

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT \_\_\_\_\_

\_\_\_\_\_, Plaintiff(s)

\_\_\_\_\_, Defendant(s) Case No: \_\_\_\_\_ SC

**DEFAULT AFFIDAVIT AND REQUEST FOR JUDGMENT**

I do solemnly swear or affirm that the facts set out below are true to the best of my knowledge and belief following diligent inquiry, and I request a default judgment.

- 1. It has been more than 20 days (40 days if served outside the United States) since the summons and complaint were served on: \_\_\_\_\_ [name].
- 2.  I already filed proof of service on this defendant with the court on \_\_\_\_\_ [date].  
 I have attached an *Affidavit of Service* (form SC-4) with this request.
- 3. The defendant is not a minor under age 18 or otherwise incompetent.
- 4.  The defendant is in the active military service of the United States.  
 I am unable to determine whether the defendant is in the military service.  
 The defendant is not in the active military service of the United States.\* This knowledge and belief is based on the following facts:

\_\_\_\_\_  
\* You may check for this online at <https://scra.dmdc.osd.mil/>. Attach a copy of the results from this military website search to your application.

- 5. I have personal knowledge of (or business records showing) the truth of every essential element of the claim for relief as stated in my complaint.  
 I attached business records that support my claim.

- 6. The amount I claimed in my complaint (not including prejudgment interest or costs) is \$ \_\_\_\_\_. Since filing this case, I have received these payments from Defendant:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____

- 7.  I request prejudgment interest. I attached (1) a sheet showing my calculations in the format required by the instructions on pages 2-4, and (2) any required documentation.
- 8.  I request attorney's fees of \$ \_\_\_\_\_. *[this amount must be 10% of the judgment or reasonable actual attorney's fees (whichever is lower) and no more than \$1,000]*

_____ Date	_____ Signature	_____ Print Name (and Title, if Applicable)
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Subscribed and sworn to or affirmed before me at \_\_\_\_\_, Alaska on \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Clerk of Court, Notary Public, or other person authorized to administer oaths  
My commission expires: \_\_\_\_\_

Certificate of Service

I certify that I sent a copy of this document and all attachments on \_\_\_\_\_ [date] to the defendant named in paragraph 1 at the following address: \_\_\_\_\_

Signature: \_\_\_\_\_

Only file page 1 of this form in court. Do **not** attach these pages (2-4) to what you file in court. If you are requesting prejudgment interest, follow these instructions and attach a **new and separate** sheet of paper showing your calculations to page 1 of this form. If you are **not** asking for prejudgment interest, you may ignore and discard these pages.

## **INSTRUCTIONS FOR CALCULATING PREJUDGMENT INTEREST**

### **STEP ONE: Determine Due Date**

First, determine the due date of the principal amount. That date will be:

In Tort Cases (non-contract cases; examples include damage to property or personal injury) [AS 09.30.070(b)]

1. The date agreed upon by the parties; **or**
2. If there is no such agreement, the earlier of:
  - a. The date the summons and complaint were served on the defendant; **or**
  - b. The date the defendant received written notification that an injury or property damage occurred and that a claim may be brought against the defendant.

In All Other Cases [AS 45.45.010]

1. The date stated in a written contract or agreement; **or**
2. The date the contract was breached; **or**
3. If there is no written contract or agreement, the date the principal was due (for example, the date an account or debt became payable or the date the parties agreed the debt would be paid) or the date the debtor refuses to pay.

[*K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d. 702, 724 (Alaska 2003),  
*Hoffman v. von Wirth*, 907 P.2d 454, 455 and footnote 2 (Alaska 1995)]

REQUIRED DOCUMENTATION. File written documentation with the court showing the date the principal became due. Some examples are: a written contract, a payment ledger, an invoice, an affidavit describing the terms of the parties' oral agreement, a copy of a letter to the defendant giving written notification of the claim.

### **STEP TWO: Determine Interest Rate**

Second, determine the interest rate. If you have a contract or promissory note that states what the interest rate will be, use that rate (and attach a copy of your contract or the *original* promissory note). If there is no contract interest rate, the rate is set by a statutory formula.<sup>1</sup> Use form ADM-505 to determine the interest rate in your case using this statutory formula: <https://public.courts.alaska.gov/web/forms/docs/adm-505.pdf>.

### **STEP THREE: Calculate Interest**

Third, show the court your interest calculations. See page 3 for the calculations if you have received *no payments* since filing the complaint. See page 4 for the calculations if you have received *any payments* since filing the complaint.

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<sup>1</sup> AS 09.30.070(a) sets the rate at "three percentage points above the 12<sup>th</sup> Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered." Exceptions: This rate does not apply if: (1) there is a contract that sets a different rate, (2) there is a statute that sets a different rate, or (3) the cause of action accrued before August 7, 1997 (in which case the rate will be 10.5%). In general, a cause of action "accrues" when a suit may be maintained thereon, that is, when sufficient events have occurred to support a valid lawsuit (for example, when injury or damage occurs or when a contract is breached).

No Payments Received

If you have received *no payments* since filing the complaint, attach a separate sheet showing:

1. The principal amount stated on your complaint (not including interest) and the date it became due.
2. Your calculation of the amount of interest due using the following formula:

$$\begin{array}{ccccccc} \text{Principal} & \times & \text{Interest} & \div & 365 & \times & \text{No. of} \\ \text{Amount} & & \text{Rate} & & & & \text{Days} \\ & & & & & = & \text{Amount of Interest} \\ & & & & & & \text{Due for that Period} \end{array}$$

"No. of Days" means the number of days between the due date of the principal and the date you file your Default Affidavit.

"Annual Interest Rate" means the interest rate you determined in Step 2 on page 2.

4. Add the interest to the original principal and show the new balance due.

EXAMPLE

Sample case: Complaint is filed September 15, 2018 claiming \$1,000. The money has been due since March 16, 2018. Defendant does not answer complaint, so on November 22, 2018, Plaintiff files Default Affidavit (page 1 of this form) with the following calculations attached:

1. Principal amount and date it became due: \$1,000 due March 16, 2018
2. 
$$\begin{array}{ccccccc} \underline{\$1,000} & \times & \underline{.05} & \div & \underline{365} & \times & \underline{251} & = & \underline{\$34.38} \\ \text{Principal} & & \text{Annual} & & \text{Days} & & \text{No. of Days} & & \text{Interest Due} \\ & & \text{Interest} & & \text{In} & & \text{Between} & & \text{For That Period} \\ & & \text{Rate} & & \text{Year} & & \text{March 16 and} & & \\ & & & & & & \text{November 22} & & \\ & & & & & & \text{(date default} & & \\ & & & & & & \text{affidavit filed)} & & \end{array}$$
3. Principal: \$1,000.00  
Prejudgment Interest: + 34.38  
New Balance Due: \$1,034.38

YOUR CALCULATIONS

Due date of principal: \_\_\_\_\_ (See page 2 about required documentation.)

$$\begin{array}{ccccccc} \$ & \times & & \div & 365 & \times & & = & \\ \underline{\hspace{2cm}} & & \underline{\hspace{2cm}} & & \underline{\hspace{2cm}} & & \underline{\hspace{2cm}} & & \underline{\hspace{2cm}} \\ \text{Principal} & & \text{Annual} & & \text{Days} & & \text{No. of Days} & & \text{Interest Due} \\ & & \text{Interest Rate} & & \text{In Year} & & & & \text{For That Period} \end{array}$$

If you have received payments since the complaint was filed, see page 4.

Payments Received

If you have *received payments* since filing the complaint, attach a separate sheet showing:

1. The principal amount due (not including any interest) and the date it became due.
2. The date and amount of the defendant's first payment.
3. Your calculation of the amount of interest due between those two dates, using the formula shown in the second text box on page 3. "No. of Days" means the number of days between the due date of the principal and the date of the defendant's first payment. "Annual interest rate" means the rate you determined from Step Two on page 2.
4. Subtract the interest amount calculated in step 3 from the defendant's first payment. Then subtract the remainder of the defendant's payment from the principal amount owed to you. This is the balance still due.
5. For each additional payment made by Defendant, repeat steps 1-4, except that:
  - "Principal" is now the "balance still due" at the end of step 4.
  - "Date principal became due" becomes the date of the defendant's previous payment
  - "No. of Days" is the number of days between the previous payment and the one you are currently calculating interest for
6. Calculate the interest from the date of the defendant's last payment to the date you file your Default Affidavit. Add this to the previous balance due and show the final balance due.

EXAMPLE

1. Principal amount and date it became due: \$1,000 due March 16, 2018
2. Defendant's first payment (after complaint filed): \$100 on September 22, 2018
3. 
$$\frac{\$1,000}{\text{Principal}} \times \frac{.05}{\text{Annual Interest Rate}} \div \frac{365}{\text{Days in Year}} \times \frac{190}{\text{No. of Days between 3/16 \& 9/22}} = \frac{\$26.03}{\text{Interest Due For That Period}}$$
4. 
$$\frac{\$100.00}{\text{Defendant's Payment}} - \frac{\$26.03}{\text{Interest Due}} = \$73.97 \text{ (amount to be applied to principal)}$$
  

$$\frac{\$1,000.00}{\text{Principal}} - \frac{\$73.97}{\text{Payment}} = \$926.03 \text{ (balance due as of September 22, 2018)}$$
5. Defendant's second payment: \$200 on October 22, 2018  

$$\frac{\$926.03}{\text{Balance Due as of 9/22}} \times \frac{.05}{\text{Annual Interest Rate}} \div \frac{365}{\text{Days in Year}} \times \frac{30}{\text{No. of Days between 9/22 \& 10/22}} = \$3.81 \text{ interest}$$
  

$$\$200 \text{ Payment} - \$3.81 \text{ Interest} = \$196.19 \text{ to be applied to balance due}$$
  

$$\$926.03 \text{ Balance Due} - \$196.19 \text{ Payment} = \$729.84 \text{ Balance Due as of October 22}$$
6. Interest from second payment to date of Default Affidavit (November 22, 2018):  

$$\$729.84 \text{ Balance} \times .05 \div 365 \times 31 \text{ Days} = \$3.10 \text{ Interest}$$
  

Previous Balance Due (10/22/18):	\$729.84
Interest Accrued Since Then:	+ 3.10
Current Balance Due (11/22/18):	\$732.94