

Making Judgments Collectable

Use frames for pictures of your kids and not for judgments.



The Problem -- Shape shifting
opponents leave you with a
judgment against an empty shell.

LLCs and Corporations that are left judgment
proof.

Individuals that make themselves judgment
proof.

Corporations sell or transfer assets and do not pay judgments.

- “Court records show some 30 former employees have received judgments by the state’s labor board requiring the [Farina] to pay them wages, tips, interest and penalties ranging from \$860 to more than \$22,000. Court records indicate that Farina paid some \$63,000 in judgments against it in 2013 and 2014, but many are still outstanding.”
Mission Local March 22, 2016.
<http://missionlocal.org/2016/03/former-owner-of-sf-missions-farina-owes-thousands-of-dollars/>

Corporations sell or transfer assets and do not pay judgments.

“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>

- “Relying on Labor Commissioner data and court records, [KCRW looked at 441 decisions and judgments](#) filed against Los Angeles area restaurants between 2013 and 2016 and found \$6.7 million awarded in unpaid wages, penalties and interest.
 - \$412,000 has been collected.
 - \$15,347 is the average judgment awarded
 - 75 percent of the judgments and decisions were unpaid
 - 13 workers have judgments for over \$100,000. Four have received payments.” (Data from LA & Long Beach offices only.)

Karen Foshay, Aug. 1, 2016, *Wage theft: Millions stolen, little recovered within the restaurant industry.*
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The story repeats

A CPA who has 10 plus PCs including identically named ones in California and Delaware.

A Car Dealership leaves 20 plus judgments unsatisfied but still operates under essentially the same DBA.

A medical billing company served the same customers, using the same equipment but under a different corporation.

**One Solution - name all corporations
and the individuals too.**

But how do you figure out who to
name ?

Part of the client interview

- Get the names of all the different companies and people who may be defendants. Get their English and other names and variant spellings.
- Ask about other lawsuits.
- Ask about locations and operations so that you know what counties and cities to look in.
- Get all of the documents including all pay stubs. Pay stubs may show different entities.

Records of the business may reveal others involved

- Corporate records from the California Secretary of State. Look them up
 - <http://kepler.sos.ca.gov/>
and order the records
 - <http://bpd.cdn.sos.ca.gov/pdf/be-records-requests.pdf>
and run a UCC Search to see who has liens against the business
 - <http://www.sos.ca.gov/business-programs/ucc/>
 - Delaware has a lot of corporations
<https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>
 - Nevada
<http://nvsos.gov/sosentitysearch/>

Get the fictitious business name records from the county.

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

- [Amador](#)
- [Contra Costa](#)
- [El Dorado](#)
- [Fresno](#)
- [Glenn](#)
- [Inyo](#)
- [Modoc](#)
- [Sacramento](#)
- [San Francisco](#)
- [Siskiyou](#)
- [Stanislaus](#)
- [Yolo](#)

Get the fictitious business name records from the county.

- Alameda County

- <http://rechart1.acgov.org/search.asp?cabinet=fbn>

- San Mateo County

- <http://www.smcare.org/clerk/fictitious/>

Search ABC website and Professional License Websites

ABC

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

Contractors

- <https://www2.cslb.ca.gov/onlineservices/CheckLicense/censell/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>

Send a PRA request to the ABC

Department of Alcoholic Beverage Control
Att: Custodian of Records
3927 Lennane Dr., Ste 100
Sacramento, CA 95834

Re: ABC Records Request – License #'s ***** and *****

Dear Sir or Madame-

Our office is writing to request copies of all records, including but not limited to, applications for ABC licenses, applications and notices of transfer of ABC licenses, corporate questionnaires, as well as any other related filings for the following liquor license holders:

License # *****

Primary Owner: *****

License # *****

Primary Owner: ***.**

Enclosed please find a check, not to exceed \$40, for costs of copying all records.

Please return all requested documents in the enclosed self-addressed envelope.

Search the San Francisco, Contra Costa, San Mateo and Alameda Superior Court Website.

- <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>

Search the Court Websites

- 1. May give you the benefit of what other lawyers have found out.
- 2. It may tell you not to repeat another lawyer's mistake i.e. the company is dead in the water.

Court Websites

One of the most frustrating experiences of my life was trying to help an attorney collect a substantial wage judgment against a local car dealership. The car dealership had been divided into various parts (you really couldn't see this from the outside) with separate corporations owning the different parts. Even though they had clearly overlapped the assets and paid employees of one out of the accounts of another, a very corporate friendly judge would not allow me to amend the judgment to add the still solvent corporation. My client's judgment was added to more than 20 which would never be satisfied. Would you like to know this was going on before you spent a lot of money getting the judgment? Additionally, your chances of successfully piercing the veil are much better before you get the judgment.

Search PACER

1. Additional information including the certificate of interested parties. You can look for this in the California Court of Appeals Also.
2. Will tell you if they are or have been BK.
3. I am working on collecting a judgment right now against a man and his company who builds swimming pools in Southern California. When I ran him on Pacer, I saw that, in a few days, it would have been 8 years since his last discharge in bankruptcy. Wouldn't you like to know this when you evaluate how much you are going to spend to get the judgment.

Use Google / social networking information and other information on the web before they take it down.

- Go past the first few pages and you may find something interesting
- Use the way back machine to find screen shots of what their site used to look like

<http://archive.org/web/web.php>

Skip Trace

- Accurint
- Westlaw
- Lexis
- TLO, Delvepoint, IDI (Requires a site visit but you get better data)
- You can get quite a bit of data on some businesses from running a U.C.C. search

Use Labor Code 558.1

- **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.

(Some judges are saying it only applies to the DLSE)

The Problem -- Discovery after judgment is almost worthless

- The discovery act does not apply per its terms. (2016 .070. This title applies to discovery in aid of enforcement of a money judgment only to the extent provided in Article 1 (commencing with Section 708.010) of Chapter 6 of Title 9 of Part 2.)

The Problem -- Discovery after judgment is almost worthless

You are limited to

- Document demands
- Demand for inspection
- OEX of the judgment debtor and those who owe her money
- Good luck enforcing the first two
- Number three is enforced by contempt.

The Solution - Get as much information as you can in the lawsuit

- Banking information from evidence of payments
- Subpoena bank records if you can formulate a basis for doing so.
- Send subpoenas before you take a default ??
- Be on the lookout for social security numbers
- Get customer lists. (They will really hate having their customers subjected to Third party Debtor's Exams when you get a judgment.)
- Try to figure out which corporation they are operating under. I have one I am trying to collect currently where neither I nor some very smart private investigator's can figure out which corporate vehicle they are operating under. I suspect they don't know. The names are almost identical and, when I do bank levies, it is hard to figure out which EIN number to use. Remember, John Klutts California professional corporation is different from John Klutts Delaware professional corporation. Get your judgment against all of them if you can

The Solution - Get as much information as you can in the lawsuit

- Get information from former employees
- Background information on the business can be critical for collection purposes. Corporate structure. What they own and do not own? Do the assets in their store or on their lot belong to them or their supplier or some financing company. Who owns them ?

Understand why the assets are relevant to your case theory so the Judge can compel them to answer.

- This may take creativity.
- Alter ego allegations ?

Get them to admit that you have the right defendants

- *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 22

For example, in the *Barnabey's Hotel* matter, the plaintiff sued the wrong corporate entity, a subsidiary corporation without any assets, Barnabey's. *Id.* Instead, he should have sued the controlling corporate entity, Peppercorn. *Id.* The matter proceeded to judgment without the defendant ever claiming or otherwise bringing it to the plaintiff's and court's attentions that it was not the correct entity to sue. *Id.* After obtaining judgment, the Plaintiff moved to add the real controlling corporate entity, Peppercorn, under CCP § 187. *Id.*

The Solution - Get as much information as you can in the lawsuit

- Their spouse
(so you can levy the spouse's bank account or garnish his wages) (This is actually surprisingly hard to prove after the fact. I have spent a lot of time digging through property records and trying to get marriage records so that I can go after a husband's assets. If you can slip it into a deposition and get them to admit someone is their spouse, it may help you later)
- Who else might get her money?
(Husband? Partner? Children?)

The Solution - Get as much information as you can in the lawsuit

- Figure out what they value so you can put it in peril
 - Reputation with customers ? Do they have a few customers ?
 - Their rifle, rare tea strainer, Ming dynasty snuff box, baseball card collection, the Heisman Trophy ?

Make the judgment collectable and
you will be singing a happy tune and
can tip the piano player



Don't go until you tell me how to collect !



The first 30 – 45 days after you have a Judgment

- Start Right Away
 - California judgments are immediately enforceable (CCP 683.010)
 - In federal court you have to wait 14 days (FRCP 62)
- Bank Levy ?

You may want to levy any bank accounts you know of right away
- Put liens in place.

Liens

- Notice of Judgment Lien with Cal. Secretary of State
- Abstract of Judgment
 - Obtain from Court
 - File to original with the Recorder's Office in the county where the property is located. (Note it will be much more expensive on January 1, 2018)
- Debtor's Exam (OEX) (ORAP if you are in Southern California)
 - Lien on all personal property. VERY BROAD (CCP § 708.110(d); In Re Burns (9th Cir. BAP 2003) 291 BR 846)

Take things of value

- Bank Levy?
- Rights to payments?
- Stock?
- Don't wear yourself out by taking things of little or no value.