

Make Your Judgments Collectible.

(The case isn't over until you get paid)

The Problem

A surprising number of judgments are essentially worthless. This is usually not because of bankruptcy protection but rather because many judgments are very hard or impossible to enforce.

“Of all the workers who won judgments in California between 2008 and 2011, only 17 percent collected any money, according to a joint study by the National Employment Law Project and the UCLA Labor Center. The same study found that when workers did collect, they received an average of 15 cents on the dollar.” Karen Foshay, Aug. 1, 2016, *Wage theft: Millions stolen, little recovered within the restaurant industry*. <http://curious.kcrw.com/2016/08/wage-theft>

The reason a judgment goes unpaid could be that the defendant has no money but the more likely explanation is that the defendant has been able to move the money from one place to another. Sometimes you can amend the judgment to add the new entity and sometimes you can file a fraudulent transfer lawsuit but amending a judgment is difficult and the money may be in yet another entity by the time to get there and fraudulent transfer lawsuits are just that, another lawsuit before your client gets paid.¹

With these things in mind, this article argues that the best time to fix your judgment is before you get your judgment and, I hope, makes practical suggestions as to how to maximize your chances of obtaining a collectible judgment.

Step 1. Figure out who to sue

You can lose your case before you file it. About half of the people who call me believe they have a judgment against the owner of a certain business only to find out, when a little more research is done, that their judgment is against a hollow corporate shell that owns nothing. While it is theoretically possible to amend the judgment after the fact under CCP § 187, this requires that you essentially prove that the entity sought to be added is the *alter ego* of the entity you have a judgment against without being able to use California's discovery statutes. You also have to establish that the entity to be added was effectively represented in the underlying litigation. This will almost always be impossible if your judgment was obtained by default. With this in mind, some of the most important work you do before you file your lawsuit will be to make sure you have sued the right entities.

¹ Although fraudulent transfer can also be alleged as part of the underlying lawsuit.

But how do you figure out what entities to sue?

First, make it a part of your interview with the client. Ask about different locations, different names the client has seen on company paperwork, whether or not their paychecks come from different entities, what they have heard working at the business including who is sued the business and where. If possible, get copies of those documents and review them yourself. Many employment lawyers have had the experience of going through a client's paychecks and finding that many of them are written from different corporate entities. Company handouts will frequently contain the headers and footers of corporate parents or other corporate entities. Sometimes, the client will be required to sign a handbook or other handout which indicates that their employer is a different entity.

Second, go through the Government records. For example, business records kept by state and local governments such as those I have linked to below:

Californis SOS

businesssearch.sos.ca.gov

<http://bpd.cdn.sos.ca.gov/pdf/be-records-requests.pdf>

California UCC Search

<http://www.sos.ca.gov/business-programs/ucc/>

Delaware

<https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>

Nevada

<http://nvsos.gov/sosentitysearch/>

California County records

<http://www.criis.com/index.html>

California ABC

- <http://www.abc.ca.gov/datport/lqsmenu.html>

California Contractors

- <https://www2.cslb.ca.gov/onlineservices/CheckLicenseII/checklicense.aspx>

Nurses

- <http://www.rn.ca.gov/online/verify.shtml>

Enrolled Agents IRS Tax

- <https://www.irs.gov/tax-professionals/verify-the-status-of-an-enrolled-agent>

Similarly, Public Records Act requests to various agencies, including the ABC or permit offices can be useful.

You can also search the fictitious business name records for the locations where the company does business.

- Alameda County
 - <http://rechart1.acgov.org/search.asp?cabinet=fbn>
- San Mateo County
 - <http://www.smcare.org/clerk/fictitious/>

Go through the court websites for those locations and also take a look at Pacer for federal cases. Also, it's not a bad idea to see whether or not the company has declared bankruptcy.

- <http://sfsuperiorcourt.org/online-services>
- http://www.sanmateocourt.org/online_services/case_access_sites.php
- <http://icms.cc-courts.org/iotw/>
- <https://publicrecords.alameda.courts.ca.gov/prs>

You can also run a google search and even use the way back machine to see what the company's website looked like a year ago or two years ago <http://archive.org/web/web.php>

It is a good idea to continue this process during the lawsuit. Spend some time conducting discovery to make sure you have the right entity. Perhaps the most dramatic example of this was is *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 22. in the *Barnabey's Hotel* matter, the plaintiff sued the wrong corporate entity, a subsidiary corporation without any assets named Barnabey's. Instead, the plaintiff should have sued the controlling corporate entity, Peppercorn. The matter proceeded to judgment without the defendant ever claiming or otherwise bringing it to the plaintiff's and court's attention that it was not the correct entity to sue. After obtaining judgment, the Plaintiff moved to add the real controlling corporate entity, Peppercorn, under CCP § 187. *Id.*

This story ended happily but the result might have been different with a different judge or if ownership of the one corporation was different than the other. Amending a judgment under CCP § 187 requires establishing not only *alter ego* but also that the entity sought to be added was effectively represented in the underlying lawsuit.

Obviously, the result of all of this is that you want to name every entity against whom you would like a judgment. While fighting this battle may make the lawsuit more difficult, it may also be the place where you actually win or lose your lawsuit.

Finally, for those pursuing wage claims, consider attempting to use Labor Code Section 558.1. While some judges feel that this is only available to the Division of Labor Standards Enforcement, others have been willing to let it go past the demurrer stage.

558.1. Violations of provisions regulating minimum wages, hours, or days of work; nonpayment of wages; persons liable (Effective: January 1, 2016)

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

Step 2, Gather Information during the Lawsuit

Post judgment discovery is limited. The California discovery act no longer applies after a judgment is entered and post judgment discovery is limited both explicitly by the code and in practical terms by the fact that the only way to enforce it is with the a sanctions order that adds to the amount of the judgment you already can't enforce.

It is possible to conduct a debtor's exam of the judgment debtor and also people who owed the judgment debtor money but these procedures can be cumbersome and difficult to enforce. With all these things in mind, it makes sense to keep an eye out for ways to get information that will help you to enforce a judgment while you are still in the lawsuit. This may include attempting to get bank records under a theory that you need them to show that one entity is the *alter ego* of another or finding creative ways to figure out who the company's largest customers/accounts receivable are. For individuals, it is always useful to know who the person's spouse is when you start the collection process.

Step 3. Enforce Aggressively

My favorite answer the question, "What should I do once I have a judgment?" is that you should call me immediately. (In fact some lawyers call me before they get their judgment) However, no matter who does the enforcement, I recommend that liens be established immediately (or fourteen days after judgment is entered if you are in federal court).

The broadest lien under California law (also available in Federal Court per FRCP 69) is the one created by serving a judgment debtor exam on the judgment debtor. The lien applies to almost all personal property of the judgment debtor even if it is not in the judgment debtor's possession. Thus, for any judgment of consequence, you will want to get a judgment debtor exam issued and served. If you want the lien to be effective as to third parties, you will also need to give them notice.

There is no reason not to file a notice of lien with the California Secretary of State as the cost is low and your priority may be based on when you filed.

If the judgment debtor owns land or you think they may own land, recorded an abstract of judgment in the recorder's office for every county where the land may be located.

An exception to the rule of getting your liens in place immediately. may be if you know where the judgment debtor banks. If that is the case. you may want to serve a bank levy as soon as possible or on the first payday before giving the notice required when you put your liens in place. Otherwise, the judgment debtor may consider moving his money to a different bank or under their mattress.

If the judgment debtor is an individual, you may want to get an earnings withholding order served.

The procedure for bank levies and earnings withholding orders depends on the sheriff you are working with and that will depend on the county where you are have to have to serve the documents. This means there are fifty-eight different procedures.

Once you have your judgment the challenge becomes locating, laying claim to and seizing assets. If your judgment is against the right entity, your chances of finding enough things of value to satisfy it will be much better.

Greg Groeneveld