

# SMALL CLAIMS SUING OVER A BAD CHECK/STOP PAYMENT

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You may sue if someone has written you with a check and either:

- It has bounced (there are not sufficient funds to cover the check, a “bad check.”)

OR:

- A stop payment has been put on the check (without a good faith dispute);

## GOOD FAITH DISPUTE

The debtor does have the right to stop payment without incurring penalties if he/she has a good faith dispute over the money in question. A good faith dispute is one in which the court finds that the debtor has a reasonable belief of his or her legal entitlement to withhold payment. (CC Section 1719(a)(3), CC Section 1719(b))

**Note: If you wish to sue for penalties *in addition* to the amount of the check and accrued bank fees, you must start with step 1, a demand letter. If you only wish to recover the amount of the check and accrued bank fees, you may proceed straight to step 2, filing a small claims case.**

## 1. A Demand Letter

If you want additional penalties besides the amount of the check and bank fees, before you sue in small claims court on a bad check:

- California law (CC Section 1719(c)) requires you to prepare a written request (Demand letter) to the individual who wrote and signed the check. (See example on next page)
- The letter should demand the amount of the check (no statutory damages at this point), including bank fees “not to exceed...\$25 for the first check and an amount not to exceed...\$35 for each subsequent check.” (CC Section 1719(a)(1))
- Advise the debtor that he/she has 30 days to pay or you will proceed to Court at which time they could be held responsible for additional statutory fees.
- Make sure to provide a return address.
- Make a copy of the demand letter and send the original by Certified Mail to the person who wrote and signed the check. (CC Section 1719(d))
- **If the money is not acquired through this letter**, proceed to step 2, filing a small claims case.

## 2. File a Small Claims Case

-If you wrote a demand letter, **and the money has not been paid after the thirty days specified by the demand letter**, on the thirty-first day, you can file a Small Claims lawsuit (See “How to File” fact sheet). If you skipped step 1, writing a demand letter, you **DO NOT** need to wait until the thirty-first day to file your small claims case. In either case, you may sue the other party in Small Claims Court to recover the amount of the check. You may also be able to sue for additional penalties between \$100.00 and \$1,500.00 depending on the amount of the check, unless the stop payment was done in good faith. (Civil Code Section 1719(a)(2)(C)).

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Produced by the Small Claims Court Advisory Program of the Legal Aid Society of Orange County

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## HOW TO CALCULATE THE PENALTY

When suing for additional penalties, you are entitled to up to **three times** the amount of the check (treble damages). This amount cannot exceed \$1,500. ( CC Section 1719 (a)(1)(2)).

Example: Suppose the check was written for \$200.00. To calculate the penalty, you multiply \$200.00 (x) 3 = \$600.00. The court **may** grant you the face value of the check (\$200.00) plus the additional penalty (\$600.00) for a total of \$800.00.

Note: Make sure you have a signed copy of the demand letter, plus proof of service with you when you go to court.

## EXAMPLE OF BAD CHECK DEMAND LETTER

**Send by certified mail with a return receipt requested.**

\_\_\_\_\_ (insert date here)

\_\_\_\_\_ (insert name of check writer here)

\_\_\_\_\_ (insert address of check writer here)

Dear \_\_\_\_\_: (insert name of check writer here)

The check you wrote for \$\_\_\_\_\_, dated \_\_\_\_\_, which was made payable to \_\_\_\_\_, was returned by \_\_\_\_\_ (insert name of bank) because account was closed OR the account had insufficient funds (choose only one)

Unless full payment of the check is received by money order or cash within 30 days of the date of mailing this demand, together with \$\_\_\_\_\_ (account charged by your bank to process the bad check, not to exceed \$25 for the first bad check or \$35 for subsequent bad checks), and \$\_\_\_\_\_ for the cost of mailing this demand letter by certified mail, I will file a small claims case against you.

The Claim will request damages for the amount of the check, \$\_\_\_\_\_, plus \$\_\_\_\_\_ damages assessed at three times the amount of the check calculated by assessing a minimum penalty of \$100 up to a maximum penalty of 1500, pursuant to Civil Code section 1719), for a total claim of \$\_\_\_\_\_ against you.

Please send your payment to:

\_\_\_\_\_ (insert your name here)

\_\_\_\_\_ (insert address here)

\_\_\_\_\_ (your signature)

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