



# Federal *Pro Se* Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

## ■ Entering Default against Defendants ■

When a properly served defendant fails to appear in a lawsuit on time, the plaintiff may request that the clerk of the court enter **default** against that defendant. To request an entry of default, you must file the following documents:

### 1) Application for Entry of Default

In your application for entry of default, you will explain to the clerk that the defendant was properly served, but did not respond on time and has not yet appeared in the action.

### 2) Declaration in Support of Application for Entry of Default

In your declaration, you will swear under penalty of perjury that the defendant was properly served and never appeared in the action. You must attach to this declaration the **proof of service** you previously filed with the court showing that the defendant was properly served. You must also swear that the defendant is not a minor, an incompetent person, or in the military service.

**The “properly served defendant”:** If you did not serve the defendant properly, according to Federal Rule of Civil Procedure 4, *the defendant is under no obligation to respond to your lawsuit*. In addition, without proper service, the clerk may reject your application for entry of default and the judge will almost certainly refuse to grant you a default judgment. Check the rules on service before you proceed with the default process.

## Commons Questions about Default

### I. What does it mean to enter default against a defendant?

Entry of default cuts off the defendant’s right to appear in the lawsuit unless the defendant has a good explanation for why it failed to respond on time. However, entering default against a defendant does *not* mean that you have won the lawsuit. To get a final court judgment against the defendant, you must ask the judge in your case for a **default judgment**. You must ask the clerk of the court to enter default against the defendant before you can move for default judgment.

**Remember:** Entering default is the first step to getting a default judgment. Entry of default and default judgment are not the same thing. This guide focuses on entry of default. For more information on default judgments, visit the Federal Pro Se Clinic.

After the clerk enters default against a defendant and you move the court to grant a default judgment, you will have to argue that you should win your case as a matter of law. This means that even if the defendant never appears in the action, the court can still refuse to grant you a default judgment if the judge believes you do not have a good case. In fact, courts generally try to avoid default judgments because they prefer that everyone appear in the case so that the court can decide a case on its merits and not on a technicality. For

this reason, a court will typically set aside entry of default and even default judgment if the defendant has a good explanation for why it failed to appear earlier in the case.

If you think the defendant failed to answer your lawsuit by mistake, it might be a good idea to contact the defendant and ask why it is not responding before you spend the energy obtaining a default.

## II. Will the court automatically default a defendant who does not respond on time?

The court clerk *will not* automatically enter default after a defendant's time to respond to a lawsuit has passed. It is the plaintiff's responsibility to ask the clerk to enter default. If the plaintiff fails to do so and the defendant appears in the case – even if the defendant files an answer or a motion well after its deadline to do so – the clerk cannot enter default and the judge will usually allow the defendant to proceed in the action.

## III. Why would the clerk deny my request to enter default?

Entry of default is automatic. The clerk *must* enter default against a defendant, as long as you follow all of the proper procedures. If the clerk denies entry of default, you may have made one of the following mistakes:

- A. You may not have served the defendant properly. (**Note:** Mailing a summons and complaint to a defendant usually does not satisfy the rules for service. There are some rare exceptions, so check Federal Rule of Civil Procedure 4 to make sure you served properly.)
- B. You did serve the defendant properly, but you failed to properly fill out and file a proof of service with the court.
- C. You did not list the defendant's name identically on the summons, complaint, proof of service, and application for entry of default.
- D. The defendant has already appeared in the case.

## Formatting Your Documents

By following the instructions below, you will comply with the format requirements of the Local Rules for the Central District of California:

- 1) **Pleading Paper:** Court filings must be written on pleading paper. "Pleading paper" is letter-sized (8.5" x 11") paper that has the numbers 1-28 typed down the left-hand side. You can download a template for pleading paper in Microsoft Word or Adobe PDF format at the Public Counsel website:
  - Go to <https://publiccounsel.org/services/federal-court/forms-guides-samples/>
  - Find "MS Word Pleading Paper" in the list of forms and guides
- 2) **Font, Margins, and Spacing:** 14 pt size font (suggested fonts: Times New Roman or Arial); 1-inch margins; double-spaced.

1	Name	
2	Email	
3	Address Line 1	
4	Address Line 2	
5	Phone Number	
6	Plaintiff in Pro Per	
7		
8	<b>UNITED STATES DISTRICT COURT</b>	
9	<b>CENTRAL DISTRICT OF CALIFORNIA</b>	
10	Plaintiff's Name,	Case No.: CV 1-1 PA (SSx)
11	Plaintiff,	
12	vs.	<b>Application for Entry of</b>
13	Defendant's Name,	<b>Default against Defendant</b>
14	Defendant.	<b>John Doe</b>
15		
16	To the Clerk of the United States District Court for	
17	the Central District of California:	
18	As provided by Rule 55 of the Federal Rules of Civil	
19	Procedure, Plaintiff requests that the Clerk enter the default	
20	of Defendant John Doe for failure to plead or otherwise	
21	defend against this action in a timely manner.	
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Application for Entry of Default 1

- 3) **Name and Contact Information:** Starting on Line 1, write your name, address, and phone number. Write “Plaintiff in Pro Per” or “Defendant in Pro Per” underneath your personal information.
- 4) **Line 8 or below:** Type the name of the court (UNITED STATES DISTRICT COURT). On the next line, write the district name (CENTRAL DISTRICT OF CALIFORNIA).
- 5) **Party Names:** Below the names of the court and district, write the names of the plaintiff and the defendant(s).
- 6) **Case Number:** Your case number goes to the right of the party names. Be sure to include all of the letters that make up the judges’ initials.
- 7) **Title of Document:** Under the Case Number, write the title of your document.
- 8) **Date and Signature:** When you have finished writing your documents, write the date, your signature, and your name.
- 9) **Footer and Page Numbers:** Type the title of your document in the footer. Be sure to number every page.

### **Filing and Serving Your Application**

When you have completed your application, you must file it with the Civil Intake Division of the courthouse in which the judge who is hearing the application is located. The Civil Intake Division requires **1 original** and **1 copy** of each document you wish to file. In addition, send **1 copy** of each document by mail to the defaulting party and the counsel of any other parties in the case on the same day that you file.

You may file your application with the Court in person or by mail. Keep in mind that mailing your application may delay the date on which it is filed. The addresses for the Civil Intake Division for the Central District of California are as follows:

#### **LOS ANGELES**

United States Courthouse  
Central District of California  
Western Division  
255 East Temple St., Ste TS-134  
Los Angeles, CA 90012

#### **SANTA ANA**

United States Courthouse  
Central District of California  
Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701-4516

#### **RIVERSIDE**

United States Courthouse  
Central District of California  
Eastern Division  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

1 \_\_\_\_\_ (Full Name)  
2 \_\_\_\_\_ (Email)  
3 \_\_\_\_\_ (Address Line 1)  
4 \_\_\_\_\_ (Address Line 2)  
5 \_\_\_\_\_ (Phone Number)

6 \_\_\_\_\_ in Pro Per  
7 (indicate Plaintiff or Defendant)

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 \_\_\_\_\_,  
13 Plaintiff,  
14 vs.  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_,  
20 Defendant(s).

Case No.: \_\_\_\_\_

**APPLICATION FOR ENTRY OF  
DEFAULT AGAINST:**

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22 To the Clerk of the United States District Court for the Central District of  
23 California:

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25 As provided by Rule 55 of the Federal Rules of Civil Procedure, Plaintiff  
26 (your name) \_\_\_\_\_ requests that the Clerk enter  
27  
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the default of the following Defendant(s) for failure to plead or otherwise defend against this action in a timely manner:

**Name of Defendant:** \_\_\_\_\_

1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on *(date)* \_\_\_\_\_.

2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on *(date)*\_\_\_\_\_.

**Name of Defendant:** \_\_\_\_\_

1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on *(date)* \_\_\_\_\_.

2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on *(date)*\_\_\_\_\_.

**Name of Defendant:** \_\_\_\_\_

1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on *(date)* \_\_\_\_\_.

1           2) The applicable time limit for the above-named Defendant to appear or  
2 otherwise respond to this action expired on (*date*)\_\_\_\_\_.

3  
4           The above-named Defendants have failed to plead or otherwise respond to  
5 the complaint.

6           This request is based on the attached Declaration of Plaintiff.

7  
8 DATED: \_\_\_\_\_ Respectfully submitted,

9  
10 \_\_\_\_\_  
(sign)

11 \_\_\_\_\_  
(print name)

12 Plaintiff in Pro Per  
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## DECLARATION OF PLAINTIFF

I, *(name)* \_\_\_\_\_, declare as follows:

1. I am the Plaintiff in this action. If called as a witness, I could and would competently testify thereto.

2. Defendant *(name)* \_\_\_\_\_ was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on *(date)* \_\_\_\_\_, as evidenced by the proof of service on file with this Court.

3. Under Rule 12, Defendant *(name)* \_\_\_\_\_ was required to plead or otherwise respond to the complaint by *(date)* \_\_\_\_\_. The time to plead or otherwise respond to the complaint has not been extended by any agreement of the parties or any order of the Court.

4. Defendant *(name)* \_\_\_\_\_ has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.

5. Defendant *(name)* \_\_\_\_\_ is not a minor or an incompetent person.

6. Defendant *(name)* \_\_\_\_\_ is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

(If you are trying to default multiple Defendants, you should make a copy of this page and fill it out for each Defendant.)

¶# \_\_. Defendant (*name*) \_\_\_\_\_ was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on (*date*) \_\_\_\_\_, as evidenced by the proof of service on file with this Court.

¶# \_\_. Under Rule 12, Defendant (*name*) \_\_\_\_\_ was required to plead or otherwise respond to the complaint by (*date*) \_\_\_\_\_.

The time to plead or otherwise respond to the complaint has not been extended by any agreement of the parties or any order of the Court.

¶# \_\_. Defendant (*name*) \_\_\_\_\_ has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.

¶# \_\_. Defendant (*name*) \_\_\_\_\_ is not a minor or an incompetent person.

¶# \_\_. Defendant (*name*) \_\_\_\_\_ is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

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1 ¶# \_\_\_\_\_. I have attached to this declaration a true and correct copy of the  
2 **proofs of service** on file with this Court for the above-named Defendants.

3  
4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on \_\_\_\_\_, in \_\_\_\_\_.  
6 (date of signing) (city, state of signing)

7 \_\_\_\_\_  
8 (sign)

9 \_\_\_\_\_  
10 (print name)

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Plaintiff in Pro Per

# Proofs of Service

Attach to your Declaration a copy of the Proofs of Service you filed with the Court. The Proofs of Service must show that the Defendants you are trying to default were served properly.

DO NOT INCLUDE THIS SHEET WITH YOUR FILING.

**PROOF OF SERVICE BY MAIL**

On \_\_\_\_\_, I served the documents described as:  
(date of mailing)

1. Application for Entry of Default
2. Declaration of Plaintiff

\_\_\_\_\_  
(list the names of any other documents you are mailing)

on all interested parties in this action by placing a true and correct copy thereof in a sealed envelope, with first-class postage prepaid thereon, and deposited said envelope in the United States mail at or in \_\_\_\_\_,  
(city and state of mailing)  
addressed to:

_____ (name)	_____ (name)
_____ (address)	_____ (address)
_____ (address)	_____ (address)
_____ (address)	_____ (address)

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

Executed on \_\_\_\_\_ at \_\_\_\_\_.  
(date) (city and state of signing)

\_\_\_\_\_  
(sign)

\_\_\_\_\_  
(print name)