credit be listed on line 4 and there is no indication as to application of the credit. Again, it may be practical if that form complied with section 695.220.</p>	<p>MC-012, Item 4</p> <p>The commentator's suggestions appear addressed to item 4 of the current MC-012 form. These comments are similar to those received from other commentators over the years. To facilitate use of the EJ-130 form, the committee has revised the MC-012 form, including the breakdown of the calculation of payments to interest and principal in item 4 consistent with Code of Civil Procedure section 695.220.</p>
<p>California Association of Judgment Professionals by Gretchen D. Lichtenberger, Legislative Chairperson</p>	<p>I did see one thing I would like to comment on regarding the proposed <i>Writ of Execution</i> included with this Invitation to Comment. In item 9, there appears to be a typing error. The sentence in item 9 says "<i>See next page for information on real or personal property to be delivered under a writ of possession on sold under a writ of sale.</i>" I believe this word "on" between "<i>possession</i>" and "<i>sold</i>" should be the word "or", as it is in the current <i>Writ of Execution</i>.</p> <p>The other Comment I have is this document is called a "<i>Writ</i></p>	<p>EJ-130, Item 9</p> <p>The committee thanks the commentator for this suggestion and agrees there is a typographical error at item 9 of the EJ-130 form. The word "on" between the words "possession" and "sold" in the sentence in item 9 has been changed to "or."</p> <p>EJ-130, Writ of Possession or Sale</p>

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	<p><i>of Execution</i>” when it can also be used as a “<i>Writ of Possession</i>” or a “<i>Writ of Sale</i>”. Would it be helpful to possibly title this form as “<i>Writ of Execution, Possession or Sale</i>”? Or possibly separate off the “<i>Writ of Possession or Sale</i>” into its own form, then each form would be just two pages. I have encountered a few problems with the Sheriff when a “Writ of Execution” for money recovery and a Writ of Possession for real property possession are on the same form. Some Sheriff’s Offices think those two distinct processes cannot be done on ONE FORM. I have directed them to CCP §712.040(a). I haven’t done many of these however it is something that may need to be reviewed in the future.</p>	<p>The committee thanks the commentator for this suggestion. The title of the form is dependent on which check boxes the judgment creditor chooses in the title box, whether a Writ of Execution, Possession, or Sale. A separate form for Writs of Possession or Sale is beyond the scope of the current proposal, but will be considered by the committee in the future.</p>
<p>California State Sheriffs’ Association by Cathy Coyne, Deputy Executive Director</p>	<p>3. Item 3, Identifying judgment creditor or assignee of record. a. Suggestion – this same language and format should be carried over to the accompanying form(s) e.g. Form MC-012 #7</p> <p>4. Item 4, Identifying type of legal entity. a. Opposed - CCP 699.510(c)(2) specifically requires the legal entity be on the Writ a. CCP 699.510(c)(2) <i>The writ of execution shall include the additional name or names, and the type of legal entity, by which the judgment debtor is known, as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution. Prior to the clerk of the court issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the</i></p>	<p>MC-012, Item 7 The committee thanks the commentator for the suggestions. Unfortunately, it is beyond the scope of the current proposal for revisions to the MC-012 form. The committee will consider the suggestion in the future.</p> <p>EJ-130, Item 4 The proposed revision to item 4 (which was circulated for comment last year) only removes the information on the form requiring a party to identify, for a judgment debtor not a natural person, the type of legal entity “<i>stated in judgment.</i>” Code of Civil Procedure section 699.510(c)(2) addresses requirements when the type of legal entity is <i>not</i> stated in the judgment and must be added pursuant to court order after the filing of an “affidavit of identity.” The committee respectfully disagrees with the commentator that the proposed revision somehow conflicts</p>

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Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)

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	<p><i>judgment debtor, the court shall authorize the issuance of the writ of execution with the additional name or names.</i></p> <p>5. Items 11-20, Calculation of amount to enforce judgment. a. No Opposition – Neither the calculations nor the additional forms have a direct effect on the Levying Officer or their duties. The Levying Officer relies on the information contained on the completed Writ. However, the attachment 20 needs to be standardized. b. Suggestion – Standardize the attachment 20 throughout the state (Make it a court form) a. CCP 699.520(c) requires the total amount of the money judgement as entered or renewed. Often times the front of the writ is left blank and the amounts owed are documented on an attachment 20, which comes in many different forms and often leaves the levying officer without a total judgment amount. This is especially true when dealing with Joint and Several liability judgments. Often times the liability amounts exceed the total judgement amount which creates issues as the levying officer has no authority to collect beyond the total judgement amount.</p> <p>b. The total amount of the money judgment should be required on the front of the writ pursuant to CCP 699.520(c), Separate from any joint and several liabilities.</p> <p>c. The attachment 20 should break down joint and several liabilities between defendants.</p> <p>d. The attachment 20 should look similar to lines 11-19 on the front of the writ for each listed defendant. (We refer you to the San Diego County attachment 20 as a state wide standard)</p> <p>6. Possession of Real Property. a. Strongly Opposed – The Sheriff has no legal standing to remove occupants from real property in any action other than an Unlawful Detainer action.</p>	<p>with the requirements of Code of Civil Procedure section 699.510(c)(2).</p> <p>EJ-130, Item 20 Developing a standardized attachment 20 is beyond the scope of this proposal, but will be considered by the committee in the future as time and resources permit.</p> <p>EJ-130, Item 24 The comment concerns the proposed revision to item 24 to add an item in which to indicate whether a writ for possession arises from an</p>
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Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)

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	<p>A court cannot be sued for wrongful eviction. However, the Sheriff may be sued for wrongful eviction if he proceeds knowing the court lacked jurisdiction to issue a writ of possession for real property.</p> <p><i>If a court or judge is without jurisdiction of the subject matter, a sheriff may not only refuse to obey court's precept, but will not be protected if he does obey it. > Magnaud v. Traeger (App. 2 Dist. 1924) 66 Cal.App.526, 226 P. 990. Sheriffs And Constables K 98(2). Unless there is a clear absence of jurisdiction on the part of the court or magistrate issuing process, it is sufficient authority for the sheriff to act, if upon its face, it appears to be valid in judgement of ordinarily intelligent and informed layman. > Vallindras v. Massachusetts Bonding & Ins. Co. (1954) 42 Cal.2d 149, 265 P.2d907. Sheriffs And Constables K 98(5). All that is required to make process fair on its face so as to protect the Sheriff from civil liability for action taken thereunder is that it must proceed from a court having jurisdiction of the subject matter and that it contain nothing which ought reasonably to apprise officer that it was issued without authority, and it is not necessary that the process under which sheriff acts should show jurisdiction of person to afford the Sheriff protection and justification for his acts in executing it. > Vallindras v. Massachusetts Bonding & Ins. Co. (1954) 42 Cal.2d 149, 265 P.2d907. Sheriffs And Constables K 98(5). If a writ or order commanding a Sheriff to do or to refrain from doing an act be legal upon its face and show an apparent jurisdiction, and court has jurisdiction of subject matter, officer will be protected, when acting in good faith in obedience to such Writ or order. . > Magnaud v. Traeger (App. 2 Dist. 1924) 66 Cal.App.526, 226 P. 990. Sheriffs And Constables K 98(2).</i></p> <p>a. Unlawful Detainer</p> <p>CCP PART 3, TITLE 3, CHAPTER 4. Summary</p>	<p>unlawful detainer action (because, if so, certain other items must be completed). The commentator contends that a court only has subject matter jurisdiction to issue a writ of possession for real property in an unlawful detainer action under the Code of Civil Procedure, sections 1159 to 1179. The committee respectfully disagrees with the commentator regarding the court's jurisdiction to enforce a judgment for possession based on , for example, ejection or quiet title, by writ of possession. However, in light of this comment, the committee has determined that the form may not address the types of notice and/or procedures, if any, required when a writ of possession results from an action other than for unlawful detainer. For that reason, the committee is not recommending the item to indicate whether the underlying claims is an unlawful detainer at this time, but leaving the form as it has been in relation to this point. The committee will continue its work on this point and make further recommendations as appropriate if necessary.</p>
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Proceedings for Obtaining Possession of Real Property in Certain Cases [1159 - 1179a] specifically outlines when the court may issue a writ of possession for real property pursuant to an Unlawful detainer action showing jurisdiction for the court to issue such a writ.

b. Quiet Title

CCP PART 2, TITLE 10, CHAPTER 4, Quiet Title [760.010-765.60] specifically outlines procedures to obtain a quiet title. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a quiet title action.

c. Ejectment

Ejectment appears to be a little used action in today's statutes. There is no mention of the ejectment process in regards to the recovery of real property in either the civil code or the code of civil procedures. There are no statutes giving the court jurisdiction to issue a writ of possession for real property in an ejectment action nor is there a procedure outlined for the Sheriff to remove any occupant in an ejectment action.

d. Probate

The Probate code outlines the process for the distribution of assets in a probate action. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a probate action.

1. Administrators of deceased property owner's estate brought petition to enjoin harassment against resident of property owner's dwelling, seeking his eviction from premises. The Superior Court, Santa Clara County, Mark Thomas J., granted permanent injunction, prohibiting harassment and evicting resident from dwelling. Resident appealed final order of eviction. The Court of appeal, Agliano, P.J. held that: (1) Court was not authorized to evict defendant in statutory special proceeding to enjoin

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harassment, and (2) court lacked equitable jurisdiction to evict defendant, in view of existing legal remedies. > Marquez v. Marquez, App.6 Dist. 1987) 192 Cal. App. 3d 1513.

e. Small Claims

CCP PART 1, TITLE 1, CHAPTER 5.5, Small Claims [116.110-116.950] outlines the Small Claims action process. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a small claims action.

f. Criminal & Nuisance Abatement

CCP PART 2, TITLE 10, CHAPTER 2. Actions for Nuisance, Waste, and Willful Trespass, in Certain Cases, on Real Property [731 - 736] outlines the abatement process by a District Attorney, County Counsel, and/or City Attorney. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in an abatement action.

g. Family Law - Divorce The family code outlines procedures for distribution of community property pursuant to dissolution of marriage proceedings. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a dissolution of marriage action.

b. The Sheriff will not knowingly enforce a writ issued by a court lacking jurisdiction to issue such a writ. Therefore, making these changes to the writ will be futile.

c. Judgements not otherwise enforceable pursuant to title.

a. **CCP 717.010** A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a

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	<p>certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt.</p> <p>1. In all actions not based on unlawful detainer proceeding in which the court orders a party to be excluded from real property, and that party willfully disobeys the courts orders, the court has the option to punish for contempt.</p> <p>7. Special Rules for Unlawful Detainers Involving Foreclosed Property. a. Adding item 24a (1)(a) to indicate Foreclosed property a. Opposed – the amendments in Section 24 a. (1) (a) do not go far enough. 1. CCP 415.46(e)(2) In any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to Section 1161a, paragraph (1) shall not limit the right of any tenant or subtenant of the property to file a prejudgment claim of right of possession pursuant to subdivision (a) of Section 1174.25 at any time before judgment, or to object to enforcement of a judgment for possession as prescribed in Section 1174.3, regardless of whether the tenant or subtenant was served with a prejudgment claim of right to possession.</p> <p>b. Suggestion - Add reference to Rental Housing Unit a. Either add Rental Housing unit under section 24 a. (1) (a), or b. Add Section 24 a. (1) (b) to indicate this was a rental housing unit at the time of the filing of the unlawful detainer action.</p> <p>9. Revisions to NOTICE TO PERSON SERVED. a. Opposed – These advisements, as currently written, are vague and ambiguous.</p> <p>a. Notice as described in CCP 1161a and 1161b refers to the notice to quit, served on the defendant prior to the unlawful detainer judgement not the Sheriffs notice to vacate served after the writ has been issued.</p>	<p>EJ-130, Item 24 a.(1)(a) The commentator is correct that the form should indicate whether the unlawful detainer is resulting from the foreclosure sale of a “rental housing unit.”(See 415.46(e)(2).) Specifically, Code of Civil Procedure section 1174.3(a)(2) allows the tenant or subtenant the right to object up until time of enforcement of the judgment. The committee has revised item 24 of the form to include this statutory language and citations.</p> <p>EJ-130, “Notice to Person Served” The committee thanks the commentator for the suggestion and agrees that the “notice” language on the form appears ambiguous, in part, as the term “vacate” is used with reference to the “notice to quit” described in Code of Civil Procedure sections 1161a and 1161b. The corm has been revised in light of this comment. The relevant</p>
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	<p>1. CCP 1161a (b) <i>In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobile home, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:</i></p> <p>2. CCP 1161b (a) <i>Notwithstanding Section 1161a, a tenant or subtenant in possession of a rental housing unit under a month-to-month lease or periodic tenancy at the time the property is sold in foreclosure shall be given 90 days' written notice to quit pursuant to Section 1162 before the tenant or subtenant may be removed from the property as prescribed in this chapter.</i></p> <p>b. Any completed claim of right to possession must be filed with the Levying officer.</p> <p>10. Proposed Revisions to form MC-012. a. No Opposition – the Levying Officer does not use or receive this form. It is for the creditors and courts use only and will have no direct effect on the Levying Officer.</p> <p>11. New Form MC-130-INFO. a. No Opposition – the Levying Officer does not use or receive this form. It is for the creditors and courts use only and will have no direct effect on the Levying Officer.</p> <p>12. Alternatives Considered. a. Additional revisions are still needed as documented above.</p> <p>13. Implementation Requirements, Costs, and Operational Impacts. a. Emphasis needs to be added to the</p>	<p>“notice” on page 3 of the form is entitled “EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED.” The phrase “notice to vacate” in the second to last sentence of that section has been revised so it now reads: “notice to quit.”</p> <p>The form has been modified to reflect this.</p> <p>No response required.</p> <p>No response required.</p> <p>See specific comments above.</p> <p>The committee thanks the commentator for the comments and suggestions.</p>
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	<p>Review of the Writ, by the issuing court, prior to the issuance of the writ. b. Instructional training is a great idea if implemented properly.</p>	
<p>Richard Morrison Black Widow Financial Redwood City, CA</p>	<p>As a professional judgment enforcer, and a member of the California Association of Judgment Professionals, the MC-012 is a complicated form, even for the experienced, and I highly commend the instructions prepared by LA County for use in Small Claims: http://file.lacounty.gov/SDSInter/dca/205642_MC012InstructionSheetRevised03.20.13.pdf Perhaps this could be incorporated almost verbatim as an attached instruction.</p> <p>One problem with the MC-012 form is that it is trying to be three documents in one. If used solely as a declaration of accrued interest, I believe it is not required to serve the judgment debtor. Yet, there is nothing that indicates this on the form. Further, in this instance, I believe that a self-generated affidavit alone may be used for the Writ (see C.C.P. 685.050), so I believe the form is misleadingly labeled as "Adopted for Mandatory Use." This issue apparently has come up with clerks on occasion, who will insist that the MC-012 MUST be used even for interest-only declarations, based on comments by my judgment enforcer colleagues.</p> <p>In one forum discussion, one of my colleagues wrote (and I'm certain he wouldn't mind my passing along his comments) regarding the MC-012:</p> <p>"The form DOES NOT have to be used for all three purposes every time the form is filed but can be used for a single or double purpose. And even using the form As Acknowledgment of Credit to tell the Court of any payments made by the Debtor or As Declaration of Accrued Interest, it's not very clear and can easily be messed up. For</p>	<p>MC-012 The committee thanks the commentator for these comments and suggestions. The suggestion exceeds the scope of the current proposal but will be considered by the committee in the future.</p> <p>The committee has reviewed the structure of the MC-012 form again in light of this comment and made several non-substantive changes (reorganizing into three parts, re-numbering and adding check boxes) so it is clear to litigants they can select the items on the form that are necessary at a given time. The committee has further noted the commentator's suggestion that MC-012 form be revised from a mandatory form to an optional one for future consideration, as the suggestion is beyond the scope of the current proposal.</p>

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	<p>example, say you have a \$1000 judgment and it is 5 yrs old so there is \$500 in interest. If the debtor makes you a \$100 payment at the 5th year, where do you record that on the MC-012? You show it to the court by only declaring that the amount of interest now owed is \$400! You only show credits on line 4 of the MC-012 when enough payments have been made that have paid all the interest to date and now payments are being credited to the actual amount of the judgment and previously allowed costs.</p> <p>I was having so many issues with clerks and the MC-012 form, I now only use it when adding new costs or credits to the principle J amount. If I am adding just interest, I use a template I got out of a Matthew Bender book. Since doing this, my life has become much easier and my incorrect rejections from clerks have all but stopped! I was even having clerks tell me that service of the MC-012 was required for previously allowed costs on line 2. CRAZY! That MC-012 is nothing but trouble."</p> <p>I apologize for the directness of the above, some of which you have clearly attempted to address in your line 4 revisions, but this may be helpful to you as far as what happens in the real world.</p> <p>The MC-012 is an extremely dense form that suffers from trying to get everything onto one page, with concomitant omissions due to lack of space. I strongly encourage you to consider making this a two-page form with three discrete sections, perhaps with the Declaration of Accrued Interest as a separate page that could be filed independently without the implication of required service on the judgment debtor.</p> <p>The interest calculations could be a separate attachment (or integrated with the suggested separate page for Declaration</p>	<p>As noted above, the form has been organized into three discrete sections in light of this and other comments. The current proposal also includes a new form, MC-013-INFO, which provides information regarding the calculation of interest and principal due when multiple payments have been made over various times by the debtor. The changes to the MC-012 are coordinated with this new form and now allow</p>
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	<p>of Accrued Interest), and should be in a consistent format that is easily checked by a clerk, perhaps with a standardized calculator available that is approved by the State. As it stands now, for judgments that have had multiple payments by the debtor, we usually submit our own calculations that may or may not match the clerk's own calculations, leading to potential conflicts, and which certainly takes up far too much time for everyone.</p> <p>*An annotated form MC-012 was attached to the comment, with suggestions that:</p> <ul style="list-style-type: none">• Additional space be provided for dollar amounts in item 2a• A spelling error be corrected• Information regarding possible extensions of time be added to the notice to the judgment debtor.	<p>space to input the amounts of interest and credits. The EJ-130 form has also been revised to use similar terms and refer to the MC-012 and MC-013-INFO forms.</p> <p>The spelling error has been corrected, and a small amount of additional space added (all that would fit on the form). Adding further information to the notice is outside the scope of the current proposal, but will be considered in the future, along with moving it to the back of the form to allow for more space.</p>
Orange County Bar Association Michael L. Baroni, President	<p>Comments: As to the revised form EJ-130, the following modifications are suggested.</p> <p>At item 12, per the discussion text accompanying the proposed form, the citation within the parenthesis should read, "CCP 685.090(b)."</p> <p>At item 24, for consistency of format, a period should be placed after the item number.</p>	<p>EJ-130, Item 12</p> <p>The committee thanks the commentator for making this suggestion. Subdivision (b) to the citation was included in the Invitation to Comment but inadvertently omitted from the form. The citation in the parenthetical on item 12 of the form has been revised to read: "CCP 685.090(b)."</p> <p>EJ-130, Item 24</p> <p>The committee thanks the commentator for making this suggestion. A revision has been made to the form to correct the clerical error in item 24, so a period now appears after the item number.</p>
Superior Court of Orange County by Civil and Probate Operations Managers	<p>The EJ-130 form is ambiguous and unclear as to the proper procedure for addressing multiple debtors with different judgment amounts. This has caused confusion for the courts</p>	

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	<p>when issuing the writ of execution and for sheriff departments enforcing the writ. Throughout the state, courts and sheriff departments are interpreting the form in different ways and requiring judgment creditors to prepare the writs differently. This has resulted in rejected writs from the sheriff departments and often requires the creditor to seek correction of the writ or to have a new writ issued to comply with sheriff department requirements.</p> <p>The current EJ-130 form addresses different judgment amounts for different debtors on line #20 of the form by referencing “Attachment 20”, but is ambiguous as to what to include or not include if utilizing attachment 20. Line 20 states “The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.” The current verbiage results in different interpretations of how the form and attachment should be completed. Since we do not have a Judicial Council form for Attachment 20, several courts have created a local form for use with the EJ-130. Orange County’s Attachment 20 local form provides space for (3) Judgment Debtors and includes lines 11-19 for each debtor, matching what is on page 1 of the EJ-130.</p> <p>The current EJ-130 form with “Attachment 20” is often rejected by certain sheriff departments due to confusion on page 1 of the EJ-130 in regards to lines 11-19 of the form. This confusion creates the following questions: If there are multiple debtors with different judgment amounts, what debtors name goes in field 4 on page 1 of the EJ-130? If there are multiple debtors with different judgment amounts, what amounts go in fields 11- 19 on page 1 of the EJ-130? If there are multiple debtors, should fields 11-19 be left blank on page 1 of EJ-130, and all amounts be listed on “Attachment 20” for each debtor?</p>	<p>EJ-130, Item 20 (attachment)</p> <p>The committee appreciates this input and thanks the commentator for the suggestions. The suggestion is beyond the scope of the current proposal for revisions to the EJ-130 form. However, the committee will consider these suggestions (including the proposal for a standardized form attachment 20) in the future.</p>
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	<p>Suggestions: (1) Changing the verbiage on line 20 of the EJ-130 would give clarity to the creditor, the court, and sheriff department on how the form should be prepared. If item 20 is checked on the form, the proposed verbiage change would make clear that all amounts for 11-19 will be left blank on page 1, and listed for each debtor on the Attachment 20 page. The suggested verbiage at line 20 is: “Items 11 – 19 left blank. The amounts called for are different for each debtor and are stated for each debtor on attachment 20”. (2) A Judicial Council approved Attachment 20 form be created in order to provide consistency throughout the state. Writ of executions are issued by each court for multiple counties throughout the state. Having a consistent Attachment 20 would require Sheriff Departments enforcing the writ to only be familiar with one version of the form. (3) Verbiage be added to the form to indicate that the writ may be issued electronically in accordance with GC 68150(F). Writs are often rejected from sheriff departments due to not having the original court seal. GC 61850 (f) states: A copy of a court record created, maintained, preserved, or reproduced according to subdivisions (a) and (c) shall be deemed an original court record and may be certified as a correct copy of the original record.</p>	
Superior Court of San Diego County by Mike Roddy, Executive Officer	<p>EJ-130 Recommend the following revisions to the proposed changes to EJ-130:</p> <p>#14: Rather than stating “Credit to principal (after crediting interest)” state “Principal reduction”, or “Reduction of principal balance”, as this is how the credit to principal is listed on the court’s judgment calculator. This revision will make it easier for the judgement creditor to recognize the correct money amount to state in number 14.</p>	<p>EJ-130, Item 14 The committee appreciates the comments and understands the concern raised regarding the potential for confusion to litigants who use the form in conjunction with the court’s judgment calculator that employs different language. However, the committee respectfully disagrees with the specific suggestion for revised language to item 14 on the EJ-130 form. The current proposal responds to comments received over the years, and comments in response to the proposed</p>

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#16: Rather than “accrued interest remaining” it may be less confusing to restate it as “total remaining interest” (per CCP 685.050) (not on GC 6103.5 fees). The judgment calculator lists the correct interest amount that is to be stated on line number 16 as “total interest”.

revisions circulated last year. The committee believes it is important to clarify that payments received are “credited” to interest first. The proposed language also follows the terms used in the statute and corresponds to the MC-012 form where the calculation of credits is presented. In light of the comment, however, the committee has revised line 15 of the EJ-130 form. The item currently reads “Subtotal (subtract 14 from 13)” This proposal revises the form to read: “Principal Remaining Due (subtract 14 from 13).” The committee believes this change will provide more clarity for all litigants using the form and responds to the comment by showing that line 14 corresponds to the reduction of the principal balance.

EJ-130, Item 16

The committee thanks the commentator for this suggestion and, as stated above, understands the concern about potential confusion for litigants using the form in conjunction with a judgment calculator that employs different terms. The committee respectfully disagrees with the commentator’s proposal to revise the language in item 16 on the EJ-130 form. The committee believes the proposal, which adopts the statutory terms, clarifies more precisely the information that is requested. The language in this item is also intended to correspond to the terms used on the MC-012 form. However, in light of the comment, the committee has made a minor revision to item

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	<p>MC-012 #4: Our court suggests the omission of subdivision (1) and (2), as this information appears unnecessary, and may confuse the judgement creditor.</p>	<p>16 on the EJ-130 form for purposes of making it less confusing. Specifically, item 16 has been revised so the phrase “remaining due” is no longer in a parenthetical, and the full line item now reads: “Accrued Interest Remaining Due (per CCP 685.050)(not on GC 6103.5 fees)”</p> <p>MC-012, Item 4 The committee has reviewed the structure of the MC-012 form again in light of this comment and made several non-substantive changes (re-numbering and adding check boxes) so it is clear to litigants they can select the information on the form that is necessary.</p>
<p>Superior Court of Ventura County by Julie Camacho, Court Manager</p>	<p>I only make one recommendation for clarification to the MC-013-INFO to clarify the second bullet under "What can the judgment creditor recover?" This second bullet states "Costs approved by the court after judgment". Since most costs after judgment are listed on the MC-012 and automatically added to the EJ-130 once the Motion to Tax Costs period under CCP 685.070(b) has expired and these costs do not require court approval, perhaps this bullet can be rephrased so that litigants are not led to believe that all costs after judgment must be approved by the court.</p>	<p>MC-013-INFO (Costs) The committee thanks the commentator for this suggested clarification to the MC-013-INFO form. The MC-013-INFO form has been modified to clarify that recoverable costs added to the judgment (in addition to those approved by the court) includes costs claimed by a creditor that are automatically added once the period for the filing of a Motion to Tax Costs has expired under CCP 685.070(b).</p>