

# BUSINESS LAW REPORT

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## RECOVER DAMAGES FOR "BAD" CHECKS

By Jay D. Fullman, Esq.

Has your business ever been the recipient of a "bad" check?

As you might expect, it is illegal for anyone to write a check to a business or an individual when the check writer knows the check is not supported by funds in the bank account, or the account the check was drawn on is closed, or a "stop payment" is made on the check without cause (i.e., "NSF" check).

In most instances, when a check is returned by the bank, it is either re-submitted and paid, or replaced with a good check. The drawer of the check is usually sufficiently embarrassed, and the check is paid or replaced. But, if the drawer of the check does not make the check good, and there is no actual dispute about the services or goods provided, you do have options.

Since 1983, California law has allowed for recovery of penalties and damages for NSF checks, in addition to the amount of the check. The penalty and damages may make it worthwhile to pursue a Small Claims Court complaint to recover the amount owed. Unfortunately, the statute that provides recovery of penalties and damages in addition to the amount of the check is very complicated. But, with a little patience, this law can be used to your advantage.

## LEGAL PENALTY FOR "BAD" CHECK

Section 1719 of the Civil Code provides an automatic penalty of \$25 for the first NSF check, and \$35 for each additional NSF check issued by the same person.

## TREBLE (TRIPLE) DAMAGES FOR "BAD" CHECK

Civil Code Section 1719 also provides that three times the amount of the check (up to \$1,500) can be recovered as damages if the proper notice is sent to the person who wrote the NSF check. In summary, the written notice to the check writer, sent by certified mail, must include:

- a. The amount of the check;
- b. Reference to Civil Code Section 1719;
- c. The amount of any bank service charge paid for the NSF check;
- d. That they can be liable for the penalty (see above);
- e. That they can be liable for the cost of mailing by certified mail;
- f. That they can be liable for at least \$100, or 3 times the amount of the check, up to \$1,500; and
- g. That if there is a good faith dispute, they should try to resolve the dispute.

## STATUTORY NOTICE

Section 1719 states the text of the required notice if there was a stop payment on the check. The notice may also be used for insufficient

funds or for a check written on a closed account. The Notice is:

To: \_\_\_\_\_ (drawer)  
\_\_\_\_\_ (payee) is the payee of a check you wrote for \$\_\_\_\_\_ (amount). The check was not paid because you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed \$25 for the first check passed on insufficient funds and an amount not to exceed \$35 for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and be held responsible to pay at least both of the following:

- (1) the amount of the check.
- (2) Damages of at least \$100, or 3 times the amount of the check up to \$1,500.

If the court determines you have a good faith dispute with the payee, you will not have to pay the service charge, treble damages or mailing cost. If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at: \_\_\_\_\_.

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

\_\_\_\_\_ (name of payee)

Contact Jay D. Fullman for specific advice and representation.