

How to Request Joinder of Employee Benefit Plan

Step 1	<p>Complete the following forms in blue or black ink:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Request For Joinder Of Employee Benefit Plan And Order (FL-372) <input checked="" type="checkbox"/> Pleading On Joinder – Employee Benefit Plan (FL-370) <input checked="" type="checkbox"/> Summons (Joinder) (FL-375)
Step 2	<p>Copy: Make 3 copies of the original.</p>
Step 3	<p>File: Turn in the original and copies to the Clerk’s Office in the courthouse located at: 201 N. First Street, San Jose, CA 95113 The Clerk’s Office opens at 8:30 a.m. Monday-Friday, closing times are subject to change, visit www.scscourt.org or call 408-534-5600 for current office hours.</p>
Step 4	<p>Service on the Employee Benefit Plan:</p> <ul style="list-style-type: none"> • Your server must complete the <i>Notice and Acknowledgement of Receipt</i> form (FL-117). • Serve a copy by mail of the following to the Agent for Service of Process for the Employee Benefit Plan Administrator: <ul style="list-style-type: none"> ○ Form FL-372; ○ Form FL-370; ○ Form FL-375; ○ Two copies of form FL-117; ○ Blank form FL-374; ○ One business-sized (No. 10) envelope with proper postage prepaid, <u>addressed to your process server</u> (it cannot be addressed to you). This is for the benefit plan to return a copy of the <i>Notice of Acknowledgement</i> form (FL-117). • “<i>Mail Service</i>” means: someone, NOT YOU, who is at least 18 years old, must mail the above forms to the Plan Administrator. You can ask a friend, relative, etc. to serve the papers for you or you can look online to hire a “process server” to serve the papers for you for a fee. Whoever serves the forms must complete the <i>Proof of Service-Joinder</i> on page 2 of form (FL-375) after they complete service and give it back to you.
Step 5	<p>Service on the other party:</p> <ul style="list-style-type: none"> • Serve a copy by mail of the following to the other party: <ul style="list-style-type: none"> ○ Form FL-372; ○ Form FL-370; ○ Form FL-375. • “<i>Mail Service</i>” means: someone, NOT YOU, who is at least 18 years old, must mail the above forms to the other party. Whoever serves the forms must complete the <i>Proof of Service by Mail</i> form (FL-335) after they complete service and give it back to you.
Step 6	<p>File your proof of service forms.</p> <p>You must file at the Clerk’s Office the original and a copy of the proof of service form on page 2 of your <i>Summons</i> form (FL-375), the <i>Proof of Service by Mail</i> form (FL-335) and the <i>Notice and Acknowledgement of Receipt</i> form (FL-117) returned by the Plan Administrator. The clerk will file stamp the copy and give it back to you. Keep this copy for your records.</p>
Step 7	<p>Within 30 days of signing the <i>Notice and Acknowledgement of Receipt</i> form (FL-117) the Employee Benefit Plan may file the <i>Notice of Appearance and Response</i> form (FL-374). You will receive a copy of this form in the mail. By signing that form, the Employee Benefit Plan will be making an appearance and becoming a claimant in the case.</p> <p>If you do not receive a <i>Notice of Appearance and Response</i> form (FL-374) in the mail, you may take a default against the Employee Benefit Plan. If you need assistance with taking default, please consult with a private attorney. To find a private attorney, you can use the “Lawyer Referral Service” through the State Bar website: http://www.calbar.ca.gov/Public.</p>

WHEN TO USE THIS PROCESS

This process is used in a divorce or legal separation case when one of the parties has a retirement plan through their employer. Joining the plan ensures that a non-employee's interest in the retirement plan is preserved until proper division of the plan.

Some retirement plans are required to be joined prior to entry of a status only judgment. See California Family Code §2337. Review the attached form FL-318-INFO to determine if the retirement plan is required to be joined in your case. An order or judgment is not enforceable against an employee benefit plan unless the plan has been joined as a party to the proceeding. See California Family Code §2060(b).

It may be helpful to contact the Plan Administrator so you can get their mailing address for service and they may be able to provide you with a sample QDRO. Either the employee or the non-employee may contact the Plan Administrator. Please note that if you are the non-employee, they cannot share confidential information about the employee. If you do not know who the Plan Administrator is, please see below.

HOW TO FIND OUT WHO IS THE PLAN ADMINISTRATOR?

If you are seeking to join your own retirement plan, please ask your human resources division for assistance in identifying your plan administrator. If you are seeking to join the other party's employee benefit plan, they are required to provide you within 30 days after written request, the name of the plan and the name, title, address and telephone number of the plan's trustee, administrator or agent for service of process. California Family Code §2062(c).

WHAT IF THE PLAN ADMINISTRATOR DOES NOT RETURN THE NOTICE AND ACKNOWLEDGMENT OF RECEIPT FORM (FL-117)?

If the Employee Benefit Plan Administrator does not return the Notice and Acknowledgement of Receipt Form (FL-117), then you will have to have them served by any other method authorized by law for service of a summons (see California Code of Civil Procedure §415.10 et seq.) for example, by personal service. You can find further information about types of service at the following webpage: <https://www.courts.ca.gov/selfhelp-serving.htm>.

WHAT IS THE NEXT STEP AFTER THE PLAN IS JOINED?

After the retirement plan is joined into the case, you may need to consult with a private attorney to determine whether you need a special Qualified Domestic Relations Order (QDRO) prepared to properly divide the retirement plan. To find a private attorney, you can use the lawyer referral service through the State Bar website: <http://www.calbar.ca.gov/Public>.

HOW CAN I GET HELP?

Here are some ways to get help:

- Go to <http://www.calbar.ca.gov/Public>, then click on "Lawyer Referral services" to hire or consult with a private attorney.
- For free legal advice and information, see our "Do-It-Yourself Resources" flyer. Go to www.scscourt.org, click on "Self-Help" then "Self-Help Flyers".
- The Self Help Center/Family Law Facilitator – See our information flyer:
 - **Contact us:** Go to www.scscourt.org then click "**Contact the Self Help Center**". Walk-in assistance is limited to emergencies so contact us remotely first.
 - **Obtain Forms:** Go to www.scscourt.org then click "**Complete Forms at Home**".
 - **Form Review:** Email your forms as a PDF file to SHCDocReview@scscourt.org.
 - Note: We **cannot** help people who have attorneys.

Superior Court, County of Santa Clara
Self Help Center/Family Law Facilitator's Office
 201 N. First Street, San Jose, CA 95113
 408-882-2926

RETIREMENT PLAN JOINDER - INFORMATION SHEET

Type of Retirement Plan	Examples	Joinder Required
Governmental plan of a state, county, public school or university, or other public agency	California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System (CalSTRS), and University of California Retirement System (UCRS) (includes both qualified plans and nonqualified plans, such as Int. Rev. Code, § 457(b) or (f) deferral plans or Int. Rev. Code, § 403(b) Tax Sheltered Annuity (TSA)	Yes
Federal government plan	Federal government plans including all military branches, Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), Foreign Service Pension System (FSPS)	No
Funded plan (whether or not qualified) covering employees working for private-industry employer (includes collectively bargained plans)	Int. Rev. Code, § 401(k) plan, defined benefit pension plan (traditional or cash balance), profit-sharing plan, money purchase or target benefit pension plan, Employee Stock Ownership Plan (ESOP), Tax Sheltered Annuity (TSA)	No (ERISA covered)
Unfunded nonqualified plan covering employees working for private-industry or tax-exempt employer (other than excess benefit plans)	Supplemental executive retirement plan, Int. Rev. Code, § 457(f) deferral plan, Stock Appreciation Right (SAR) or phantom stock plan, severance plan	No (ERISA covered)
Plan (qualified or nonqualified) covering only business owners and spouses or employees of a church	Int. Rev. Code, § 401(k) plan, defined benefit pension plan (traditional or cash balance), profit-sharing plan, money purchase or target benefit pension plan, Keogh, Tax Sheltered Annuity (TSA)	Yes
Individual Retirement Account or annuity	Individual Retirement Account (IRA), Roth IRA	No (not true retirement plans; Qualified Domestic Relations Orders (QDROs) do not apply). May be divided by judgment or order
All others		Generally yes

For domestic partnerships and same-sex marriages, please consult an attorney as federal laws apply and rules may vary.

BLANK FORMS

**THESE ARE THE DOCUMENTS
YOU HAVE TO COMPLETE,
COPY, FILE AND SERVE.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar no., and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name) : Self-Represented	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 201 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Family Justice Center Courthouse	
MARRIAGE OF PETITIONER: RESPONDENT:	
CLAIMANT:	
REQUEST FOR JOINDER OF EMPLOYEE BENEFIT PLAN AND ORDER	
CASE NUMBER:	

TO THE CLERK

1. Please join as a party claimant to this proceeding (specify name of employee benefit plan):

2. The pleading on joinder is submitted with this application for filing.

Dated: _____

▶

(SIGNATURE OF ATTORNEY FOR)
 PETITIONER RESPONDENT

(TYPE OR PRINT NAME)

ORDER OF JOINDER

3. IT IS ORDERED

- a. The claimant listed in item 1 is joined as a party claimant to this proceeding.
- b. The pleading on joinder be filed.
- c. Summons be issued.
- d. Claimant be served with a copy of the pleading on joinder, a copy of this request for joinder and order, the summons, and a blank *Notice of Appearance and Response of Employee Benefit Plan* (form FL-374).

Dated: _____ Clerk, By _____, Deputy

PETITIONER:	CASE NUMBER:
RESPONDENT:	

4. Petition for dissolution and response states

- a. Date of marriage:
- b. Date of separation:

5. Response states

- a. Date of marriage:
- b. Date of separation:

6. Judgment

- a. has not been entered
- b. was entered on *(date)* :
 - (1) and disposes of each spouse's interest in the employee benefit plan.
 - (2) and does not dispose of each spouse's interest in the employee benefit plan.

7. The following relief is sought:

- a. An order determining the nature and extent of both employee and nonemployee spouse's interest in employee's benefits under the plan.
- b. An order restraining claimant from making benefit payments to employee spouse pending the determination and disposition of nonemployee spouse's interest, if any, in employee's benefits under the plan.
- c. An order directing claimant to notify nonemployee spouse when benefits under the plan first become payable to employee.
- d. An order directing claimant to make payment to nonemployee spouse of said spouse's interest in employee's benefits under the plan when they become payable to employee.
- e. Other *(specify)* :

f. Such other orders as may be appropriate.

Dated:

(SIGNATURE OF ATTORNEY FOR)
 PETITIONER RESPONDENT

 (TYPE OR PRINT NAME)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO. (Optional): _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): Self-Represented	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 201 N. First Street, San Jose, CA 95113 MAILING ADDRESS: 201 N. First Street, San Jose, CA 95113 CITY AND ZIP CODE: BRANCH NAME: Family Justice Center Courthouse	
MARRIAGE OF PETITIONER: RESPONDENT:	
CLAIMANT:	
SUMMONS (JOINDER)	CASE NUMBER:

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response or pleading, if any, may be filed on time.

¡AVISO! Usted ha sido demandado. El tribunal puede decidir contra Ud. sin audiencia a menos que Ud. responda dentro de 30 días. Lea la información que sigue.

Si Usted desea solicitar el consejo de un abogado en este asunto, debería hacerlo inmediatamente, de esta manera, su respuesta o alegación, si hay alguna, puede ser registrada a tiempo.

1. TO THE PETITIONER RESPONDENT CLAIMANT
 A pleading has been filed under an order joining (name of claimant):

as a party in this proceeding. If you fail to file an appropriate pleading within **30** days of the date this summons is served on you, your default may be entered and the court may enter a judgment containing the relief requested in the pleading, court costs, and such other relief as may be granted by the court, which could result in the garnishment of wages, taking of money or property, or other relief.

2. TO THE CLAIMANT EMPLOYEE BENEFIT PLAN
 A pleading on joinder has been filed under the clerk's order joining (name of employee benefit plan):

as a party claimant in this proceeding. If the employee benefit plan fails to file an appropriate pleading within **30** days of the date this summons is served on it, a default may be entered and the court may enter a judgment containing the relief requested.

Dated: _____ Clerk, By _____, Deputy

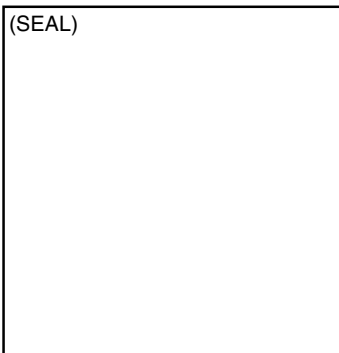
3. NOTICE TO THE PERSON SERVED: You are served

- a. As an individual.
 b. As (or on behalf of) the person sued under the fictitious name of:

c. On behalf of:

- | | |
|--|---|
| Under: <input type="checkbox"/> CCP 416.10 (Corporation)
<input type="checkbox"/> CCP 416.20 (Defunct Corporation)
<input type="checkbox"/> CCP 416.40 (Association or Partnership)
<input type="checkbox"/> Other: | <input type="checkbox"/> CCP 416.60 (Minor)
<input type="checkbox"/> CCP 416.70 (Incompetent)
<input type="checkbox"/> CCP 416.90 (Individual)
<input checked="" type="checkbox"/> FC 2062 (Employee Benefit Plan) |
|--|---|

- d. By personal delivery on (date):



PROOF OF SERVICE-SUMMONS (JOINDER)
(Use separate proof of service for each person served)

1. I served the
- a. **Summons and (1) Request for Joinder of Employee Benefit Plan and Order, Pleading on Joinder-Employee Benefit Plan, blank Notice of Appearance and Response of Employee Benefit Plan**
(2) **Notice of Motion and Declaration for Joinder** (3) **Order re Joinder**
(4) **Pleading on Joinder (specify title):**
(5) **Other:**
 - b. On (name of party or claimant):
 - c. By serving (1) **Party or claimant.** (2) **Other (name and title or relationship to person served):**
 - d. **By delivery at** **home** **business** (1) **Date of:**
(2) **Time of:** (3) **Address:**
 - e. **By mailing** (1) **Date of:** (2) **Place of:**
2. Manner of service: (check proper box)
- a. **Personal service.** By personally delivering copies. (CCP 415.10)
 - b. **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
 - c. **Substituted service on natural person, minor, incompetent, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**
 - d. **Mail and acknowledgment service.** By mailing (by first-class mail or airmail) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) **(Attach completed acknowledgment of receipt.)**
 - e. **Certified or registered mail service.** By mailing to address outside California (by registered or certified airmail with return receipt requested) copies to the person served. (CCP 415.40) **(Attach signed return receipt or other evidence of actual delivery to the person served.)**
 - f. **Other (specify code section):**
 Additional page is attached.
3. The notice to the person served (item 3 on the copy of the summons served) was completed as follows (CCP 412.30, 415.10 and 474):
- a. **As an individual.**
 - b. **As the person sued under the fictitious name of:**
 - c. **On behalf of:**
Under: **CCP 416.10 (Corporation)** **CCP 416.60 (Minor)**
 CCP 416.20 (Defunct Corporation) **CCP 416.70 (Incompetent)**
 CCP 416.40 (Association or partnership) **FC 2062 (Employee Benefit Plan)**
 - d. **By personal delivery on (date):**
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: \$.....
6. Person serving
- a. **Not a registered California process server.**
 - b. **Registered California process server.**
 - c. **Exempt from registration under Bus. & Prof. Code 22350(b).**
 - d. **California sheriff, marshal, or constable.**
 - e. **Name, address, telephone number, and, if applicable, county of registration and number:**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (date): _____ at (place): _____, California.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct and that this certificate is executed on (date): _____ at (place): _____, California.

(Signature)

(Signature)

PROOF OF SERVICE

**TO BE COMPLETED BY THE SERVER
(SEE INSTRUCTIONS FOR DETAILS)**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): Self-Represented	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 201 N. First Street, San Jose, CA 95113 MAILING ADDRESS: 191 N. First Street, San Jose, CA 95113 CITY AND ZIP CODE: _____ BRANCH NAME: Family Justice Center Courthouse	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER: (If applicable, provide): HEARING DATE: HEARING TIME: DEPT.:
PROOF OF SERVICE BY MAIL	

NOTICE: To serve temporary restraining orders you must use personal service (see form FL-330).

1. I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
3. I served a copy of the following documents (*specify*):
 - Request for Joinder of Employee Benefit Plan and Order (FL-372)**
 - Pleading on Joinder - Employee Benefit Plan (FL-370)**
 - Summons (Joinder) (FL-375)**
 by enclosing them in an envelope AND
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 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.
4. The envelope was addressed and mailed as follows:
 - a. Name of person served:
 - b. Address:
 - c. Date mailed:
 - d. Place of mailing (*city and state*):
5. I served a request to modify a child custody, visitation, or child support judgment or permanent order which included an address verification declaration. (*Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order* (form FL-334) may be used for this purpose.)
6. 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 PERSON COMPLETING THIS FORM)

RESPONSIVE FORMS

LEAVE BLANK

**TO BE ATTACHED TO THE
EMPLOYEE BENEFIT PLAN
ADMINISTRATOR'S COPY FOR
SERVICE**

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number and address):</i> TELEPHONE NO. <i>(Optional):</i> _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name)</i> : Self-Represented	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 201 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Family Justice Center Courthouse	
MARRIAGE OF PETITIONER: RESPONDENT:	
CLAIMANT:	
NOTICE OF APPEARANCE <input type="checkbox"/> AND RESPONSE OF EMPLOYEE BENEFIT PLAN	CASE NUMBER:

1. An appearance in this proceeding is entered by claimant employee benefit plan *(name)* :

2. Service on claimant may be made as follows
 - a. Attorney for claimant *(name, address, and telephone number)* :

 - b. Other *(name, title, address, and telephone number)* :

3. Claimant responds to the pleading on joinder and states that the allegations of the pleadings are
 - a. correct
 - b. incorrect as set forth in attachment 3b or as follows *(specify)* :

Dated: _____ Claimant

By _____ (SIGNATURE)

(TYPE OR PRINT NAME)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> Self-Represented	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 201 N. First Street, San Jose, CA 95113 MAILING ADDRESS: 191 N. First Street, San Jose, CA 95113 CITY AND ZIP CODE: _____ BRANCH NAME: Family Justice Center Courthouse	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER: (If applicable, provide): HEARING DATE: HEARING TIME: DEPT.:
PROOF OF SERVICE BY MAIL	

NOTICE: To serve temporary restraining orders you must use personal service (see form FL-330).

1. I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
3. I served a copy of the following documents *(specify)* :

by enclosing them in an envelope AND

- a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 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.

4. The envelope was addressed and mailed as follows:

- a. Name of person served:
- b. Address:
- c. Date mailed:
- d. Place of mailing *(city and state)*:

5. I served a request to modify a child custody, visitation, or child support judgment or permanent order which included an address verification declaration. *(Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order (form FL-334) may be used for this purpose.)*

6. 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 PERSON COMPLETING THIS FORM)