

2016

Legal Manual

MANAGEMENT ONE LICENSED OPERATING SYSTEMS
KNOWLEDGE BASED MANUAL

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Disclaimer

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Security Deposit - Small Claims Trial

This List is used to prepare for a Small Claims Trial when ex-residents are suing for security deposit with-holdings. It is recommended for you to Package all documents, for a final review, no later than 10 days prior to the scheduled hearing. The package is then submitted to a supervisor for the office, to get their approval.

Prior to the Trial

Small Claims Trial Check List

When ex-residents are suing for security deposit with-holdings

1. ___ Contact the owner of the property to advise of the court date scheduled; not necessary for the owner to appear in most counties (however if the owner disbursed the security deposit or did their owner work, it would be recommended they attend)
2. ___ Print a copy of the original security deposit breakdown (and any revisions if applicable)
3. ___ Print a copy of the M1 notepad
4. ___ Review the prior dispute letter from the resident if applicable along with our response and confirm if any adjustments were needed
5. ___ Print a copy of the rental agreement
6. ___ Print a copy of the latest rental modification (if applicable)
7. ___ Print a copy of the notice to vacate (resident notice given or M1 notice given to resident)
8. ___ Print a copy of the resident move out instructions letter (if applicable)
9. ___ Print a copy of the resident move-in inspection form (if applicable)
10. ___ Print a copy of the resident pre-move out inspection form (if applicable)
11. ___ Print a copy of the PCR (Property Condition Report) of the FWT (First Walk Through) after the resident vacated
12. ___ Print a copy of the PCR (Property Condition Report) of the FINAL before the resident moved in (if applicable)
13. ___ Print a copy of all invoices of the rehab work that was completed prior to move in (if applicable)

14. _____ Print a copy of all invoices for the rehab work that was completed to substantiate the charges on the security deposit disbursement
15. _____ Print a copy of all invoices completed during tenancy should there be any disputes of work being done while the resident occupied the property
16. _____ Print a copy of all photos that show damages by the resident to substantiate the charges
17. _____ Print a copy of all photos prior to the resident move in to show condition of the property (if available)
18. _____ Print a copy of any other pertinent information that may apply to the resident's claim
19. _____ Place in the Tickler, to contact the owner, the day before the trial, to confirm they will be available by phone, if they are not present in court that day, in the event a settlement is possible

Package all documents for final review no later than 10 days prior to the scheduled hearing. Submit package to supervisor for approval.

At the Trial

First, sign in with the clerk. Then sign the authorization to represent a business form (Form SC109) and turn it in to the clerk.

You will be asked to go to mediation to exchange all documents and attempt to settle the case. During mediation, you will be asked to respond to the resident's claims (after he/she presents the case). Use the documents 2 through 19 to support your claims and provide proof. You may be authorized up to \$250.00 to settle the case without the owner's permission or contact the owner while in mediation to confirm if the owner wishes to settle if a higher amount is requested should you not have prior owner approval. If the owner (or resident) does not wish to settle, you will be heard by the judge to present all evidence and the judge will make the final decision.

Tip: take note of how the plaintiff presents the case to the court-appointed mediator, he/she will most likely present the case the same way to the judge. Organize the paperwork above (2-19) in the order relative to the resident's specific claims, that way you are ready to respond in a professional matter when presenting to the judge. Any documents being used to support your case need to be labeled with a "D" for "Defendant" on the top right corner.

When you are called to present your case to the judge:

1. Keep it short and sweet. Be precise and concise, make sure to provide proof with any of the declarations you make. Use the defendant labeled documents (2-19) to support your claims.
2. Do not speculate and do not mention conversations unless they are in writing and you have copy of the emails with you. Try to stick to just referring to the company's policies to present the company as equitable to all residents.
3. You may call a witness if you are lacking documents or information. The property inspector may be a witness if there is something pertinent to the case for which you have no documentation. If you need to subpoena a witness, use form SC 107.

The judge may ask to keep some of the documents presented to him in court (labeled P (Plaintiff) or D (Defendant)), make sure you take only copies of documents (2-19).

Most of the time, the judge will take the case under submission and mail out his decision within 48 hrs.

After the Trial

1. ___ Update the court outcome into the property notes in M1 Software
2. ___ Contact the owner of the property and update the outcome of the court trial (If a decision is being sent by mail, tickler for 1 week). If funds are needed from the owner, request at that time to remit within 5 days.
3. ___ Tickler for the projected follow up date based on the outcome (if applicable).

Legal Disclaimer

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Management Contract Buyout - Small Claims

This List is used to prepare for a Small Claims Trial when suing an owner for a management contract buyout. It is recommended for you to Package all documents, for a final review, no later than 10 days prior to the scheduled hearing. The package is then submitted to a supervisor for the office, to get their approval.

Small Claims Trial Checklist

When suing an owner for a management contract buyout

1. ___ Request check for court fees from corporate
 - Breakdown of costs per claim:
 1. \$0.00- \$1,500.00- \$30.00 court filing fee.
 2. \$1,501.00- \$5,000.00- \$50.00 court filing fee.
 3. \$5,001.00- \$10,000.00- \$75.00 court filing fee.
2. ___ Fill out form SC100- *Plaintiff's Claim and ORDER to go to Small Claims Court and print 3 sets (1 for court, 1 for you, and 1 for the defendant).*
3. ___ Go to court and file paperwork with the clerk. You will be provided with a court date.
4. ___ Send paperwork to process server, to serve defendant.
5. ___ Prep file for court date
6. ___ Print a copy of the M1 notepad
7. ___ Print a copy of the original owner cost breakdown
8. ___ Print a copy of the original urgent gram mailed to the owner
9. ___ Review the prior dispute letter from the owner (if applicable) along with our response and confirm if any adjustments were needed and sent.
10. ___ Print a copy of the management agreement
11. ___ Print a copy of any management agreement modifications
12. ___ Print a copy of all emails documenting communication with owner to substantiate our claims.
13. ___ If property was up for rent and contract is less than 90 days old, print copy of ads, leads, and applications to prove that we have performed our duties as specified in the contract.

14. _____ If charging for any work done at the property that is owed to a contractor, print work order and invoice.
15. _____ Print a copy of any other pertinent information that may apply.
16. _____ Tickler to review with upper management prior to the court date.

Package all documents for final review no later than 10 days prior to the scheduled hearing. Submit package to supervisor for approval.

At Trial

First, sign in with the clerk. Then sign the authorization to represent a business form (Form SC109) and turn it in to the clerk.

You will be asked to go to mediation to exchange all documents and attempt to settle the case. During mediation, you will be asked to present your case (why the owner owes the buyout). Use the documents 6 through 15 to support your claims and provide proof. If the owner does not wish to settle, you will be heard by the judge to present all evidence and the judge will make the final decision.

Tip: Organize the paperwork above (6-15) in the order in which you are presenting your case, that way you are ready and professional when presenting to the judge. Any documents being used to support your case need to be labeled with a "P" for "Plaintiff" on the top right corner.

When you are called to present your case to the judge:

1. Keep it short and sweet. Be precise and concise, make sure to provide proof with any of the declarations you make. Use the organized plaintiff labeled documents (6-15) to support your claims on how we have performed our duties as expressed in the management agreement and why we are entitled to such monies.
2. Do not speculate and do not mention conversations unless they are in writing and you have copy of the emails with you. Try to stick to just referring to the company's policies to present the company as equitable and professional.
3. You may call a witness if you are lacking documents or information. The property inspector may be a witness if there is something pertinent to the case for which you have no documentation. If you need to subpoena a witness, use form SC 107.

The judge may ask to keep some of the documents presented to him in court (labeled P (for Plaintiff)), make sure you take only copies of documents (6-15).

Most of the time, the judge will take the case under submission and mail out his decision within 48 hrs.

After Trial

1. ___ Update the court outcome into the property notes in M1 Software
2. ___ If a decision is being sent by mail, tickler for 1 week.
3. ___ Tickler for the projected follow up date based on the outcome (if applicable).

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3 Day Notice to Pay or Quit

3 Day Notice to Pay Rent or Vacate Premises [C.C.P. 1161(2)]

[Property Management Co. Name]

[Street Address]

[City, State, Zip]

[Resident's Name]

[Rental Property Street Address]

[City, State, Zip]

3 Day Notice to Pay Rent or Vacate Premises

C.C.P. 1161(2)

To TENANT'S names herein by the property number and all tenants, subtenants and all others in possession.

YOU ARE HERE NOTIFIED that pursuant to the lease or agreement under which you hold possession of the premises described in this notice, there is now due, unpaid, and delinquent rent for the period(s): 12/01/2015 To 12/31/2015

Date Due: 12/01/2015

Rent Due: \$2,225.00

YOU ARE FURTHER NOTIFIED THAT within three (3) days after the service of this notice on you, you must pay the amount of rent stated in this notice in full or quit the premises and deliver up possession of the premises to the undersigned, who is authorized to receive possession of the premises, or the undersigned will institute legal proceedings for unlawful detainer against you to recover possession of the premises and to recover all rents and damages due.

_____ Dated 12/11/2015

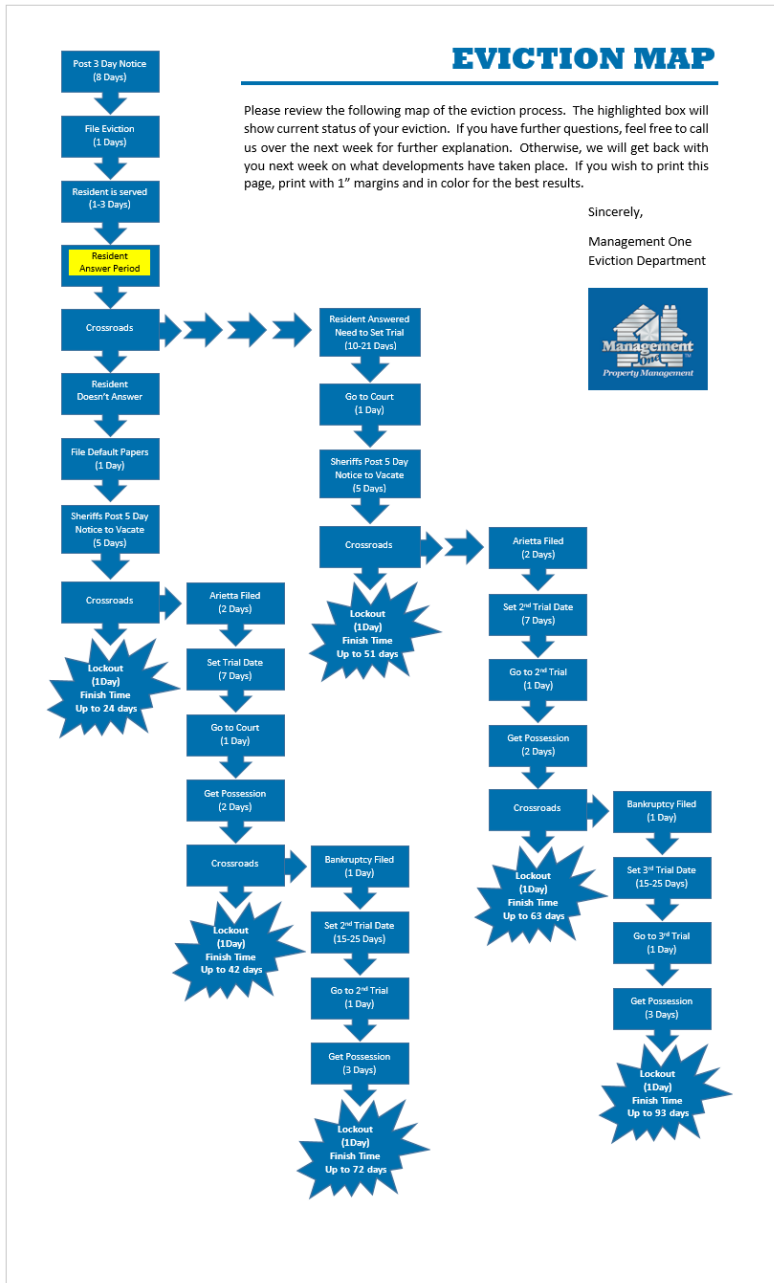
Person Authorized to Give Notice:

YOU ARE FURTHER NOTIFIED THAT rent is to be paid by cashier's check or money order and may be tendered Mon - Fri 9am - 5pm or 7 days a week through a secured, after hours, drop located in front of the office located above.

Eviction Process

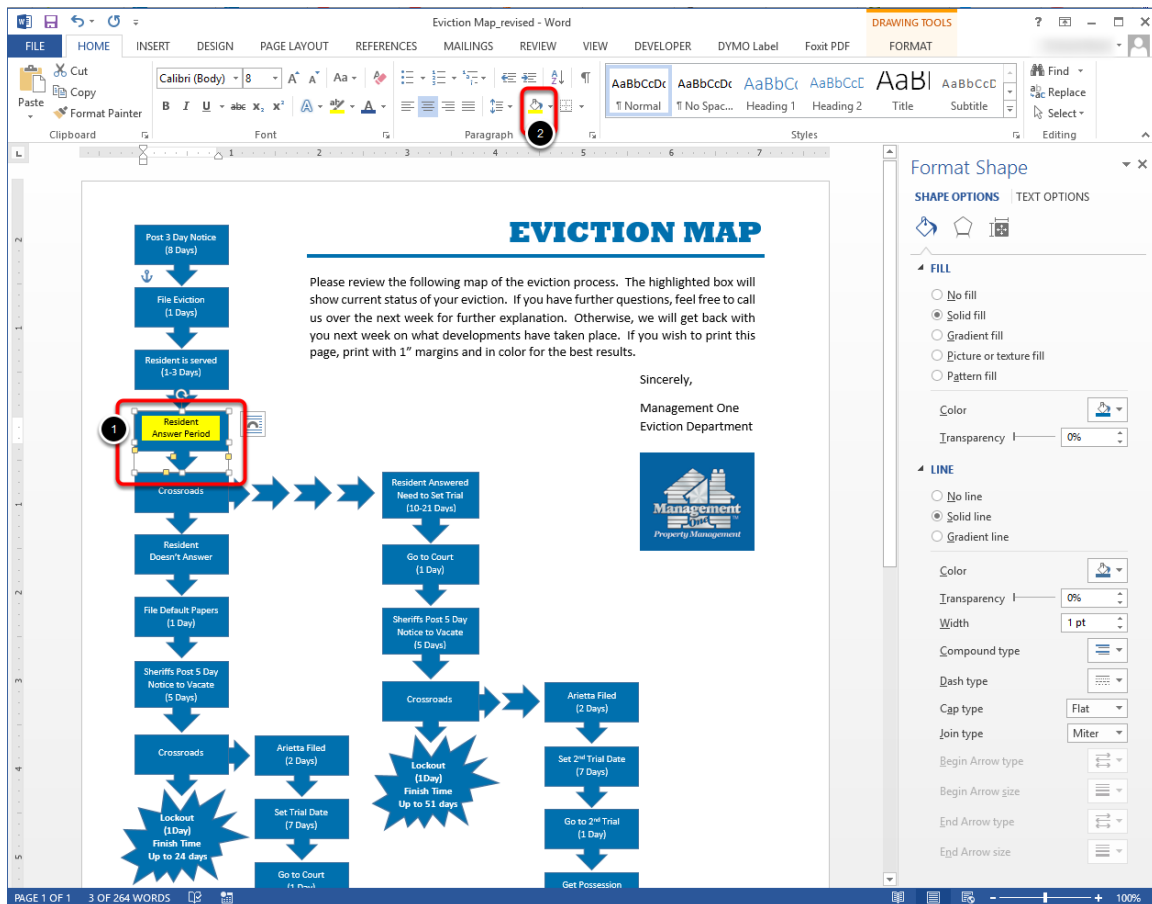
This Eviction Map outlines many of the necessary Steps in the Eviction Process as well as some of the variances that can effect this process. This Map is a tool that is used to keep the property owner informed of the current position and steps taken so far, which is applied when a Resident has not paid Rent by the due date and the Grace Period has expired. This process is enacted the moment that a 3 day notice is posted on the Resident's door for the outstanding Rent. This is not a process to steer away from and it is necessary to stay ahead of it in order to secure the proper position and not loose any time for the owner if the Resident is unable to pay and an Unlawful Detainer needs to be filed with the Court to get the Resident out of the home. The Eviction Map is updated and sent to the Owner on a weekly basis or as often as is required.

Eviction Map



This Map can be updated by denoting the current Step in the Process and then emailed to the Owner on a weekly basis or as often as is required.

Highlighting the Current Step in the Process



Open the File In Microsoft Word:

1. With your mouse, Select the **Step** of the Process the Eviction is in.
2. From the **Home Toolbar** above, Select the **Fill Icon***
3. The **Text area** will change from No Background and a White Font to a Colored Background and a Black Font.

Note: * You can select any color when you click the expanding arrow for the Fill Icon. The best recommended color is yellow, as you can see in this example.

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Eviction Filing Preparation

This List is used to prepare to file for an Unlawful Detainer Trial. This is done when a resident has failed to pay rent or make arrangements to pay rent within the allotted time frame, in addition to having given proper notice by posting a "3-day Pay or Quit Notice" on the door of the rental a "3-day Pay or Quit Notice" as well as mailing a copy to the property. By not paying the rent, the resident(s) is(are) in breach of their lease and forfeit their right to the property, meaning that the resident(s) and "all unnamed parties" that are residing in the home are doing so without proper cause. However, it is for a Judge to decide if they are detaining the property unlawfully and would need to be evicted by a court order and locked out by the Sheriff.

It is recommended for you to Package all documents, for a final review, no later than 10 days prior to the filing. The package is then submitted to a supervisor for the office, to get their approval.

Eviction Filing Prep Checklist

The following steps are to be followed once you are ready to file an eviction:

1. ___ Double check the night drop, accounting box, etc. that funds were not received
2. ___ Check occupancy to confirm the resident is still in possession of the property. You can check this by calling the resident on the phone. If you have had no contact with the resident then the Property Inspector will need to go to the property to check occupancy. You may have to wait 24hrs before filing if occupancy could not be determined and a notice was posted.
3. ___ Pull the 3-Day Notice served
4. ___ Pull a copy of the rental agreement
5. ___ Pull a copy of the latest rental modification; if any
6. ___ Fill out the Proof of Service and have the property inspector sign it
7. ___ Fax/email over all documents to the eviction service; they will email you back a confirmation of receipt normally the same day. If you do not receive it, contact the eviction company to confirm.
8. ___ Update the eviction section in the resident detail for tracking
9. ___ Send the owner the eviction map with the evict1 memo
10. ___ Stamp the rent receipt with the eviction stamp so rent is not mistakenly taken **VERY IMPORTANT**

11. ____ Each week you will give the owner a call with the update as well as send out the eviction map with the eviction memo until the eviction is cancelled due to paid in full, resident vacating prior to completion or lockout
12. ____ If the resident pays in full, you must immediately send over notice to the eviction service to cancel the eviction and update the notes in the system
13. ____ Call the owner if paid in full

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Filing Notice

This Letter is printed at the same time as the "3-Day Pay or Quit" Notice and they are posted and mailed together.

This Letter properly breaks down and informs the resident of the cost associated with paying the Rent late as well as the cost and consequence if arrangements are not made to pay the rent and all outstanding charges.

Letter - F Notice

[Property Management Co. Name]

[Street Address]

[City, State, Zip]

IMPORTANT

RENT, LATE FEES (5% OF THE RENT + \$5.00/DAY AS OF THE 6TH)
AND YOUR \$50.00 POSTING FEE MUST BE PAID BY THE 9TH AT 5:30
PM

**EVICTON WILL BE FILED ON THE 10TH AND A \$705.00
ATTORNEY FEE WILL BE CHARGED TO YOU.**

SAVE YOUR CREDIT AND ATTORNEYS'S FEES BY PAYING BEFORE THE
DEADLINE OR GIVE US A CALL TO MAKE ARRANGEMENTS.

***PLEASE DISREGARD THIS NOTICE IF YOU HAVE ALREADY
PAID.**

CALL OFFICE FOR TOTAL CHARGES

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Eviction - Unlawful Detainer Trial

This List is used to prepare for an Unlawful Detainer Trial. This is done when a resident has failed to pay rent or make arrangements to pay rent within the allotted time frame, in addition to having given proper notice by posting a "3-day Pay or Quit Notice" on the door of the rental a "3-day Pay or Quit Notice" as well as mailing a copy to the property, . By not paying the rent, the resident(s) is(are) in breach of their lease and forfeit their right to the property, meaning that the resident(s) and "all unnamed parties" that are residing in the home are doing so without proper cause. However, it is for a Judge to decide if they are detaining the property unlawfully and would need to be evicted by a court order and locked out by the Sheriff.

It is recommended for you to Package all documents, for a final review, no later than 10 days prior to the filing. The package is then submitted to a supervisor for the office, to get their approval.

Eviction Trial Checklist

Preparing for trial

1. ___ Pull the property file
2. ___ Print a copy of the notepad
3. ___ Print a copy of the rental agreement
4. ___ Print a copy of the latest rental modification (if applicable)
5. ___ Print a copy of the 3Day Notice (or notice used to file eviction)
6. ___ Print a copy of the account ledger
7. ___ Print out any work orders & invoices that may apply to the resident's claim
8. ___ Print out any other pertinent information that applies to the resident's claim

At Trial

You will be represented by an attorney who will assist in the negotiations of attempting to sign a settlement agreement for the resident to agree to pay or vacate the premises. (We recommend not giving the resident more than 14 days to vacate in the negotiations)

After Trial

1. ___ Update the court outcome into the property notes in M1 Software

2. ___ Contact the owner of the property and update the outcome of the court trial
3. ___ Tickler for the projected follow up date based on the outcome (date resident scheduled to pay, date resident scheduled to vacate, etc.)

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Court Forms (SC 100-104B) Plaintiff's Claim and ORDER to go to Small Claims Court

Forms Disclaimer: The following forms are provided as an example of the type of paperwork to expect when needing to File a Plaintiff's Claim and Order to go to Small Claims Court. Please realize, these forms are used in the Riverside County of the State of California Courts and you will need to seek legal council as to the proper and correct forms to be used and filed in the jurisdiction of the Rental property you are managing.

SC-100 Plaintiff's Claim and ORDER to go to Small Claims Court

Print These Forms
Clear These Forms

SC-100 **Plaintiff's Claim and ORDER to Go to Small Claims Court**

Notice to the person being sued:

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of RIVERSIDE

(SELECT COURTHOUSE) ▾

Clerk fills in case number and case name:

Case Number: _____

Case Name: _____

Order to Go to Court

The people in ① and ② must go to court: *(Clerk fills out section below.)*

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

Date: _____ Clerk, by _____, Deputy

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Judicial Council of California, www.courts.ca.gov
 Revised January 1, 2012, Mandatory Form
 Code of Civil Procedure, §§ 116.110 et seq.,
 116.220(c), 116.340(g)

Plaintiff's Claim and ORDER to Go to Small Claims Court
(Small Claims)

SC-100, Page 1 of 5 →

SC-100 Plaintiff's Claim and ORDER to go to Small Claims Court (page 2 of 5)

Plaintiff (list names): _____ Case Number: _____

1 The Plaintiff (the person, business, or public entity that is suing) is:
Name: _____ Phone: (____) _____
Street address: _____
Street City State Zip
Mailing address (if different): _____
Street City State Zip

If more than one Plaintiff, list next Plaintiff here:
Name: _____ Phone: (____) _____
Street address: _____
Street City State Zip
Mailing address (if different): _____
Street City State Zip

Check here if more than 2 Plaintiffs and attach Form SC-100A.
 Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

2 The Defendant (the person, business, or public entity being sued) is:
Name: _____ Phone: (____) _____
Street address: _____
Street City State Zip
Mailing address (if different): _____
Street City State Zip

If more than one Defendant, list next Defendant here:
Name: _____ Phone: (____) _____
Street address: _____
Street City State Zip
Mailing address (if different): _____
Street City State Zip

Check here if more than 2 Defendants and attach Form SC-100A.
 Check here if any Defendant is on active military duty, and write his or her name here: _____

3 The Plaintiff claims the Defendant owes \$ _____ . (Explain below):
a. Why does the Defendant owe the Plaintiff money? _____

b. When did this happen? (Date): _____
If no specific date, give the time period: Date started: _____ Through: _____
c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) _____

 Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Revised January 1, 2012 **Plaintiff's Claim and ORDER to Go to Small Claims Court (Small Claims)** SC-100, Page 2 of 5 →

SC-100 Plaintiff's Claim and ORDER to go to Small Claims Court (page 3 of 5)

Plaintiff (list names): _____ Case Number: _____

4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? Yes No
If no, explain why not: _____

5 Why are you filing your claim at this courthouse?
This courthouse covers the area (check the one that applies):

a. (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
 (2) Where the Plaintiff's property was damaged.
 (3) Where the Plaintiff was injured.

b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)

c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)

d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)

e. Other (specify): _____

6 List the zip code of the place checked in 5 above (if you know): _____

7 Is your claim about an attorney-client fee dispute? Yes No
If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here:

8 Are you suing a public entity? Yes No
If yes, you must file a written claim with the entity first. A claim was filed on (date): _____
If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?
 Yes No If yes, the filing fee for this case will be higher.


10 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

11 I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: _____ Plaintiff types or prints name here
Date: _____ Second Plaintiff types or prints name here

Plaintiff signs here
Second Plaintiff signs here

 **Requests for Accommodations**
Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civil Code, § 54.8.)

Revised January 1, 2012
Plaintiff's Claim and ORDER to Go to Small Claims Court (Small Claims)
SC-100, Page 3 of 5

SC-100 Plaintiff's Claim and ORDER to go to Small Claims Court (page 4 of 5) "Information for the Defendant"

SC-100 Information for the Defendant (the person being sued)

"Small claims court" is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may generally claim up to \$10,000, including a sole proprietor. (*See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you may *not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courts.ca.gov/smallclaims/forms.

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see: www.courts.ca.gov/smallclaims/appeals.

*Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc. § 116.221.)

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county's Small Claims Advisor can help for free.

Small Claims Advisor (Riverside) 951-274-4499
Small Claims Advisor (Desert Region) 760-393-2163
E-mail: smallclaimsadvisory@riverside.courts.ca.gov

Or go to www.courts.ca.gov/smallclaims/advisor.

Revised January 1, 2012

Plaintiff's Claim and ORDER to Go to Small Claims Court
(Small Claims)

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SC 100 Plaintiff's Claim and ORDER to go to Small Claims Court (page 5 of 5) "Información para el demandado"

SC-100

Información para el demandado (la persona demandada)

La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública) puede reclamar hasta \$10,000. Una "persona natural" (que no sea un negocio ni una entidad pública), que incluye un dueño único, generalmente puede reclamar hasta \$10,000. (* Vea abajo para las excepciones.) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado — la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero *no puede* tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos, y cualquier pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en:

www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accommodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo inglés bien?

Traiga a un adulto que no sea testigo para que le sirva de intérprete. O pida al secretario de la corte que le asigne uno. Si quiere que la corte le asigne un intérprete, lo tiene que pedir como mínimo menos cinco días antes de la fecha en que tenga que ir a la corte. Es posible que no haya disponible un intérprete proporcionado por la corte o que tenga que pagar una cuota por emplear un intérprete de la corte, a menos que tenga una exención de cuotas. Puede pedir a la corte una lista de intérpretes y la Solicitud de exención de cuotas y costos de la corte (formulario FW-001).

¿Dónde puedo obtener los formularios de la corte que necesito?

Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en: www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea: www.courts.ca.gov/reclamosmenores/apelaciones.

Revised January 1, 2012

¿Tengo otras opciones?

Si. Si lo están demandando, puede:

- Resolver su caso antes del juicio. Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- Probar que es la corte equivocada. Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despidiera el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- Ir al juicio y tratar de ganar el caso. Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- Demandar a la persona que lo demandó. Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- Aceptar el reclamo del Demandante y pagar el dinero. O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- No ir al juicio y aceptar el fallo por falta de comparecencia. Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo?

Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio) o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado) o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

El Asesor de Reclamos (Riverside) 951-274-4499

El Asesor de Reclamos (Indio) 760-393-2163

E-mail: smallclaimsadvisory@riverside.courts.ca.gov

O vea "Información por condado" en:

www.courts.ca.gov/reclamosmenores/asesores.

*Excepciones: Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).) En un caso presentado por una persona natural por daños debido a lesiones físicas en un accidente automovilístico, existe un límite de \$7,500 si el demandado tiene cobertura bajo una póliza de seguro de vehículo que incluye la obligación de defender. (Vea el Código de Procedimiento Civil, sección 116.221.)

**Reclamo del Demandante y ORDEN
Para Ir a la Corte de Reclamos Menores
(Reclamos Menores)**

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SC-100-INFO Information for the Small Claims Plaintiff

SC-100-INFO

INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a **lawyer** for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 if you are a business or public entity or for more than \$10,000 if you are a natural person (including a sole proprietor). (*See below for references to exceptions.) If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least 18 years old to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court.

You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.

4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear on Behalf of Party*, form SC-100.)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue**. Check the court's local rules if there is more than one court location in the county handling small claims cases.

If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard.

The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;

3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken;
5. For a retail installment account or sales contract or a motor vehicle finance sale:
 - a. Where the buyer lives;
 - b. Where the buyer lived when the contract was entered into;
 - c. Where the buyer signed the contract; or
 - d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's **exact legal name**. If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit at www.ss.ca.gov/business. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.

2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF**. Here are four ways to serve the defendant:

the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.

1. **Service by a law officer** — You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server** — You may ask anyone who is *not a party* in your case and who is at least 18 years to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when

3. **Certified mail** — You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court prior to the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service** — This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

*Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc., § 116.221.)

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Form Adopted for Mandatory Use
Judicial Council of California
Revised January 1, 2012

INFORMATION FOR THE PLAINTIFF
(Small Claims)

Code of Civil Procedure
§§ 116.110 et seq., 116.220(c), 116.340(g)
www.courts.ca.gov

SC-100-INFO Information for the Small Claims Plaintiff (page 2 of 2)

4. Substituted service (continued)

A copy of your claim must be left

— at the defendant's business with the person in charge;

OR

— at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until 10 days after the copy is mailed.

No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least 15 days before the trial date. This period is at least 20 days if the defendant lives outside the county.

The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant**) will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim*. The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 or \$10,000 if the defendant is a natural person (*see exceptions on page 1). If the value of the claim is more than this amount, the defendant may either give up the amount over \$5,000 or \$10,000 and sue in the small claims court or file a motion to transfer the case to the appropriate court for the full value of the claim.

The defendant's claim must be served on the plaintiff at least 5 days before the trial. If the defendant received the plaintiff's claim 10 days or less before the trial, then the claim must be served at least 1 day before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily. You may also ask the clerk of the court to issue a **subpoena**. A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order prior to the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and collects the money is called the **judgment creditor**. The party who loses the case and owes the money is called the **judgment debtor**. Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment* form. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

- Lawyers** — Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
- Interpreters** — If you do not speak English well, bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).
- Waiver of fees** — The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
- Night and Saturday court** — If you cannot go to court during working hours, ask the clerk if the court has trials at night or on Saturdays.
- Parties who are in jail** — If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
- Accommodations** — If you have a disability and need assistance, immediately ask the court to help accommodate your needs. If you are hearing impaired and need assistance, notify the court immediately.
- Forms** — You can get small claims forms and more information at the California Courts Self-Help Center Web site (www.courts.ca.gov/smallclaims), your county law library, or the courthouse nearest you.
- Small claims advisors** — The law requires each county to provide assistance in small claims cases free of charge. (*Small claims advisor information*):

Small Claims Advisor (Riverside) 951-274-4499
Small Claims Advisor (Desert Region) 760-393-2163
E-mail: smallclaimsadvisory@riverside.courts.ca.gov

SC-103 Fictitious Business Name

NOTICE - This form is only required if you are a Plaintiff doing business under a fictitious name (ex. John Smith dba ABC Plumbing). If this does not apply to you, remove the form from your packet.

SC-103 Fictitious Business Name

Case Number: _____

This form is attached to: Form SC-100 OR Form SC-120

- ① If you want to file a small claim and you are doing business under a fictitious name ("doing business as," or "dba") give the following information. (Nonprofits and exempt real estate investment trusts do not have to file this form.)

Business name of the person suing: _____

Business address (not a U.S. Postal Service P.O. Box): _____

Mailing address (if different): _____

- ② The business listed in ① does business as (check ONLY one):

- an individual a corporation
 an association a limited liability company
 a partnership other (specify): _____

You must follow the laws for fictitious business names. If you have not followed these laws, including filing a fictitious business name statement in your county and publishing this information in a local newspaper, the court can dismiss your case.

- ③ Name of county where you filed your Fictitious Business Name Statement (dba): _____

- ④ Your Fictitious Business Name Statement number: _____

- ⑤ Date your Fictitious Business Name Statement expires: _____

- ⑥ I declare, under penalty of perjury under California State law, that the information above is true and correct. Only the owner, president, chief executive officer (CEO), or other qualified officer can sign this form.

Date: _____

Type or print your name and title



Sign your name



Need help?

Your county's Small Claims Advisor can help for free.

Small Claims Advisor (Riverside) 951-274-4499
Small Claims Advisor (Desert Region) 760-393-2163
E-mail: smallclaimsadvisory@riverside.courts.ca.gov

Or go to "County-Specific Court Information" at:
www.courtinfo.ca.gov/selfhelp/smallclaims

SC-104 Proof of Service

SC-104 Proof of Service

Use this form to serve a **person**, a **business**, or a **public entity**. To learn more about proof of service, read *What Is "Proof of Service"?*, Form SC-104B. To learn more about how to serve a business or entity, read *How to Serve a Business or Public Entity*, Form SC-104C.

To serve a **business**, you must serve one of the following people:

- Owner (for a sole proprietorship)
- Partner (for a partnership) or general partner (for a limited partnership)
- Any officer or general manager (corporation or association)
- Any person authorized for service by the business (corporation, association, general partnership, limited partnership)
- Any person authorized for service with the Secretary of State (corporation, association, limited liability company [LLC], limited liability partnership [LLP], limited partnership)

To serve a **public entity**, you must first file a claim with that entity, then serve one of the following people:

- Clerk (of a city or county)
- Chief officer or director (of a public agency)
- Any person authorized for service by the entity

- ① a. If you are serving a **person**, write the person's name below:
- _____
- b. If you are serving a **business or entity**, write the name of the business or entity, the person authorized for service, and that person's job title:

Business or Agency Name	
Person Authorized for Service	Job Title

② **Instructions to Server:**

You must be at least 18 years old and not be named in this case. Follow these steps:

- Give a copy of all the documents checked in ③ to the person in ①, *or*
 - Give a copy of all the documents checked in ③ to one of the following people:
 - a. A competent adult (at least 18) living with, and at the home of the person in ①, *or*
 - b. An adult (at least 18) who seems to be in charge at the usual workplace of the person in ①, *or*
 - c. An adult (at least 18) who seems to be in charge where the person in ① usually receives mail (but not a U.S. Post Office box), if there is no known physical address for the person in ①.
- and mail a copy of the documents left with one of the adults in a, b, or c above to the person in ①.*

THEN

- Complete and sign this form, and
- Give or mail your completed form to the person who asked you to serve these court papers, *in time for the form to be filed with the court at least 5 days before the hearing.*

③ **I served the person in ① a copy of the documents checked below:**

- a. SC-100, *Plaintiff's Claim and ORDER to Go to Small Claims Court*
- b. SC-120, *Defendant's Claim and ORDER to Go to Small Claims Court*
- c. Order for examination (*This form must be personally served. Check the form that was served:*)



Note: The court can issue a civil arrest warrant if the served party does not come to court only if the order for examination was personally served by a registered process server, sheriff, marshal, or someone appointed by the court.

- (1) SC-134, *Application and Order to Produce Statement of Assets and to Appear for Examination*
- (2) AT-138/EJ-125, *Application and Order for Appearance and Examination*

d. Other (specify): _____

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of RIVERSIDE

Fill in case number, case name, hearing date, day, time, and department below:

Case Number:	
Case Name:	
Hearing Date:	
Time:	Dept.:

SC-104 Proof of Service (page 2 of 2)

Case name: _____	Case Number: _____
------------------	-----------------------

4 Fill out "a" or "b" below:

a. **Personal Service:** I personally gave copies of the documents checked in ③ to the person in ①:

On (date): _____ At (time): _____ a.m. p.m.

At this address: _____

City: _____ State: _____ Zip: _____

b. **Substituted Service:** I personally gave copies of the documents checked in ③ (a, b, or d) to (check one):

A competent adult (at least 18) at the home of, and living with the person in ①, or

An adult who seems to be in charge where the person in ① usually works, or

An adult who seems to be in charge where the person in ① usually receives mail, or has a private post office box (not a U.S. Post Office box), if there is no known physical address for the person in ①.

I told that adult, "Please give these court papers to (name of person in ①)."

I did this on (date): _____ At (time): _____ a.m. p.m.

At this address: _____

City: _____ State: _____ Zip: _____

Name or description of the person I gave the papers to: _____

After serving the court papers, I put copies of the documents listed in ③ in an envelope, sealed the envelope, and put first-class prepaid postage on it. I addressed the envelope to the person in ① at the address where I left the copies.

I mailed the envelope on (date): _____ from (city, state): _____

by leaving it (check one):

a. At a U.S. Postal Service mail drop, or

b. At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service, or

c. With someone else I asked to mail the documents to the person in ①, and I have attached that person's completed Form SC-104A.

5 **Server's Information**

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

Fee for service: \$ _____

If you are a registered process server:

County of registration: _____ Registration number: _____

6 I declare under penalty of perjury under California state law that I am at least 18 years old and not named in this case and that the information above is true and correct.

Date: _____

Type or print server's name

▶

Server signs here after serving

Revised January 1, 2009

Proof of Service
(Small Claims)

SC-104, Page 2 of 2

SC-104A Proof of Mailing (Substituted Service)

SC-104A Proof of Mailing (Substituted Service)	Case Number: _____
---	--------------------

This form is attached to Form SC-104. Use this form ONLY if you mailed the documents in ① and someone else personally gave them to the person, business, or public entity served.

Notice to Server

You must:

- Be at least 18 and not listed in this lawsuit.
- Fill out ①–⑥ of this form and attach it to Form SC-104.

① **Documents served by mail:**

a. SC-100, *Plaintiff's Claim and ORDER to Go to Small Claims Court*

b. SC-120, *Defendant's Claim and ORDER to Go to Small Claims Court*

c. Other (specify): _____

② **Name and address of the person, business, or public entity served:**

a. If you served a person, write the person's name and address below:

Name: _____

Address: _____

Street City State Zip

b. If you served a business or public entity, write the name and address of the business or public entity, the person authorized for service, and that person's job title:

Business or Public Entity Name	Person Authorized for Service	Job Title
--------------------------------	-------------------------------	-----------

Address: _____

Street City State Zip

③ I put copies of the documents listed in ① above in an envelope, sealed the envelope, and put first-class prepaid postage on it. I addressed the envelope to the person, business, or public entity listed in ② and mailed the envelope by leaving it at (check one):

a. A U.S. Postal Service mail drop or

b. An office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

④ I mailed the envelope:

a. On (date): _____ b. From (city, state): _____

⑤ My address is: _____

⑥ I declare, under penalty of perjury under California State law, that the information above is true and correct.

Date: _____

Type or print server's name

Server signs here after mailing

Judicial Council of California, www.courtinfo.ca.gov
Revised January 1, 2006, Optional Form
Code of Civil Procedure, §§ 116.340, 415.20

Proof of Mailing (Substituted Service)
(Small Claims)

SC-104A, Page 1 of 1

SC-104B What is "Proof of Service"?

SC-104B What Is "Proof of Service"?

What is "service"?

"Service" or "serving" is when someone—not you or anyone else listed in this case—gives a copy of your court papers to the person, business, or public entity you are suing. Service lets the other party know:

- What you are asking for
- When and where the trial will be and
- What the party can choose to do

There are strict rules for serving court papers. This form explains how to serve these forms:

- Form SC-100, *Plaintiff's Claim*
- Form SC-120, *Defendant's Claim*

How is service done?

This form tells you how to serve by *personal* service or *substituted* service.

Personal service means someone gives the papers directly to the person being sued or to the agent authorized to accept service (business or public entity).

Substituted service means someone gives the papers to an adult where the person lives, works, or receives mail (including a private post office box, but not a U.S. Postal Service P.O. Box).

What if the court papers do not get served?

The judge cannot hear your case unless the court papers were served correctly.

Can the court serve the papers for me?

Yes. You can pay the court to mail your claim to the person you are suing. But if the person you are suing or the person's agent for service doesn't sign the U.S. Postal Service mail receipt with his or her complete name, or if someone else signs the receipt, you will have to serve again using personal or substituted service.

Who can serve?

You can ask a friend, a process server, or the Sheriff. The server must be at least 18 and not listed in the case.

A "process server" is someone you pay to deliver court forms. Look in the Yellow Pages under "Process Serving." The Sheriff (or Marshal if your county has one) can also deliver court forms. Ask the court clerk how to contact the Sheriff. Or look in the county section of your phone book under "Sheriff." You must pay the server, unless you qualify for a fee waiver.

How is *personal* service done?

Ask someone who is at least 18 and not listed in this case to personally "serve" (give) a copy of your court papers to the person or the agent authorized to accept court papers for the person, business, or public entity listed on Form SC-104.

Give the server a separate *Proof of Service* form for each person, business, or public entity you are suing. And tell the server to:

- Walk up to the person to be served.
- Say, "These are court papers."
- Give the person copies of all papers checked on Form SC-104, *Proof of Service*. If the person won't take the papers, just leave them near the person. It doesn't matter if the person tears them up.
- Fill out and sign page 2 of Form SC-104, *Proof of Service*.

How is *substituted* service done?

If you don't want to use personal service or can't find the person to be served, ask someone who is at least 18 and not listed in this case to serve the court papers.

Give the server a separate *Proof of Service* form for each person, business, or public entity you are suing. Tell the server to give the papers to:

- A competent adult (at least 18) at the home of and living with the person to be served *or*
- An adult who seems to be in charge where the person to be served usually works *or*
- An adult who seems to be in charge where the person receives mail (including a private mailbox, but not a U.S. Postal Service P.O. Box). *Note:* This is only for cases where the physical address of the person to be served is not known.

Then do the following:

- Write down that person's name and say, "Please give these court papers to [name of person to be served]." If the person does not want to give his or her name, describe the person you served.
- Give that person copies of all papers checked on Form SC-104, *Proof of Service*. If the person won't take the papers, just leave them near the person.
- Mail another copy of the papers (by first-class mail) to the person being sued at the same address where you left the papers.
- Fill out and sign page 2 of Form SC-104, *Proof of Service*.



SC-104B What is "Proof of Service"? (page 2 of 2)

SC-104B What Is "Proof of Service"?

What does the server do with the original Proof of Service form?

If a process server or Sheriff served the papers, he or she can file Form SC-104, *Proof of Service*, with the clerk. If the server used a different *Proof of Service* form, ask him or her to list each paper served on the form. Also make sure that the registered server will file the original directly with the court and will mail you a copy of the filed form. Take it with you when you go to court.

If a friend served the papers, tell him or her to give the completed form back to you. Keep a copy for your records and take the copy with you when you go to court.

You need to file the original completed *Proof of Service* form 5 days before your trial.

When do the court forms have to be served?

- If you are serving Form SC-100, *Plaintiff's Claim*, look at the trial date on page 1. Then, look at a calendar.

For *personal* service, subtract 15 days from the trial date (or 20 days if the person, business, or public entity is located outside the county). That's the deadline for serving your small claims forms. But you can serve the forms before the deadline.

The people in ① and ② must go to court.

Trial Date	Date	Time
1.	_____	_____

For *substituted* service, subtract 25 days from the date the server mailed a copy of the court papers served (or 30 days if the person, business, or public entity is located outside the county). That's the deadline for serving your small claims forms. But you can serve the forms before the deadline.

If the person, business, or public entity to be served is outside California or if you are serving a different form, ask the Small Claims Advisor for more information.

- If you are serving Form SC-120, *Defendant's Claim*, look at the trial date on page 1. Then look at a calendar.

For *personal* or *substituted* service, subtract 5 days from the trial date. That's the deadline for serving your small claims forms if you were served at least 11 days before the trial. If you were served 10 days or less before the trial date, you must serve at least 1 day before the trial. But you can serve the forms before the deadline.

What if I can't get the court papers served before the trial?

If you were not able to serve your claim (Form SC-100 or SC-120) before the deadline for service, talk to your Small Claims Clerk. Each county has its own rules.

If you already served your claim on some parties but not everyone you are suing, you may need to fill out and file Form SC-150, *Request to Postpone Trial*, at least 10 days before the trial date (or explain why you couldn't meet the 10-day deadline). Then give or mail a copy of this form to all other Plaintiffs and Defendants listed on your court papers.

The court may postpone your trial for 15 days or more.

Who do I have to serve?

If you are suing a person (or people)—not a business or public entity—serve each person you are suing. For example, if you were in a car accident and you are suing the owner and the driver of the car, you must list the names of the owner *and* the driver on your claim and serve both people.

Examples:

If the owner and driver are the same person:
Lee Smith, owner and driver

If the owner and driver are not the same person:
Lee Smith, owner and driver
Bob Smith, owner

If you are suing a business, an association, or a public entity, read Form SC-104C, *How to Serve a Business*.



Need help?

Your county's Small Claims Advisor can help for free.

Small Claims Advisor (Riverside) 951-274-4499
Small Claims Advisor (Desert Region) 760-393-2163
E-mail: smallclaimsadvisory@riverside.courts.ca.gov

Or go to "County-Specific Court Information" at:
www.courtinfo.ca.gov/selfhelp/smallclaims

Legal Disclaimer

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its parts, as it relates to your business activities or interests, is highly recommended to seek legal advice from a licensed practitioner and to address them solely with their own appointed legal council.

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Court Form (SC-107) Small Claims Subpoena

Forms Disclaimer: The following forms are provided as an example of the type of paperwork to expect when needing to File a Plaintiff's Claim and Order to go to Small Claims Court. Please realize, these forms are used in the Riverside County of the State of California Courts and you will need to seek legal council as to the proper and correct forms to be used and filed in the jurisdiction of the Rental property you are managing.

SC-107 Small Claims Subpoena

Name and Address of Court: _____

To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.

SC-107

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):

 Telephone No.: _____

 Telephone No.: _____

SMALL CLAIMS CASE NO. _____

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):

 Telephone No.: _____

 Telephone No.: _____

See attached sheet for additional plaintiffs and defendants.

**SMALL CLAIMS SUBPOENA
 FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
 AND THINGS AT TRIAL OR HEARING AND DECLARATION**

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this case at the date, time, and place shown in the box below **UNLESS** your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: _____ Time: _____ Dept.: Div.: Room:

b. Address: _____

2. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name of subpoenaing party: _____ b. Telephone number: _____

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. **YOU ARE** (item a or b must be checked):

a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

(SEAL) Date issued: _____

Clerk, by _____, Deputy

(See reverse for declaration in support of subpoena) Page one of three

Form Adopted for Mandatory Use
 Judicial Council of California
 SC-107 (Rev. January 1, 2000)

**SMALL CLAIMS SUBPOENA
 AND DECLARATION**

Code of Civil Procedure,
 § 1985 et seq.

SC-107 Small Claims Subpoena (page 2 of 3)

PLAINTIFF/PETITIONER: _____	CASE NUMBER: _____
DEFENDANT/RESPONDENT: _____	_____

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

1. I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): _____ in the above entitled action.

2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.

a. For trial or hearing (specify the exact documents or other things to be produced by the witness):

 Continued on Attachment 2a.

b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):

- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
- (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
- (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
- (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
- (5) California registration certificates and ownership certificates for all vehicles registered to the party.
- (6) Deeds to any and all real property owned or being purchased by the party.
- (7) Other (specify): _____

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:

 Continued on Attachment 3.

4. These documents are material to the issues involved in this case for the following reasons:

 Continued on Attachment 4.

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 PARTY)

(See proof of service on page three)

SC-107 (Rev. January 1, 2000) SMALL CLAIMS SUBPOENA AND DECLARATION Page two of three

SC-107 Small Claims Subpoena (page 3 of 3)

PLAINTIFF/PETITIONER: _____	CASE NUMBER: _____
DEFENDANT/RESPONDENT: _____	

**PROOF OF SERVICE OF SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING
AND DECLARATION**

1. I served this *Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:

a. Person served (name): _____

b. Address where served: _____

c. Date of delivery: _____

d. Time of delivery: _____

e. Witness fees (check one):

(1) were offered or demanded and paid. Amount: \$ _____

(2) were not demanded or paid.

f. Fee for service: \$ _____

2. I received this subpoena for service on (date): _____

3. Person serving:

a. Not a registered California process server.

b. California sheriff, marshal, or constable.

c. Registered California process server.

d. Employee or independent contractor of a registered California process server.

e. Exempt from registration under Business & Professions Code section 22350(b).

f. Registered professional photocopier.

g. Exempt from registration under Business & Professions Code section 22451.

h. Name, address, and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: _____ Date: _____

(SIGNATURE) (SIGNATURE)

SC-107 [Rev. January 1, 2000] Page three of three

PROOF OF SERVICE OF SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AT TRIAL OF HEARING AND DECLARATION

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Save This Form

Print This Form

Clear This Form

Legal Disclaimer

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its parts, as it relates to your business activities or interests, is highly recommended to seek legal advice from a licensed practitioner and to address them solely with their own appointed legal council.

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Court Form (SC-109) Authorization to Appear

Forms Disclaimer: The following forms are provided as an example of the type of paperwork to expect when needing to File a Plaintiff's Claim and Order to go to Small Claims Court. Please realize, these forms are used in the Riverside County of the State of California Courts and you will need to seek legal council as to the proper and correct forms to be used and filed in the jurisdiction of the Rental property you are managing.

SC-109 Authorization to Appear

SC-109

Authorization to Appear

This form is used to tell the court you are authorized to appear for a plaintiff or defendant in a small claims case. You may also use this form to ask the court for permission to help a plaintiff or defendant who cannot properly speak for himself or herself.

You cannot appear for a defendant or plaintiff if your only job is to represent him or her in small claims court. If you are a lawyer, you can appear only as authorized by section 116.530 of the Code of Civil Procedure.

Fill out ①–④ on this page, then file it with the small claims clerk at or before the trial.

Clerk stamps date here when form is filed.

To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.

① List the name, address, and position of the person appearing:

Name: _____
 Address: _____
 Job title or relationship to the defendant or plaintiff you want to appear for: _____

② Who are you appearing for?

A defendant in this case (name): _____
 A plaintiff in this case (name): _____

③ Tell us about the defendant or plaintiff you are appearing for.
 I am appearing for a (check one):

Corporation and I am an employee, officer, or director of that corporation.
 Partnership and I am an employee, officer, director, or partner of that partnership.
 Other business (not a corporation, partnership, or sole proprietorship) and I am an employee, officer, or director of that business.
 Government agency or other public entity and I am an employee, officer, or director of that agency or entity.
 Sole proprietorship and I am an employee of that business. I am qualified to testify about business records made in the regular course of business at or near the time of the event. The content of the business records is the only issue in this case. (*Evidence Code, § 1271*).
 Plaintiff who was assigned to out-of-state active duty in the U.S. armed forces for more than 6 months after filing this claim. I am not being paid to appear. I have not appeared in small claims court for other people more than 4 times in this calendar year.
 Defendant or plaintiff who is in a jail, a prison, or another detention facility now. I am not being paid to appear. I have not appeared in small claims court for other people more than 4 times in this calendar year.
 Owner of rental property in California who employs me as a property agent. This claim is about the rental property I manage.
 Association created to manage a common interest development and I am an agent, management company representative, or bookkeeper for that association.
 Husband or wife and my spouse and I are both listed on this claim and agree that either spouse can appear for the other.
 Other (explain): _____

④ I declare under penalty of perjury under California state law that the information above is true and correct.
 Date: _____

Type or print your name

 Sign your name

Fill in court name and street address:

Superior Court of California, County of _____

Fill in your case number and case name below:

Case Number: _____

Case Name: _____

Judicial Council of California, www.courtinfo.ca.gov
Revised January 1, 2007, Optional Form
Code of Civil Procedure, § 116.540

Authorization to Appear
(Small Claims)

SC-109, Page 1 of 1

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Save This Form

Print This Form

Clear This Form

Legal Disclaimer

The information discussed in this manual and any Chapter, Article, Section, or reference thereof, which is included within it, is not intended to be given as legal advice. The publication of this material is only given in reference to discuss topics of concern and to bring them to the attention of the reader. Should the reader of the said materials have any questions regarding any of the content within this manual or

its parts, as it relates to your business activities or interests, is highly recommended to seek legal advice from a licensed practitioner and to address them solely with their own appointed legal council.

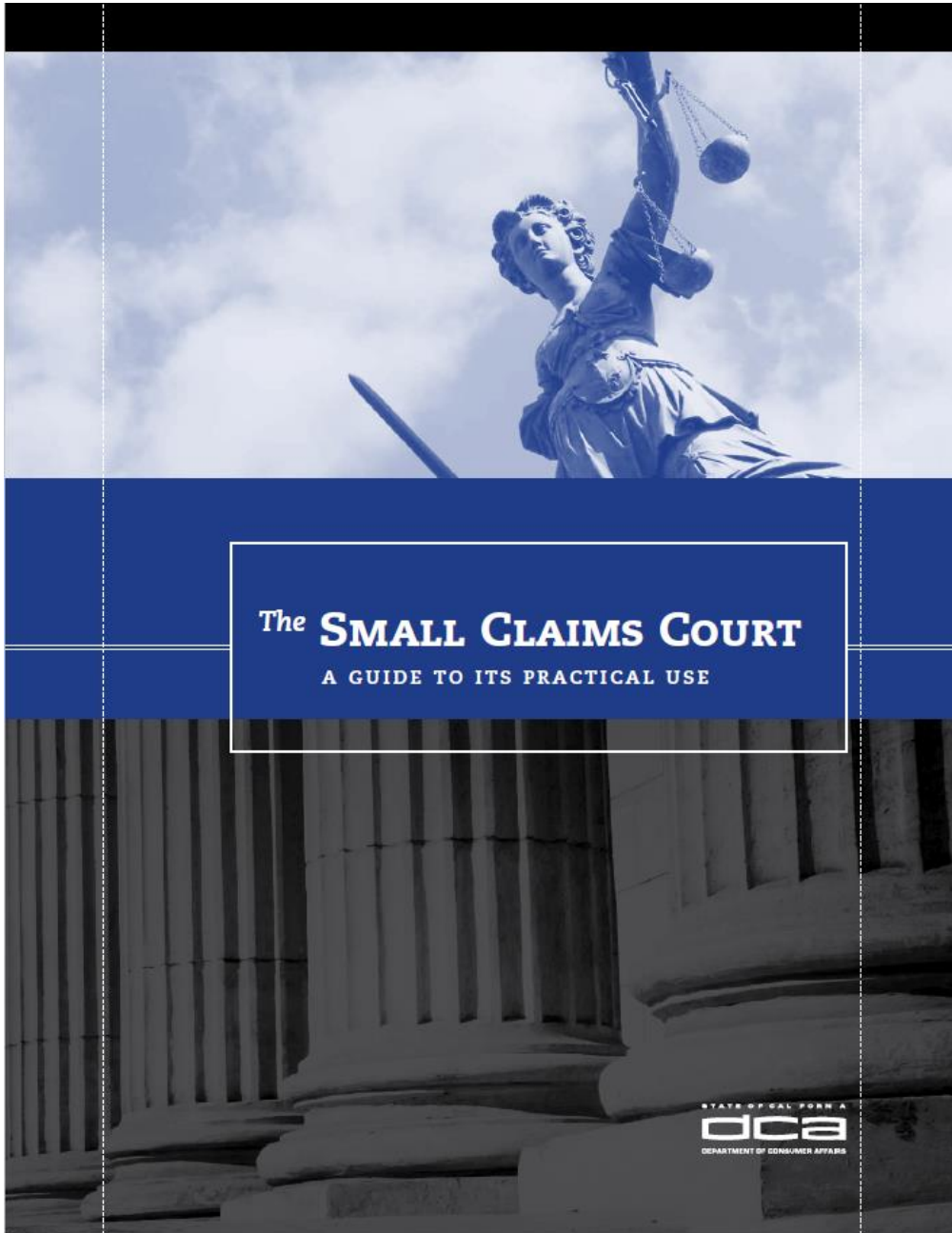
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The Small Claims Court - A Guide to its Practical Use by the State of California Department of Consumer Affairs

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The Small Claims Court - A Guide to its Practical Use



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The California Department of Consumer Affairs regulates more than 2.5 million practitioners in more than 240 professions and occupations. Our goal is to ensure competent and fair marketplace practices and the protection of consumers.



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INTRODUCTION

Many disputes you haven't been able to resolve by other means can be decided in small claims court. Some people think going to court is difficult or frightening, but it doesn't need to be.

This handbook is designed to help anyone who is suing or being sued in small claims court, or who is deciding whether or not to file a small claims court case. This handbook answers questions people frequently ask, and it describes procedures used in most small claims courts.

Your case may be unique, or your local small claims court may have procedures that are a bit different from those described here. Therefore, check with the small claims court clerk or your local small claims adviser before filing your claim. Get advice as soon as possible, so you'll be well prepared at your small claims hearing.

Small claims clerks can answer many kinds of questions and will provide the forms you need at a minimal charge, and sometimes free of charge. However, the law prohibits small claims clerks from giving legal advice. In most counties, small claims advisers are available to provide free advice and assistance.

Small claims advisers can help both sides.

They can:

- Explain small claims court procedures.
- Help you prepare your claim or defense.
- Tell you how to enforce your judgment.
- Help you arrange for payment by installments.
- Answer many other kinds of questions.

In this handbook, legal terms are in bold type, and titles of court forms are in **bold italics**.

Legal terms are defined in the **Glossary of Terms** on pages 43–46.

A **Checklist** for plaintiffs and defendants appears on pages 47–48.

Basic Considerations and Questions

BASIC CONSIDERATIONS AND QUESTIONS

What is Small Claims Court?

Small claims court is a special court where disputes are resolved quickly and inexpensively. In small claims court, the rules are simplified and the hearing is informal. Attorneys are generally not allowed. The person who files the claim is called the **plaintiff**. The person against whom the claim is filed is called the **defendant**. They are also called **claimants** or **parties**. You don't need to be a United States citizen to file or defend a case in small claims court. If you are a non-English speaker, see page 28 for information on an interpreter.

In general, claims are limited to disputes up to **\$5,000**. However, **natural persons** (individuals) can claim up to **\$7,500**. Corporations, partnerships, unincorporated associations, governmental bodies, and other legal entities cannot claim more than **\$5,000**. Also, no claimant (natural person or legal entity) may file *more than two* small claims court actions for more than **\$2,500** anywhere in the State during any calendar year. For example, if you file an action for **\$4,000** in February 2010, and another action for **\$4,000** in March 2010, you may not file any more actions for more than **\$2,500** until January 1, 2011. You may file as many claims as you wish for **\$2,500** or less.

The fee for filing in small claims court depends on the amount of the claim: **\$30** if the claim is for **\$1,500** or less, **\$50** if the claim is for more than **\$1,500** but less than or equal to **\$5,000**, or **\$75** if the claim is for more than **\$5,000**. However, if a plaintiff has filed more than 12 small claims actions in California within the previous 12 months, the filing fee for each subsequent case is **\$100**. The filing fee is paid by the plaintiff to the clerk of the small claims court.

Since the limits on amounts of claims and filing fees may be changed by legislative action, you should check with your local small claims adviser or small claims clerk to determine the current limits on

claims and filing fees. You may also consult with your own attorney if you wish.

Small claims courts can order a defendant to do something, as long as a claim for money is also part of the lawsuit. If you are suing to get back the lawn mower you loaned to a neighbor, for instance, the court can order the return of the mower, or payment for the mower if it is not returned. Otherwise, small claims courts may order a defendant to do or not to do something only when expressly authorized by statute (i.e., an order preventing an unlawful telephone solicitation).

Examples of other disputes that might be resolved in small claims court are:

- Your former landlord refuses to return the security deposit you paid.
- Someone dents your car's fender and refuses to pay for its repair.
- Your new TV will not work, and the store refuses to fix it or replace it.
- Your tenant caused damage to the apartment in an amount that exceeded the security deposit. (Note: You can't file an eviction action in small claims court.)
- You were defrauded in the purchase of a car, and desire to cancel the purchase and get back the amount of your down payment from the seller.
- You lent money to a friend, and he or she refuses to repay it.

In most small claims courts, cases are heard within 30–40 days after filing the plaintiff's claim, but they are never set for earlier than 20 days or more than 70 days after the claim is filed. Most cases are heard on weekdays, but some courts also schedule evening and Saturday sessions.

Basic Considerations and Questions (page 2 of 6)

Is Small Claims Court Your Best Option?

Before filing a case in small claims court, it's important to decide whether going to small claims court is the best way to resolve your dispute. Many disputes can be resolved by using other dispute resolution methods, such as **mediation**. Many counties help resolve disputes informally through their local consumer affairs offices, or through local public or private dispute resolution or mediation programs.

You need to consider whether the defendant is legally responsible for the claim. Is the law on your side? If there is a law that applies to your case, the small claims judge must follow that law, interpreting it in a spirit of reasonableness and fairness to both parties. If the law isn't on your side, but you feel that justice is, you may get a more favorable result through voluntary mediation.

If you decide to file a small claims court case, be prepared to devote some time and effort to it. This includes preparing for the hearing, gathering evidence, meeting with witnesses, and attending the hearing in person.

You also may need to take action and spend money to enforce any **judgment**. While a small claims court judgment carries legal weight, it may be difficult or even impossible to **enforce** the judgment. Collecting a court judgment is one of the most challenging and frustrating aspects of any lawsuit. The person who is obligated to pay the judgment may not have the money to pay it, or may simply refuse to pay it. Enforcement procedures are available, but these require extra effort and also money on your part. It's possible that you will never collect anything.

In deciding whether to file a small claims case, remember that you may not **appeal**. By choosing small claims court to resolve your dispute, you give up the right to have a different judge re-hear the case. So if you should lose, that's the end of the case for you. If you win, the person or entity against whom you filed your claim (the defendant) may

appeal the judge's ruling. In that situation, the entire dispute will be heard again, before a different judge.

Have You Tried to Settle the Dispute Yourself?

Have you and the defendant tried to resolve the dispute on a friendly basis? If you haven't done so before suing, why not try? At the very least, you should ask the defendant for the legal remedy that you hope the judge will award you.

Are you able to give the other person some incentive to settle the dispute? If he or she owes you money, you might consider offering to accept less than the full amount, if it's paid right away. If you owe money, it may be worth paying a bit more than you feel you owe, just to end the dispute. If the dispute goes to court and results in a judgment against you, the amount you owe may be increased by **court costs** and **interest**, and the judgment will be noted in your credit record.

If there's no dispute about the amount you owe, but you simply can't pay the entire debt at one time, consider offering to make monthly or weekly payments until the debt is paid. (Even after the case is decided, the judge can authorize payment by weekly or monthly installments.)

Have You Considered Mediation?

Mediation is a process for resolving disputes informally. A third party—a *mediator*—helps the parties arrive at their own solution. Unlike a judge, a mediator doesn't issue a decision. The best quality of the mediation process is that it attempts to restore the relationship between the parties. While only some disputes can be resolved by mediation (since both parties must agree to the results), consider whether your dispute can be resolved in that way. Disputes involving neighbors and family members are particularly well-suited for mediation because of the importance of the relationships between the parties.

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Basic Considerations and Questions (page 3 of 6)

BASIC CONSIDERATIONS AND QUESTIONS

If you decide that mediation (rather than small claims court) might resolve your dispute, ask the clerk if the small claims court offers a mediation program. If not, the clerk may know of a publicly funded program in your county. You can also locate a mediation program by looking in the business section of your telephone directory, or by calling the California Department of Consumer Affairs at (800) 952-5210. Hearing-impaired persons may call (800) 322-1700 (TDD) or (916) 322-1700 (TTY). You can also find a list of mediation programs on the Web site of the California Department of Consumer Affairs (www.dca.ca.gov).

Where Can You Obtain More Information and Advice?

- **Small Claims Adviser**—Small claims advisers provide free, individual, personal advisory services to small claims **disputants**. The law requires each county to provide a small claims advisory service. Some advisers are available only by phone, others by e-mail, while others may be visited in an office setting. Some advisory services provide recorded advice by phone. Some advisory services provide in-person workshops. All small claims advisers provide information regarding the procedural rules. Some will also assist you in preparing your case. To locate your local small claims adviser, contact the local small claims clerk or look in your telephone directory. The small claims advisory services of all counties are listed in the Web sites of the Department of Consumer Affairs at www.dca.ca.gov, and of the Judicial Council at www.courtinfo.ca.gov/selfhelp/smallclaims/scbycounty.htm.
- **Publications**—Small claims court procedural rules are summarized and explained in a Department of Consumer Affairs publication entitled *Consumer Law Sourcebook: Small Claims Court Laws & Procedures*. (See www.dca.ca.gov.) While the *Consumer Law Sourcebook* is written

principally for judges and small claims advisers, some disputants find it useful. Most county law libraries make reference copies available to the public. Your county law library may also have books on the subject of your claim. Materials published by the Department of Consumer Affairs can be ordered from its Consumer Information Center at (800) 952-5210, or its Office of Publications, Design & Editing at (866) 320-8652. If you have access to a computer, you can print a copy of *The Small Claims Court: A Guide to Its Practical Use* (this handbook) by visiting the Web site of the Department of Consumer Affairs at www.dca.ca.gov.

- **Internet Resources**—The Internet offers countless sources of information. If you don't have access to the Internet at home, visit your public library. The Judicial Council's self-help Web sites offer assistance in both English and Spanish:

www.courtinfo.ca.gov/
(California Courts Self-Help Center)

Court forms can be viewed and printed at the Judicial Council's self-help Web sites listed above.

If you are the plaintiff, reviewing the following court forms will give you some useful information:

Information for the Small Claims Plaintiff
(Form SC-100 Info); and
Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100).

If you are the defendant, reviewing the following court forms will give you some useful information:

Information for the Defendant
(Form SC-100 (page 4)); and
Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120).

Basic Considerations and Questions (page 4 of 6)

The following Web sites provide access to Federal and California statutes and regulations:
Federal statutes—www.gpoaccess.gov/uscode/search.html
California statutes—www.leginfo.ca.gov
Federal regulations—www.regulations.gov
California regulations—www.oal.ca.gov

The Department of Consumer Affairs provides fact sheets and information on landlord-tenant issues, auto repairs, contractor hiring, and the professions and occupations regulated by the Department on its Web site at www.dca.ca.gov.

Links to Web sites designed to help persons who represent themselves in court actions are listed at www.publiclawlibrary.org/help.html. Links to other information resources are provided in the Web site of *Consumer Reports* magazine at www.consumerreports.org.

- **Attorneys**—An attorney may be able to advise and assist you before or after filing your claim. You should consult an attorney if you feel it would be cost-effective to do so, considering the size of the claim and the kinds of issues involved. You can't have the attorney represent you in court. Except in rare instances, fees charged by the attorney for private assistance are not recoverable as *court costs* or *damages*. For a list of attorney referral services, go to the Web site of the State Bar of California at www.calbar.ca.gov/state/calbar/calbar_home.jsp. If you can't afford an attorney, a legal services program might be able to help. Legal services programs for low-income persons are listed at www.LawHelpCalifornia.org/CA.

Who Can File or Defend a Claim?

With certain exceptions, anyone can sue or be sued in small claims court. Generally, all parties must represent themselves. An individual can sue another

individual or a business. A business, in turn, can sue an individual or another business. However, an **assignee** (a person or business that sues on behalf of another, such as a collection agency) can't sue in small claims court. A federal agency may not be sued in small claims court.

To file or defend a case in small claims court, you must be (a) at least 18 years old or legally emancipated, and (b) mentally competent. A person must be represented by a **guardian ad litem** if he or she is under 18 and not legally emancipated, or has been declared mentally incompetent by a court. For a minor, the representative is ordinarily one of his or her parents. A small claims clerk or small claims adviser can explain how to have a guardian ad litem appointed.

Can Someone Else Represent You?

In most situations, parties to a small claims action must represent themselves. As a general rule, attorneys or non-attorney representatives (such as debt collection agencies or insurance companies) may not represent you in small claims court. Self-representation is usually required. There are, however, several exceptions to this general rule:

If the court determines that a party is unable to properly present his or her claim or defense for any reason, the court may allow another individual to assist that party. The individual who helps you can only provide assistance—the individual's participation in court cannot amount to legal representation, and the person can't be an attorney.

- **Corporation or other legal entity**—A corporation or other legal entity (that is not a natural person) can be represented by a regular employee, an officer, or a director; a partnership can be represented by a partner or regular employee of the partnership. The representative may not be an attorney or person whose only job is to represent the party in small claims court.

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Basic Considerations and Questions (page 5 of 6)

BASIC CONSIDERATIONS AND QUESTIONS

- **Property agent**—A property agent may represent the owner of rental property *if* the property agent was hired principally to manage the rental of that property and not principally to represent the property owner in small claims court *and* the claim relates to the rental property. At the hearing, the agent should tell the judge that he or she was hired and is employed principally to manage the property. This statement may also be in a written declaration. A common interest development also may appear and participate in a small claims action through an agent.
- **Sole proprietorship**—In a case in which a claim can be proved or disputed by evidence of an account that constitutes a business record, and there is no other issue in the case, a sole proprietorship (such as a physician) can be represented by a regular employee who is employed for purposes other than solely representing the proprietor in small claims court actions, and who is qualified to **testify** to the identity and mode of preparation of the business record. In that situation, the employee must be able to testify that (1) the evidence of the account was made in the regular course of business, (2) the evidence of the account was made at or near the time of the transaction, and (3) the sources of the information about the account and its time and method of preparation are such as to indicate their trustworthiness.

For example, this exception to the general rule of self-representation might permit a dentist's bookkeeper to represent the dentist in an action to collect a patient's account. However, if the patient alleged that the dentist's services were unnecessary or performed poorly, the case would involve another issue of fact, and the dentist would need to appear at the hearing in person. As in all actions to collect debts and accounts, the plaintiff's claim form must include an itemization of all fees and charges that have been added to the original loan amount or agreed price.

In the following kinds of situations, a party need not appear in court, and may either send a representative or submit written declarations to prove his or her claim or **defense**. However, the representative can't be compensated, and is disqualified if he or she has appeared in small claims actions as a representative of others four or more times during the calendar year.

- **Non-resident real property owner**—A non-resident owner of real property located in California may defend a small claims case related to the property by submitting a declaration or sending a representative.
- **Military service**—A person who is on active duty in the military service outside California, or who while on active duty is transferred out of state for more than six months after the claim arose, may be represented by a non-attorney, and may submit declarations in support of his or her claim or defense. For instance, a tenant who is on active duty, and is transferred out of state for more than six months can ask a qualified person to file a small claims action on behalf of the tenant to recover a security deposit from a landlord, and to represent the tenant at the hearing.
- **Jail or prison**—A person who is in jail or prison may be represented by someone who isn't an attorney, and may file written declarations in support of his or her claim or defense.
- **Non-resident driver involved in an in-state auto accident**—Some courts will allow a non-resident driver involved in an in-state auto accident to send a representative (but never an attorney), submit evidence by declaration, and appear in court by telephone. Contact a small claims adviser in the county where you're sued to learn about the procedures used in that county.

An individual who represents a party to a small claims court action may complete and sign an **Authorization to Appear** (Form SC-109)—a form

Basic Considerations and Questions (page 6 of 6)

provided by the clerk of the small claims court or printed from the Judicial Council's Web site. The representative must state that he or she is actually authorized to represent the party, and must describe the basis for that authorization, such as a letter from the represented party. If the represented party is a corporation or other legal entity or an owner of real property, the representative also must state that the representative isn't employed solely to represent the corporation or entity in small claims court. In the other situations listed above, the representative must state that the representative is acting without compensation, and hasn't appeared as a representative in small claims actions more than four times during the calendar year.

Can Your Spouse Represent You?

Spouses may represent each other in small claims court if they have a joint interest in the claim or defense, and the represented spouse has given his or her consent. However, one spouse may not represent the other spouse if the court decides that justice would not be served—such as where their interests are not the same and may conflict. The represented spouse need not come to court if the judge allows representation.



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Filing Your Lawsuit

If You're the Plaintiff...

FILING YOUR LAWSUIT

Have You Asked for the Money or the Property?

Before you can sue in small claims court, you must first contact the defendant (or defendants) if it's practical to do so. You must then ask for the money, property, or other relief that you intend to ask the judge to award you in court. In legal terms, you must make a "demand" on the other person, if possible. Your request may be made orally or in writing, but it's a good idea to do it both ways. Always keep copies of any letters and other written communications. It's wise to send written communications by mail, and to ask the post office for a return receipt that you can keep as evidence.

How Much Money Does Your Dispute Involve?

Think carefully about how much money—called **damages**—you want to request. The judge will ask you to prove that you're entitled to the amount that you claim. That means that you can only receive a judgment for an amount you can prove. You can prove your claim by almost any kind of evidence: a written contract, warranty, receipt, canceled check, letter, professional estimate of damages, photographs, drawings, your own statements, and the statements of witnesses who come to court with you.

Small claims courts have an upper limit on the amount of money that a party can claim. You can sue for up to \$7,500, if you are an individual or a sole proprietor. Corporations and other entities are limited to \$5,000 and a party cannot file more than two claims in any court throughout the State during a calendar year. You are not permitted to divide a claim into two or more claims (called **claim splitting**) in order to fall within the monetary limit.

If your claim exceeds \$2,500, you'll be asked to check the box on your claim form (Form SC-100) that states that you have *not* filed more than two actions for more than \$2,500 during the calendar year. If you

are a natural person (an individual), and therefore can ask for up to \$7,500, you still may not file more than two small claims court actions for more than \$2,500 during the calendar year.

If your claim is over the small claims monetary limit, you may file a case in the regular superior court, where you can either represent yourself or hire an attorney to represent you. Instead of doing that, you may choose to reduce the amount of your claim and **waive** (give up) the rest of the claim in order to stay within the small claims court's monetary limit on claims. Before reducing your claim, discuss your plans with a small claims adviser or an attorney. Once the dispute is heard and decided by the small claims court, your right to collect the amount that you waive will be lost forever.

It's always wise to ask for the full amount that you can prove, because if the defendant doesn't appear in court, the judgment that the court issues in your case will be limited to the amount that you have both requested and can prove.

If the case is against a **guarantor**—someone whose legal responsibility is based on the acts or omissions of another—the maximum claim is \$2,500. However, there are two exceptions to the jurisdictional amount of \$2,500: (1) If you are a natural person suing a guarantor that charges a fee for its guarantor or surety services, the maximum amount is \$6,500. (2) If the person suing is not a natural person, and the defendant guarantor charges a fee for its services, or is the Registrar of the Contractors State License Board because the plaintiff is suing on a contractor's bond, the maximum amount of the claims is \$4,500. In that situation, be sure to name both the contractor and the guarantor as defendants, and prepare to prove a violation of the contractors licensing laws. (See Business and Professions Code beginning with section 7101, and the Web site of the Contractors State License Board at www.csib.ca.gov.)

Filing Your Lawsuit (page 2 of 12)

Where Do You File Your Case?

It's important to file your case in a proper small claims court. In large counties, the county is divided into areas of court location. In those counties, you also must file your case within the proper area of court location within that county.

To determine what court or courts may be proper in your situation, it's wise to consult a small claims adviser. You will save yourself and the other party a lot of trouble and possible cost if you carefully choose the court in which you file your claim.

As a general rule, a case must be filed in the county (and area of court location) in which the defendant *resides*. This general rule promotes fairness, since it's usually easier for a defendant to defend a case if it's filed in the locality where the defendant resides.

However, there are many exceptions to this general rule. (See, for instance, "Automobile accidents" in the next column.) If you need help deciding in what county or area of court location to file, contact a small claims adviser.

When you file your case, you must state on your claim form (Form SC-100) why the court in which you filed your claim *is* a proper court. Especially in cases that have been filed against a defendant who lives outside the county (or outside the area of court location where the court is located), the judge will carefully look into and decide if the court is a proper one for that case.

If the judge decides that the case was *not* filed in a proper *county*—that is, that the **venue** chosen by the plaintiff isn't proper—the judge must **dismiss** the case **without prejudice** unless all defendants are present in court and agree that the case may be heard at that time. If the case was filed in a proper county, but in the *wrong court location within that county*, the case either will be transferred to a proper court location within that county, or will be dismissed without prejudice.

The following are some *exceptions* to the *general rule* that a case must be filed and heard in a court located within the county (and area of court location, if applicable) where the defendant resides:

- **Automobile accidents**—The claim may be heard either (a) within the county and the area of court location in which the *accident occurred*, or (b) within the county and the area of court location in which the *defendant resides*. (In this situation, as with many others, there may be more than one court in which an action can properly be filed.)
- **Contract**—The claim may be heard in the county or area of court location in which the contract was entered into, where the contract was to be performed by the defendant, unless the claim arises from a consumer purchase.
- **Consumer purchase (claim by seller)**—A claim to enforce a debt arising from a consumer purchase can be filed only in the county or area of court location (1) where the consumer signed the contract, (2) where the consumer resided when the contract was signed, (3) where the consumer resided when the action was filed, or (4) where goods purchased on installment credit are installed or permanently kept.
- **Consumer purchase (claim by buyer)**—An action also can be filed in localities (1), (2), or (3) immediately above by the consumer against a business firm that provided the consumer with goods, consumer services, or consumer credit. An action also can be filed by the consumer in any of those locations if the suit is based on a purchase that results from an unsolicited telephone call made by the seller to the buyer (including a situation where a buyer responds by a telephone call or electronic transmission).

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If You're the Plaintiff...**FILING YOUR LAWSUIT**

The exceptions to the general rule that requires filing a case in the county and area of court location where the defendant resides are somewhat complex and difficult to understand. If you intend to file a claim against a defendant outside the county and area of court location where the defendant resides, you should consult with a local small claims adviser to determine if your case falls within an exception to the general rule.

Only the larger counties are subdivided into areas of court location. If a county is not subdivided into two or more areas of court location, an action that can properly be filed in that county can be filed in any small claims court located within the county. A small claims adviser can also show you a map that shows the areas of court location in those counties (such as Los Angeles County) in which there is more than one area of court location within the county.

If there is more than one county or area of court location where your claim can be properly filed, you can select the court that is most convenient for you and your witnesses. If you file in a county or area of court location in which the defendant does not reside, you must give the defendant more advance notice of the hearing (20 days instead of 15 days), and it will take correspondingly longer for your case to be heard.

Special rules govern the place of filing actions against State agencies. A claim may be filed against any State agency in any county in which the California Attorney General maintains an office—Sacramento, San Francisco, Los Angeles, or San Diego. Also, a defendant sued by a State agency can have the case transferred to the county in which the Attorney General has an office that is closest to the residence of the defendant.

If the court that you select holds evening or Saturday hearings, you can request an evening or Saturday hearing when you file your case. Ask the court clerk for the local court rules.

How Quickly Must You File Your Case?

Most claims must be filed within a set time limit, called a **statute of limitations**. The purpose of the statute of limitations is to prevent the filing of cases that are too old. Memories fade, witnesses die or move away, and once-clear details tend to blur. As a general rule, you should file your case as soon as reasonably possible. Statutes of limitations are generally not less than one year. If the claim isn't filed within the time set by the statute of limitations, the judge may be required to dismiss the claim, unless there is a good legal justification for extending the time. If you are thinking about filing an older claim, you should consult a small claims adviser to see if there are facts or circumstances that might permit or require the court to extend the time for filing.

Here are some examples of various statutes of limitations:

- **Personal injury**—Two years from the date of the injury. If the injury isn't immediately discovered, two years from the date it is discovered. A minor has two years from his or her 18th birthday to file a case.
- **Oral contract**—Two years from the date the contract is broken.
- **Written contract**—Four years from the date the contract is broken.
- **Government entity**—Before you can sue a government entity, you must send a written claim to the entity, called a "Government Code section 911.30 claim." If you do not file the 911.30 claim, the small claims court must reject or dismiss the action. If the claim is against the State of California, the 911.30 claim must be sent to the Victim Compensation and Government Claims Board (VCGCB); follow the instructions on its Web site at www.boc.ca.gov. A 911.30 claim for personal injury or personal property damage must be

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sent to the government entity within six months. A 911.30 claim for breach of contract or injury to real property must be sent within one year. If the entity rejects the claim, you must usually file a court action within six months of the rejection or you'll lose your right to sue. Before you proceed, check with a small claims adviser.

Statutes of limitations, and the court rules that interpret and apply them, are complicated, and exceptions may apply to your claim. For example, if the defendant lived outside the State or was in prison for a time, the period for filing your claim may be extended. Or you might assume that a contract was an oral contract, which has a limitation of two years, while it may be interpreted as a written contract with a limitation of four years. If you're unsure about whether your claim is too old to file, you may file it and let the judge decide whether it was filed too late. Better yet, you should check with a small claims adviser before you file.

What Forms Do You Need to File?

You can obtain the forms for filing your suit by visiting or writing any small claims court or by clicking on the Judicial Council's self-help Web site at www.courtinfo.ca.gov. While completing these forms is usually easy, it's helpful to read **Information for the Small Claims Plaintiff** (Form SC-100-INFO). You will receive this when you go to small claims court to file your claim. You can also view it, and other court forms on the Judicial Council's self-help Web sites. You may complete most of these forms on your computer. Some courts will allow you to file the forms by fax or via the Internet.

You may find a specific form by going to the Judicial Council Web site, where you will find a link to all the Judicial Council forms. The forms are divided by groups, and you can view all Small Claims forms by selecting this group.

Another form that a small claims court plaintiff may need is the **Fictitious Business Name [Declaration]** (Form SC-103). Businesses that use fictitious business names—for example, "Joe Jones doing business as Joe's Garage"—must sign and file this form with the court. In this written declaration, a representative of the business (such as the owner) is required to declare under oath that the business that is suing has complied with California's fictitious business name registration laws. A business must be in compliance with California's business registration laws in order to use the small claims court. If the business is not in compliance, the needed steps must be taken before an action is filed.

In selecting a date for the hearing (or approving a date selected by the small claims court clerk), be sure to allow enough time to locate the defendant and arrange for serving the defendant with a copy of your claim (Form SC-100). A person other than you must do this. Also allow enough time to prepare and file a **Proof of Service** (Form SC-104) with the court at least five days before the hearing. This form must be completed to state the exact date, time, and place of service of process and other information. It is signed by the person who delivered a copy of your claim form (Form SC-100) to the defendant. If there is more than one defendant, each defendant must be served.

You must pay the small claims court a filing fee when you file your case. If you can't afford this expense, you may ask the court to waive (forgive) those fees. You can request a court waiver by completing and filing a **Request to Waive Court Fees** (Form FW-001). For information on the standards that will be used by the court in approving or denying your application, ask the court clerk for the **Information Sheet on Waiver of Court Fees and Costs** (Form FW-001-INFO) or visit the Judicial Council's self-help Web site and print your own copy.

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If You're the Plaintiff... **FILING YOUR LAWSUIT**

How Do You Name the Defendant?

Try to name the defendant or defendants correctly when you prepare your claim. If it's possible that you may need to use the court process to enforce a judgment in your favor, it is important that the defendant is named correctly. Otherwise your judgment may be difficult to enforce. If you don't know the defendant's correct name and only learn about it later, you can ask the judge to amend or modify your claim at the hearing. You also can amend the judgment at any time to show the judgment creditor's correct name.

If you're not sure which of several possible defendants is responsible for your claim, name each person you believe is liable. The court will decide whether the people you named are proper defendants and legally responsible.

Here are some examples of ways to name a defendant:

- **An individual**—Write the first name, middle initial (if known), and last name.
Example: "John A. Smith." If an individual has more than one name, list all of them (separated by the words "also known as" or "aka").
- **A business owned by an individual**—Write the names of both the owner and the business.
Example: "John A. Smith, individually *and* doing business as Smith Carpeting, and Smith Carpeting, a proprietorship." If you win your case, you can enforce your court judgment against assets (such as a checking account balance) in the names of either John A. Smith or Smith Carpeting.
- **A business owned by two or more individuals**—Write the names of both the business *and* all of the owners that you can identify. Example: By naming Suburban Dry Cleaning and its owners, John A. Smith and Mary B. Smith, you can

collect from the assets of either the business or an individual owner. They can be sued as "John A. Smith and Mary B. Smith, individually and doing business as Suburban Dry Cleaning, and Suburban Dry Cleaning, a partnership."

- **A corporation or limited liability company**—Write the exact name of the corporation or limited liability company, as you know it, on the claim form. You need not name the individual owners of the corporation or limited liability company. Example: "Fourth Dimension Graphics, Inc., a corporation." If the corporation operates through a division, corporate subsidiary or fictitious business name, both should be listed. Example: "Middle Eastern Quality Petrol, a Delaware corporation, individually and doing business as Fast Gas, and Fast Gas."
- **A vehicle accident defendant**—If you're suing to recover the losses you sustain in a motor vehicle accident, you should name both the registered owner or owners, and the driver. Example: If the owner and the driver are the same person, "Joe Smith, owner and driver." If the owner and driver are not the same, "Lucy Smith, owner, and Betty Smith, driver."

If you would like to amend your claim, and it hasn't yet been served, it is only necessary that you (a) prepare a new claim form (Form SC-100), (b) file the new claim form, and (c) arrange for someone to serve it on the defendant. When you go to the small claims court, be sure to bring your copy of the original claim form (Form SC-100). If any of the defendants have been served with the original claim, you'll first need to submit a letter to the small claims court requesting the court's permission to prepare and serve an amended claim.

If you would like to *delete* the names of one or more defendants from your claim, you can use the dismissal form that you received with your claim, or

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a *Request for Dismissal* (Form CIV-110). Be sure to indicate that you're dismissing the case only against certain named defendants, and that you're not dismissing the entire case. As a courtesy, you should inform the dismissed defendants that they need not appear in court.

How Do You Notify the Defendant of Your Claim?

Your claim form (Form SC-100), when it is completed by you and issued by the small claims clerk, informs the defendant of the amount of your claim, the basis for the claim, and the date, time, and place of the hearing.

After you have filed your claim and obtained a hearing date from the clerk, you then need to arrange for someone to give each defendant a true copy of the same claim form (Form SC-100) that was issued in your case. Delivering a copy of the claim form to the defendant is called **service of process**. It must be done before your case can be heard, and it must be done by someone other than you.

Be sure to allow enough time for service of process. Someone must give each defendant a true copy of the plaintiff's claim form (Form SC-100) at least *15 days* before the hearing date if the defendant lives in the county in which the claim is filed, or at least *20 days* before the hearing date if the defendant lives outside the county in which the claim is filed.

It's your responsibility to make sure that each defendant is properly notified about the lawsuit in this way, and to pay the fees and costs of giving this notice. As a courtesy, try to give the defendant (or defendants) more advance notice than is legally required.

It's important to select a capable adult person to serve your claim and complete the *Proof of Service (Small Claims)* (Form SC-104). If the judge is not convinced that the defendant was served, you may

not be able to obtain a judgment in the event the defendant does not appear.

With two exceptions, service of process must be made within the boundaries of the State of California. The following kinds of defendants need *not* be served within the State:

- **A non-resident defendant who owns real property in California**—if the defendant has no agent for service of process and the claim relates to that property. (The non-resident defendant may send a representative or submit an affidavit to defend against the claim.)
- **A non-resident defendant who owned or operated a motor vehicle involved in an accident on a California highway**—if service of process is made on both the defendant and the Department of Motor Vehicles. Some courts allow the non-resident driver to send a representative (but not an attorney), or submit an affidavit or declaration explaining that person's side of the case, or appear at the hearing by telephone. To determine the court's policy and practice, contact a small claims adviser in the county where the suit has been filed.

A representative who appears in small claims court on behalf of a defendant should bring to the hearing a completed and signed *Authorization to Appear on Behalf of a Party* (Form SC-109).

Since out-of-state corporations and partnerships that operate in California usually designate a California agent for service of process (because they are legally required to do so), you may be able to meet the in-state service requirement by serving the corporation's agent for service of process. You can obtain the name of an agent for service of process of a corporation or other entity that has registered with the California Secretary of State by calling (916) 653-6814 or (916) 657-5448 or visiting the Secretary of State's Web site at www.ss.ca.gov.

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If You're the Plaintiff... **FILING YOUR LAWSUIT**

You can have your claim form (Form SC-100) served in the following ways:

- **Certified mail by court clerk**—The court clerk may serve the claim form on the defendant by certified mail and restricted delivery, and charge you a fee of \$10 for each defendant. The court clerk receives a return receipt indicating that the person identified by you for service signed for the certified mail. Within 10–15 days after the clerk mails the claim form, you should call the small claims clerk to determine whether your claim has been successfully served. You should provide the clerk with the case number and hearing date when requesting this information.

CAUTION: Service by certified mail isn't very successful. In some courts, only about 50% of the attempts are successful. One reason is that the defendant may refuse to accept delivery or to sign a receipt for delivery. Another is that if the defendant doesn't appear at the hearing, the judge may refuse to hear the case unless the judge determines that it is actually the defendant who signed the return receipt. Frequently, the signature on the return receipt is illegible, or someone other than the defendant signed. If the return receipt is the only evidence of the defendant's signature, and there is no other evidence to show that the signature is actually the defendant's, the judge may ask that you serve another copy of your claim form. In that event, a new hearing date will need to be set.

- **Personal service**—A **process server**, or someone other than yourself who is 18 years or older and not a party to the lawsuit, may give a copy of the claim form (Form SC-100) that was issued by the court in your case to the defendant who is being served. Most plaintiffs use a professional process server, or the **sheriff** where available, to serve their claim on the defendant. However, some sheriffs will only serve for those plaintiffs who have had their filing fees waived by the court. While that is expensive (as much as \$30

or more for each defendant), you are entitled to reimbursement from the defendant of the reasonable cost of service of process if you win the case. If you decide not to use a professional process server or the sheriff, and have an adult relative or friend serve the papers, make sure that the papers are properly served on the named defendant. It is important that your friend or relative properly complete the Proof of Service (SC-104). It's not enough merely to drop the papers at the doorstep or serve a member of the defendant's household. Service of process is ordinarily accomplished by delivering a copy of the claim form to the following person:

In the case of an **individual defendant**—To the defendant in person, or to someone that the defendant has specifically authorized to receive service of process.

In the case of a **partnership**—To (1) a general partner, (2) the general manager of the partnership, or (3) an individual or entity that the partnership has designated as its **agent for service of process**.

In the case of a **corporation**—To (1) the president or other head of the corporation, (2) a vice president, (3) a secretary or assistant secretary, (4) a treasurer or assistant treasurer, (5) a general manager (or manager in charge of a location, such as a chain grocery store), (6) an individual or entity that the corporation has designated as its agent for service of process, or (7) any other person authorized to receive service of process.

In the case of a **minor**—To the minor's parent or guardian or, if no such person can be found with reasonable diligence, to any person having the care or control of the minor, or with whom the minor resides, or by whom the minor is employed. If the minor is age 12 or older, a copy of the claim also must be delivered to the minor.

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- **Substituted service**—“Substituted service” means that service of process is effected without the necessity of personal delivery to the defendant. Substituted service can be the most effective, and also the least expensive, method of service in small claims court. To help assure that a defendant receives actual notice of the papers that are served, several prerequisites for effective service apply. If you plan to use this method of service, first read *What Is “Proof of Service?”* (Form SC-104B).

Basic rules—To serve a defendant in your case by substituted service, the process server must leave a copy of the claim form at the defendant’s home or usual place of business. It must be left in the presence of a competent member of the defendant’s household who is 18 years or older, or with the person in charge of the defendant’s place of business during normal office hours.

The process server must *tell* the person who receives the papers what the papers are for. Copies also must be *mailed* by first class mail to the defendant at the place where the papers were left. Substituted service is considered to be completed on the *tenth* day after such mailing.

Special time lines—If you intend to use substituted service, the hearing date must be set very far in advance. That’s because the delivery and mailing of the court papers must take place an *extra 10 days* before the hearing date. If the defendant resides or has its principal place of business inside the county in which the case is filed, the delivery and mailing must take place no less than *25 days* before the hearing date (standard 15 days + 10 days for substituted service = 25 days total). But if the defendant resides or has its place of business *outside* the county, the delivery and mailing must take place no less than *30 days* before the hearing date (standard 20 days + 10 days for substituted service = 30 days total).

Special proof of service form—The person who serves the plaintiff’s claim by substituted service must complete and sign a special form of proof of service entitled *Proof of Mailing (Substituted Service)* (Form SC-104A). This completed form must be filed with the small claims court at least five days before the hearing.

- **Service on non-resident motorist**—A process server may serve a non-resident motorist involved in an in-state accident by first serving the California Department of Motor Vehicles (DMV), and then serving the defendant by any of the methods outlined above or by registered mail. This is a rather complex process, and you should consult with the small claims clerk or small claims adviser before serving a non-resident motorist outside California.

No matter which type of service you use, service must be completed within explicit time limits before the hearing. If you don’t serve the defendant within these explicit time limits, the defendant may ask the court for a postponement of the hearing and, in most cases, the hearing date will be changed. In counting the days, don’t count the day in which service was completed, but do count the date of the hearing. Remember too that a completed and signed Proof of Service (Small Claims) (Form SC-104), showing that service of process was accomplished within these time limits, must be filed with the small claims court at least five days before the hearing date. For more information, ask the court clerk for a copy of *What is “Proof of Service?”* (Form SC-104B). Like all court forms, you can also read and print this by visiting the Judicial Council’s self-help Web site at www.courtinfo.ca.gov.

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If You're the Plaintiff... **FILING YOUR LAWSUIT**

Locating the Other Party

You need the defendant's address for several reasons. You may want to contact the other party to attempt to settle the case before filing the action and also to communicate your pre-filing demand. Then, after you file your case, you'll need an address to give to the process server to serve your claim form on the defendant and to give to the court in order for it to serve further notices. If you win your case, you'll need an address where you can send a letter requesting payment. Here are several important sources of information for finding out where the other party lives or works.

Telephone and City Directories

The most obvious source of addresses, and one often overlooked, is the telephone directory. City directories are also excellent sources of information. For defendants living outside your area, try www.yellowpages.com or other Internet telephone directories (see page 20). If the only information you have concerning the other party is a telephone number, and the number is one that is listed in the telephone directory, you may use reverse telephone directories in your public library or online. In addition, directory assistance offers a reverse directory.

U.S. Postal Service Records

The regulations of the U.S. Postal Service (at 39 C.F.R. section 265.6(d)(1),(5)) provide that the Postal Service will give you the new address of someone who has filed a change of address order (PS Form 3575). You can obtain this information if you need the new address in order to have service of process delivered on that person, and you submit a completed and signed Request for Change of Address or Boxholder Information Needed for Service of Legal Process. The request form can be obtained from your local post office or the U.S. Postal Service's Web site at www.usps.gov. The

regulations of the U.S. Postal Service (at 39 C.F.R. section 265.6(d)(4)) also provide that the Postal Service will give you the name and *street* address given by an applicant for a Postal Services mailbox in the Service's application form (PS Form 1093). As with change of address information, you can obtain that information if you need it for the service of process on the applicant for the Postal Service mailbox, and you submit a request form—the same form used for change of address information.

The request form requires you to provide the Postal Service with certain information about the lawsuit, including the names of the parties, the court in which the case will be heard, the docket number of the case (if already filed), and the capacity in which the Postal Service's customer will be served (e.g., as a party or witness). If you are an individual person representing yourself, you need not answer question 5 (which asks for the law that authorizes you to serve court papers). If a corporation is suing, the law that authorizes service must be stated.

You must mail or deliver the completed request form to the correct post office (never a post office franchisee) accompanied by a self-addressed return envelope with postage fully prepaid. No fee is required. While the U.S. Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety, you probably will receive the requested information in due course. Since the Postal Service retains forwarding address orders for only 18 months, the Postal Service may be unable to respond to a request for change of address information made after that time.

The request form that you will sign requires you to certify that the information that you request is needed and will be used *solely* for service of legal process in conjunction with an actual or prospective lawsuit. For that reason, it's essential that the information that you receive be used for that and no other purpose. A violation can result in substantial criminal penalties.

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Secretary of State Records

The Secretary of State's Web site—www.ss.ca.gov—includes records of general partnerships, limited partnerships, limited liability companies, and limited liability corporations. The Secretary of State also maintains a record of the names and addresses of the officers of corporations and their agents for service of process, any of whom can be served with the claim in a small claims action. For instructions on how to obtain this information, call (916) 653-6814 or (916) 657-5448 (recorded message). You can download instructions and an order form from the Secretary of State's Web site at www.ss.ca.gov. For an extra charge, the Secretary of State will fax the requested information to you.

Department of Motor Vehicles Records

The Department of Motor Vehicles (DMV) will not release residential addresses to litigants and process servers.

Some situations in which the DMV will release residential addresses are:

- **To courts and other governmental entities**—However, courts will not obtain the residential addresses for litigants.
- **To law enforcement agencies**—Many law enforcement agencies will request the residential addresses of motorists or vehicle owners for use in preparing accident reports.
- **To an attorney**—The attorney must state under penalty of perjury that the residential address of a driver or registered owner is necessary to represent a client in a lawsuit involving the use of a motor vehicle.
- **To an insurance company**—An insurance company may obtain the address of a motorist or vehicle owner who was involved in an accident with the insured, or if the motorist or vehicle owner signed a waiver.

- **To a financial institution**—A financial institution must have obtained a written waiver from the individual driver or vehicle owner whose residential address is requested.
- **To a vehicle dealer**—A vehicle dealer may obtain the residential address of a motorist for the purpose of completing registration transactions or documents.
- **To a vehicle manufacturer**—A vehicle manufacturer may obtain the residential address of a motorist for the purpose of safety, warranty, emission, or product recall if the manufacturer offers to make and makes any changes at no cost to the vehicle owner.
- **To a researcher**—A person who has provided assurance that the residential address will be used only for statistical research or reporting purposes, and verifies that no person will be contacted by mail or otherwise at the residential address.
- **To a lien sale**—A person conducting a lien sale may obtain the residential addresses for the purpose of notifying the registered and legal owners and all persons who claim an interest in a vehicle of an impending lien sale or intent to dispose of the vehicle.

County Business Records

If the person you're seeking owns real property, you can search the tax rolls of the county assessor's office. The tax rolls list the names and addresses of property owners in the county by both the owner's name and the address of the property. The county registrar or recorder maintains a listing of property owners by name and location of the property owned.

The county clerk maintains a listing of fictitious business statements. The statement lists the names and addresses of the owners of businesses operating under a name different from the owners' names (called a "fictitious business name"). Check the

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If You're the Plaintiff... **FILING YOUR LAWSUIT**

computer listing of the business to obtain the owner's name and certificate number, and ask the clerk to assist you in finding the certificate in the files. The certificate contains the owner's name and address. In some counties you can obtain this information by mail. Check with the clerk of your county to determine availability, cost, and the procedure to follow. You can find the address and phone number of the county clerk's office for your county in the Government Pages of your phone book or online. It's usually listed in the county section under the heading "Assessor-County Clerk-Recorder" or "County Clerk." The records of the county assessor and county recorder also may include that information.

City Business Records

The tax and permit division of the office of the city clerk maintains a list of the names and addresses of most businesses that are licensed to do business in a city. You can find the address and phone number of the city clerk's office in the government pages of your telephone book. It's usually listed in the city section under the heading "clerk." Many cities now have Web sites that list names and addresses of persons licensed to do business in the city.

Internet Databases

The Internet can be used to locate an individual or business. The major Internet browsers have search capabilities that can be productive if you know an individual's correct name. Reverse directories also now exist online. Most regulatory agencies' Web sites have directories of their licensees. While some Web site addresses are given in this handbook, Internet resources change constantly. Some are added and some are deleted almost every day. Therefore, it also may be helpful to identify newly available Internet resources. Following are potentially useful resources. No endorsements or recommendations should be implied. Most of the services are free.

Telephone numbers and addresses

www.superpages.com
www.switchboard.com
www.whowhere.lycos.com
www.zabasearch.com

Business telephone directories

www.bigbook.com
www.telephonebook.com
www.yellowpages.com
www.whitepages.com

Corporate and business information

www.sec.gov/edgar/searchedgar/webusers.htm
www.brint.com
www.companysleuth.com
www.corporateinformation.com

Public records and reports (charges imposed)

www.hoovers.com
www.employment.screennow.com
www.merlindata.com
www.555-1212.com
www.1800ussearch.com

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Responding to the Lawsuit

If You're the Defendant...

RESPONDING TO THE LAWSUIT

What Should You Do After You Receive an Order to Appear?

Let's assume that you've been named as a defendant in a small claims court action. You know this because you have received and have read a court order entitled Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100). The papers that you have received order you to attend a small claims court hearing at a date, time, and place specified in the order.

Receipt of such a document means that you are being sued by someone else—called the plaintiff. You probably know why you are being sued. If you don't know why you're being sued, contact the plaintiff immediately for an explanation. The plaintiff's name and address appear on the plaintiff's claim form (Form SC-100) that was served on you.

Never ignore an order to appear in court, even if you believe there is something wrong or unfair about the case, or that the plaintiff's claim is invalid or was not properly served. That's because your own best interests require you to do something. If you don't come to court, the court may hear and decide the case without you. Even though the plaintiff must still prove what he or she is entitled to recover from you, the judge may decide the case without hearing your side of the dispute unless you appear.

If a court judgment is issued against you, your money or property, and maybe some of your earnings, can be taken forcibly to pay the judgment. In addition to that, your credit record may include the fact that a judgment was entered against you. If you are a member of a licensed profession or occupation, the judgment might be provided to the agency that licenses you. To prevent any of that from happening, *don't ignore an order to appear!*



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What if You Owe All or Part of the Plaintiff's Claim?

If the plaintiff's claim is valid, or if the plaintiff is entitled to receive part but not all of the amount that he or she has claimed, you probably can save yourself money, time, and inconvenience by resolving the dispute before the hearing date. If you go to court and the plaintiff wins, you may have to pay the plaintiff's court costs, and possibly also interest, in addition to the amount you already owe, and the judgment may appear on your credit record long after you've paid it.

You can try to reach a **settlement** (voluntary resolution of the matter) with the plaintiff, or let the court decide the case. If you're unable to resolve the matter directly with the plaintiff, you should plan to appear at the date, time, and place set for the hearing, unless you have received official notice of a new court date, a transfer to another court, or some other action by the court that excuses you from coming to court at the scheduled date, time, and place.

It's always a good idea to talk or write to the plaintiff before the hearing. The dispute may be based on a misunderstanding that you and the plaintiff can easily clear up. If you believe that you owe the plaintiff something, but don't have the money needed to pay it now, you can offer to pay the amount you believe you owe by weekly or monthly payments. In that situation, you should take the following steps: (1) ask the plaintiff to dismiss the case *without prejudice* (with the result that the plaintiff can re-file the claim if you don't carry out your promises), and (2) reach an agreement with the plaintiff that covers each of the following subjects:

- The total amount you agree to pay, including any interest and court costs.
- The amount of each installment payment.
- The total number of installment payments.
- The dates of the payments, such as "the first day of each month."

- The date on which the first payment is due.
- The duration of the "grace period" for paying an installment, and the effect of a failure to pay. For example: "If any installment is not paid within 10 days after the date on which it is due, the entire unpaid balance of the debt shall be immediately due and payable."

If you persuade the plaintiff to dismiss the case without prejudice, and you pay the amount that you have agreed to pay, the claim will not appear on your credit report as a judgment. ("Without prejudice" means that the plaintiff can file another suit if you don't pay.) Keep in mind that by entering into an installment payment agreement, you are waiving (giving up) your right to have the court determine whether you owed the debt. If you don't pay the debt, the plaintiff can simply bring this agreement to court and ask the court to issue a judgment which states that you owe the amount stated in that agreement.

Even though you may be able to offer a defense to all or part of the plaintiff's claim (on the basis that you owe nothing, or that you owe less than the amount of the plaintiff's demand), and have informed the plaintiff why this is so, it's possible that the plaintiff will refuse to reduce or withdraw the claim. In that situation, you can try to persuade the plaintiff to select a neutral third person to help you and the plaintiff resolve the dispute informally. (See "Have You Considered Mediation?" on page 5.) Most neighborhood dispute resolution centers offer mediation services.

If there isn't enough time to obtain help from a neutral third person or a neighborhood dispute settlement center before the hearing, you can appear at the hearing and ask the judge to postpone the hearing to a later date in order to give you and the plaintiff time to attempt to resolve the dispute through mediation, arbitration or other informal means. The judge, at his or her discretion, can postpone the hearing if either party requests a postponement for that purpose.

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You're the Defendant...**RESPONDING TO THE LAWSUIT**

What if You Can't Resolve the Dispute Informally?

If you can't resolve the dispute, make sure that you attend the hearing and are prepared to present evidence through documents or witnesses to explain your side of the case to the judge. (See "Making the Best of Your Day in Court" on pages 28-33.)

Unless you're present in court, the judge can't possibly know whether you have a defense to the plaintiff's claim. If you think that the claim is too old to be enforceable, or that the plaintiff, rather than you, caused the loss that the plaintiff wants you to pay for, you must tell this to the judge. The judge will welcome your presence in court. He or she wants to hear both sides of the dispute before deciding. Also look closely at the amount claimed by the plaintiff. If it's a total of several items, ask yourself: Do I really owe each item? Are the plaintiff's calculations correct? Are the claims for extras, such as interest or late charges, all properly chargeable? Are the amounts charged more than they should be?

If you have questions about the hearing, check with a small claims adviser before the hearing, or state your concerns to the judge at the hearing. If the plaintiff is suing on an unpaid debt or account, the plaintiff's claim form should itemize and describe each fee and charge that has been added to the original agreed amount, and should also acknowledge receipt of any payments that you have made on the account.

What if You Can't Attend the Court Hearing?

If you need to have the hearing postponed to a later date, you can prepare and file a written **Request to Postpone Trial (Small Claims)** (Form SC-150). You must file your request with the clerk of the small claims court, and must send a copy of your request to the other party. You must file your request no less than 10 days before the trial. Otherwise, you

will need to explain why you did not ask earlier, and you may need to go the hearing and ask for the postponement in person.

As a general rule, a filing fee of \$10 must accompany your written request for a postponement. However, no fee is required if you request a postponement either (a) before the plaintiff has served the plaintiff's claim form on you or (b) because you weren't served the required number of days before the hearing (*15 days* if you reside in the county where the claim is filed, or *20 days* if you reside outside the county where the claim is filed).

You must have a *sufficient reason* to receive a postponement of a court hearing date. If the plaintiff did not contact you before filing suit, and you and the plaintiff have not talked about the plaintiff's claim, that may be sufficient reason to postpone the hearing. A postponement will give you and the plaintiff time to meet and discuss the claim, and consider settlement options.

The court usually will postpone a scheduled hearing in the following situations: (1) the plaintiff hasn't been able to serve the defendant, (2) the defendant wasn't served a sufficient number of days before the hearing date, (3) the defendant filed a claim of defendant and the plaintiff wasn't served with the defendant's claim at least five days before the hearing (unless the defendant was served with the plaintiff's claim less than 10 days before the hearing, in which case the defendant may serve the plaintiff as late as the day before the hearing), or (4) the court determines that the parties desire to engage in mediation or other form of alternative dispute resolution. If you're unsure whether your particular reason may be a good enough reason for the court to postpone the hearing date, check with a small claims adviser in the your county where the claim was filed.

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What if the Service of Process Rules Weren't Followed?

You're entitled to receive at least *15 days' advance notice* of the hearing (or *20 days' advance notice* if you reside outside the county in which the court is located). If you didn't receive proper advance notice, you're not legally obligated to appear at the scheduled hearing. However, if you received some advance notice but don't plan to appear, it's better to call or write the court and explain why. If the required notice wasn't given to you on time, the court will reschedule the hearing if the court is informed that the rules on service of process were not followed.

Even though you weren't served properly, you still may want to attend. Ordinarily, you shouldn't refuse to attend simply because you received a late notice. Only if the late notice has made it more difficult to prepare for the hearing or attend it should you object to the late service. For example, the claim may have been dropped at your doorstep, instead of having been personally served on you, or it may have been served on your neighbor, who promptly gave it to you. In both of these cases, service was technically improper, but it didn't make any difference to you, because you knew about the claim and had enough time to prepare.

By attending the hearing, even if service of process was late or otherwise improper, you can present your defense and perhaps end the dispute without further delay. If you don't attend, the plaintiff may incur additional costs to serve you, and, if you ultimately lose the case, you may have to pay these added costs. There is still another reason for you to attend the hearing, even if you were served late. If you don't appear, the court may issue a judgment against you in your absence (provided that plaintiff offers sufficient evidence of the amount owing). In that event, you would have to prepare and file a request to overturn this judgment, which may entail yet another hearing.

If you were not served within the legal time limits (*15 days* before the hearing if you live within the county and *20 days* if you live outside) *and* you really need more time to prepare, you probably should prepare and file a Request to Postpone Trial (Small Claims) (Form SC-150) and explain exactly why you are making the request. As in all of your interactions with the court, be candid and straightforward.

What if the Plaintiff Hasn't Filed in a Proper Court?

If you believe the court in which the plaintiff has chosen to file the action is not a proper court (see "Where Do You File Your Case?" on page 11), you have the following options. (Keep in mind that in some situations, an action might be filed in any one of several different courts, and that the rules that determine what courts are "proper" may in any case result in some measure of inconvenience to one side or the other.) Here are your options:

- Appear at the hearing and do not challenge the plaintiff's choice of court. If you feel that it would *not* be inconvenient to have the hearing held in the county (or area of court location within the county) that was selected by the plaintiff—because, for example, you live in a neighboring county only five miles from the courthouse—you could appear and waive (give up) your right to challenge the plaintiff's choice of court.
- Challenge the plaintiff's choice of court at the hearing. You could challenge (object to) the plaintiff's choice of court at the scheduled hearing. If the judge decides that the plaintiff's choice of court was proper, then you can proceed with the hearing. If the judge decides that the plaintiff filed the case in an improper *county*, the judge *must* dismiss the case without prejudice. If the case was filed in a proper county, but in the *wrong court location* within that county, the

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You're the Defendant...**RESPONDING TO THE LAWSUIT**

judge has discretion to either transfer the case to a *proper court location* within that county, or order the case dismissed without prejudice.

- Challenge the plaintiff's choice of court by writing to the court. This is probably the easiest option, particularly if you live a long way from the court, or if it's not convenient for you to attend. You merely write a letter to the court explaining why the plaintiff's choice of court wasn't correct. If the judge disagrees with you and you're not present at the hearing, the judge must postpone the hearing for 15 days. If you have challenged the plaintiff's choice of court in this way, the judge can't decide the case in your absence. If the judge determines that the plaintiff's choice of court was wrong, then the case *must* be dismissed without prejudice.

Even if you don't challenge venue, it's a duty of the judge to *verify* that the court selected by the plaintiff is proper—that is, to look into the facts sufficiently to be able to decide whether there is a legal basis for filing the case in that court. If the judge decides that the court that was selected by the plaintiff is a proper court, the judge may (but only on rare occasions) transfer the case to another court whose location is more convenient to the parties and their witnesses. For example, if you have many witnesses who must travel to the court from a distant location, the judge may order the case transferred to a court near that location. In evaluating transfer requests, the courts give greater weight to the convenience of disputants who are individuals than those that are legal entities such as corporations, partnerships and public entities.

What If the Plaintiff Owes YOU Money?

If you believe the plaintiff has caused *you* injury or owes *you* money for any reason, you can file a defendant's claim against the plaintiff in the same small claims court action. A defendant's

claim does not need to be related to the plaintiff's claim. A defendant's claim could have arisen from a completely different event or transaction. A defendant can file a claim against the plaintiff by completing and filing a Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120). If your case is related to the subject of the plaintiff's case, it may be helpful and convenient for everyone to have it resolved at the same hearing. The small claims court can resolve both disputes.

If you file a claim against the plaintiff, the same basic rules and procedures generally apply. Legal principles, such as statutes of limitations (which limit the filing of old claims) also apply. Ordinarily, the plaintiff must receive a copy of the defendant's claim (Form SC-120) at least five days before the scheduled hearing date. However, if you received the plaintiff's claim *less* than 10 days before the scheduled hearing date, then you can serve your claim as late as one day before the scheduled hearing date. Always have the papers served as early as possible.

Think carefully. If the amount of your claim against the plaintiff exceeds the monetary limit allowed for your claim (see page 4), you may be able to have your case treated as a regular superior court action (in which attorneys may participate) by having the case transferred. (If you're a natural person (an individual) and have not already filed more than two actions for more than \$2,500, your case *cannot* be transferred and treated as a regular superior court action unless your claim exceeds \$7,500.)

If your claim is for a large amount, it's best to consult with an attorney or small claims adviser before filing a defendant's claim against the plaintiff in small claims court. (Review "Is Small Claims Court Your Best Option?" on page 5.)

Responding to the Lawsuit (page 6 of 6)



Making the Best of Your Day in Court

Plaintiffs and Defendants...

MAKING THE BEST OF YOUR DAY IN COURT

While you're waiting for your hearing date, it's important to prepare your case or defense as thoroughly as you can. Double-check your facts. Ask important witnesses to attend the hearing. Gather all of the evidence you think you may need. Prepare any needed charts or other exhibits. Decide what you'll say to the judge.

Organize your thoughts and evidence to make your claim as easy as possible to understand. Prepare a written outline of the important facts and the points you intend to make to the judge. Try to think of the questions the judge might ask, and of any available evidence that supports your answers and that you can bring to court. Also try to think about what the other party is likely to say, and about what evidence the other party may bring to court.

By thinking ahead, you'll be in a better position to present your case. By presenting your case clearly and in the least amount of time, you will make it easier for the judge to understand your case and make a decision. You can help the judge and also increase your chances of obtaining a favorable decision by being well prepared. It's also helpful to sit through a small claims court session before the date of the hearing. This will give you first-hand information about how small claims cases are heard in your local court.

On the day of your hearing, schedule enough time to get to the court, allowing for possible transportation or parking delays. Try to arrive early so you can locate the proper courtroom. Then relax, listen for announcements, and think about your case. A list of the day's small claims court cases, called a "court calendar," is usually posted outside the courtroom. If you don't find your name or case listed on the court calendar, check with the small claims clerk.

If you don't speak English well, and may have difficulty presenting your case in court, it's okay to bring someone who can interpret for you in court—perhaps an adult relative or friend, but not a party to

the action or a witness. Instead of bringing your own interpreter, ask the small claims court clerk for a list of interpreters at least five days before the hearing. Most interpreters charge a fee. If you cannot afford to pay an interpreter, ask the clerk of the court if the court can provide one for free.

Resolving Your Dispute Before the Hearing

For most people, a dispute, especially a lawsuit, is stressful. Be reasonable in your demands to the other party. Keep the lines of communication open. Always leave room for possible compromise and settlement with the other party. Even on the day of your hearing, it's not too late to settle your dispute. Many courts have mediators available in the courtroom to assist you and the other party in resolving your dispute. (See "Have You Considered Mediation?" on page 5.)

If you resolve the problem, it's better to put your settlement agreement in writing than to rely on memory. It should also be signed and dated by each of the parties to the action. It can be handwritten, and should be expressed in language each party can understand. It should describe the arrangements for making payments, and also any related agreements or understandings. If periodic payments will be made, the agreement should state the amount of each payment, the date when each payment is due, and the effect of any late payments. (See "What If You Owe All or Part of the Plaintiff's Claim?" on page 23.)

If you and the other party settle (resolve) the dispute before the hearing date, the plaintiff can dismiss the case by signing and filing a Request for Dismissal (Form CIV-110). Before filing a Request for Dismissal **dismissing** the case **with prejudice**, the plaintiff is entitled to (and ordinarily should) receive payment in full of the agreed-upon amount in cash. If the settlement amount is paid by check, the plaintiff is entitled to (and ordinarily should) wait

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until the check clears before filing the Request for Dismissal with prejudice. That's because signing and filing a Request for Dismissal is like giving a receipt for full payment.

If you and the other party settle (resolve) the dispute on the day of the hearing, there may not be enough time to dismiss the case by signing and filing a Request for Dismissal (Form CIV-110). In that event, you and the other party should attend the hearing and, when your case is called, inform the judge that you have settled the dispute. The judge has several options: The judge may (1) give you the additional time you need to sign and file a Request for Dismissal dismissing the case with prejudice before leaving court that day; (2) order a dismissal of the case *without prejudice* (meaning that it can be re-filed if the settlement amount is not paid); (3) postpone the hearing for a short period to enable the defendant to pay the claim, or (4) include the terms of the agreement in a regular court judgment. Once the defendant has paid and the plaintiff has received the agreed-upon amount, the plaintiff should sign and file a Request for Dismissal (Form CIV-110) dismissing the case *with prejudice* (meaning that the claim can never be re-filed).

If the dispute is resolved and the case is dismissed without prejudice (alternative (2) above), no judgment will appear on a defendant's credit report — a desirable result from the defendant's standpoint. If the defendant violates the settlement agreement, for example by missing payments that the defendant has agreed to make, the plaintiff may re-file the case and submit the settlement agreement as evidence that the defendant agreed to pay the amount set forth in the agreement—a desirable result from the plaintiff's standpoint. In that situation, the plaintiff ordinarily would not need to prove the original basis for the amount owed, but could rely on the settlement agreement to prove the amount owing.

Gathering the Documents You Need

Prepare for the hearing by gathering any evidence that will help the judge understand the case. Your evidence may include any written contract, receipt, letters, written estimates, repair orders, photographs, canceled checks, account books, advertisements, warranties, service contracts, or other documents.

To protect privacy interests, you should only display the last four digits of Social Security numbers on financial documents. Whenever possible, plan to bring originals rather than copies of documents. In property damage cases, some courts ask the plaintiff to provide two or three written repair cost estimates to show the reasonableness of the claim. Make a map, diagram, or drawing if it will help you explain your case more easily and quickly.

Make two copies of any document you intend to give the judge. The judge may ask you to give one copy to the other party and may place one copy in the court's file. The court will usually allow you to keep your original.

At small claims court hearings, judges take an active role and ask any questions that will help them understand the case. Small claims judges can also consider information and evidence that would not be permitted in other courts. Therefore, don't hesitate to bring any items or documents that you believe may help the judge understand the case.

Arranging for Your Witnesses

In most small claims cases, you or the other party can easily provide all the information and documents the judge will need in order to understand and decide the dispute.

Sometimes, however, you'll need to present information that can be provided only by a **witness**. The witness may support your version of an event, and may be the only person who has first-hand knowledge about it. If you believe that testimony

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Plaintiffs and Defendants...**MAKING THE BEST OF YOUR DAY IN COURT**

from a particular witness is essential to your claim or defense, you should make a special effort to have the witness attend the hearing.

If a witness can't attend the hearing, you can ask the witness to write and sign a statement called a "declaration" for submission to the court. This statement should include everything that the witness would like to tell the judge about your claim or defense. At the end of the statement, the witness should write, "I declare under penalty of perjury under the laws of the State of California that the above is true and correct., and that this declaration was signed on [date] at [location]—e.g., Sacramento, California." The witness should then date and sign the statement, and write his or her city and telephone number at the time of signing.

If the witness isn't living in California, the statement should be signed before a **notary public**. The witness should also include a telephone number (and perhaps an e-mail address) in case the judge needs to contact the witness. The judge isn't always required to accept a written statement, so it's best to have an important witness come to the hearing. Since the judge may also want to ask the witness questions, a witness should attend if possible.

You also may want to consult with the small claims clerk or small claims adviser about whether the court will allow your witness to testify by telephone. Some, but not all, small claims judges will allow a witness, especially one who lives a long distance from court, or who will not be available for the hearing, to testify by telephone. It's a good idea to present a letter to the court from the witness explaining why the witness can't appear in person at the hearing. Even if the court generally permits telephone testimony from witnesses, you should ask for permission from the court in advance of the hearing.

Always talk to a witness before the hearing. The witness may not see or interpret the facts in the same way that you do, or may have forgotten the key

points. Also, if the witness is hostile to you, he or she may do you more harm than good.

If your case involves a technical issue, such as the reason that a car or TV isn't operating properly, you may need to consult an expert. You can arrange for the expert to attend the hearing as a witness, or you can ask the expert to prepare and sign a written statement (declaration), as described above. The judge also can appoint or consult with an expert. You probably won't be reimbursed for expert witness fees, but you still might want to hire an expert at your own expense.

If your witness won't voluntarily come to court or won't provide some documents you need to present your case, you can **subpoena** the witness. At your request, the small claims court will issue a **Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration** (Form SC-107)—a court order that requires the person named in the order and served with a copy of it to come to court to testify as a witnesses.

It's usually not a good idea to force somebody to testify on your behalf, since this person probably won't make a good witness, or may even testify against you. However, a subpoena may be needed to enable a witness to obtain permission from his or her employer to be absent from work to testify in court, or it may be needed to provide documents whose disclosure might otherwise violate someone's privacy rights.

You can obtain a Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration (Form SC-107) from the small claims clerk or in some counties from a small claims adviser, or from the Judicial Council's Web site (www.courtinfo.ca.gov). After you have entered the requested information in the subpoena, the subpoena is issued by the clerk of the court and is a court order. Since the court

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may reject and refuse to issue a subpoena that asks for more than is genuinely needed or reasonable, it's important to limit your request to those documents that you know you really need and that the party who is served with the subpoena can readily obtain.

You then need to arrange to serve or arrange for someone else to serve a copy of the subpoena on the witness. Unlike the plaintiff's claim form (Form SC-100), you or anyone else can deliver a copy of the subpoena to the witness. However, that person should be a responsible adult that you can trust to serve the court papers properly. After giving the witness a copy of the subpoena, the person who delivered the subpoena must complete and sign the Proof of Service (Small Claims) that is printed on the back of the form.

A witness is entitled by law to ask for witness fees of \$35 per day plus 20 cents per mile each way. Witness fees for law enforcement officers and government employees are higher. If a witness asks for fees, the witness need not appear in court unless the required fees are paid to the witness. The person who serves the subpoena therefore should be prepared to pay the fees at the time of service in the event that fees are requested. If the witness doesn't ask for fees, you don't need to offer them. If fees are requested and paid, be sure to obtain and retain a receipt, which you will need so that you can claim and recover the expense as costs in the event you prevail.

If you'd like the witness to bring documents to the hearing, you'll need to check the box requesting the witness to do so. You'll have to fill out the declaration form, describing exactly which documents or papers you need and the reasons you need them to support your claim. The subpoena form gives you two options: You can require the witness to bring the documents to court and testify as a witness, or merely to deliver the documents that you requested to the court. (You need not require the witness to appear at the hearing.)

After the subpoena is served, the original subpoena (with the completed and signed Proof of Service on the back of the form) must be filed with the small claims clerk before the hearing date.

Hearing Before a Temporary Judge

Most small claims courts rely on **temporary judges** (sometimes called **pro tem judges**) to hear and decide small claims court cases. A temporary judge is an attorney who has been licensed for a minimum of 10 years to practice law in California and who volunteers to assist the court by hearing certain kinds of cases. The temporary judge is required to complete a training program for small claims court judges before hearing cases.

On the day of the hearing, you will be invited to consent (or **stipulate**) that a temporary judge, rather than a regular judge or a court commissioner, may hear and decide your case. Before a temporary judge may hear a case, all parties who appear at the hearing must give their consent. Some courts require the parties to sign a written consent form. If either party to a dispute doesn't consent, the clerk may find it necessary to reschedule the hearing to a later date or time when a regular judge or court commissioner is available.

If you're given the option of a hearing by a temporary judge, you should consider several factors:

- Many small claims court calendars are overcrowded, so it's possible that your hearing will be held on the scheduled date only if the hearing is conducted by a temporary judge.
- Attorneys who serve as temporary judges are expected to have basic knowledge about consumer and small claims court law.
- All courts must provide special training programs for their temporary judges.

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Plaintiffs and Defendants...**MAKING THE BEST OF YOUR DAY IN COURT**

Presenting Your Claim or Defense

Before the hearing, the courtroom procedures are explained either by the judge or some other court officer. Many courtrooms now use videotapes to explain these procedures. The court will then call roll to see which plaintiffs and defendants are present for their hearings. Listen carefully so that you'll know what to do. Everyone who will testify in a hearing will be asked to take an oath promising to tell the truth.

The court will then hear each case. Usually, cases in which the defendant isn't present are heard first. While evidence is still presented in those cases, they take less time because there is no opposition. As you listen to the other cases, you'll learn more about how to present your own claim or defense. Cases are not always called in the order listed on the court calendar, so be sure to stay in the courtroom.

When the judge is ready to hear your case, the clerk or judge will call the names of all plaintiffs and defendants in the case. You, the other parties, and any witnesses, should then go forward to the table in front of the judge. Judges usually ask the plaintiff to tell his or her side first, and then the defendant may speak. Some judges may begin by asking questions of each party to learn more about the facts, or to cover areas the judge knows are important.

Usually, you'll have only a few minutes to explain your side of the dispute and answer questions, so be sure to present your most important points first. You can usually use a written outline or notes, but it's better not to read a prepared statement. Be sure to have all your evidence and any important documents with you. Tell the judge that you have them, and ask the clerk or other court officer to give them to the judge. If you obtain the judge's permission, you may give the documents directly to the judge. If the judge needs to keep your evidence for review, ask how and when you'll get the items back.

Telling your story to a judge isn't like telling a story to a friend. When you tell a story to a friend, you usually start from the beginning, give all the details, build some suspense, and then finish with an ending. In small claims court, you first want to implant in the mind of the judge the primary issue or issues in your case.

Many judges ask for a brief overview of the case. If the defendant in an auto accident case has admitted that the accident was his or her fault, tell that to the judge, and say that the issue is the amount of damages, and not liability. In a contractor case, the plaintiff might say, "Your Honor, I am suing the defendant roofing contractor for \$1,000 because the work he did on my roof was defective, and it cost me \$1,000 to get it right." In an auto repair case, the plaintiff might say, "Your Honor, I'm suing the defendant auto mechanic for \$600 because he didn't fix a number of things on my car for which he charged me, and I have a report from the Bureau of Automotive Repair that explains what he did wrong." By providing this overview, you give the judge some guidance on what facts he or she should focus on. However, if you start out your auto accident case in a narrative style, the judge won't learn about the issues of your case until later.

Some judges may investigate the case after learning relevant facts. For example, a judge might ask the Bureau of Automotive Repair to investigate allegations from a consumer that an auto repair shop performed fraudulent work. Some judges will consult with contractors whom they know and trust to obtain advice in a case involving another contractor. If your case involves shoddy work by an auto paint shop, you may want to bring your car to the courthouse parking lot and ask the judge to look at it. A judge might visit the location where an auto accident occurred. However, it's up to the judge to determine whether an investigation is appropriate.

Be brief in making your points. Do your best to be objective, unemotional, polite, and respectful

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of the other party and the judge. The judge will be interested only in hearing the facts of your dispute. Don't raise your voice or make insulting remarks about the other party or any witness, no matter how angry you may become. During the hearing, speak to the judge and not to the other party. Most importantly, be truthful in everything you say.

Answer the judge's questions thoughtfully. If you don't understand a question, politely ask the judge to explain the question or to ask it in another way. Remember, too, that the judge is trying to apply laws that you might not know about. Therefore, don't get angry if the questions are on points that you don't consider important. The judge's questions may be of great importance to your case.

Since the law requires that any award of money be "reasonable" in amount, the judge will want to know exactly how the plaintiff decided on the amount claimed. A plaintiff must be ready to show how this figure was determined. If interest is also claimed, the plaintiff should be prepared to show exactly how it was calculated. If the interest calculation is complicated, it may be helpful to provide a written summary. In all cases, it is beneficial to provide the judge with a written itemization or calculation of your damages, if the information is not already included in your claim form.

If the defendant believes that the amount claimed by the plaintiff is excessive or improper, the defendant should be ready to explain why this might be so. If the defendant knows that all or any part of the amount claimed is owed to the plaintiff, it's okay to tell the judge that too. The judge may agree about the amount that is owed, or the judge may authorize an installment payment plan that the defendant can manage.

While the judge is asking the other party to explain his or her side of the dispute, don't argue or interrupt, even if you feel that what's being said isn't truthful or accurate. Make a note to yourself as a reminder. The judge will usually give you enough time to reply.

Asking for Court Costs

At the hearing, you should ask the judge to award your court costs if you win. Costs are out-of-pocket fees and charges a party pays to file and present a lawsuit. If you're awarded costs, the award is included in the judgment against the losing party. In most cases, costs are awarded to the prevailing (winning) party, but you should still ask the judge for them at the hearing. If neither party is truly a "prevailing party," the judgment might not include awards of either costs or interest. In that situation, both parties may be "winners"—always a goal in small claims court.

Be sure to keep receipts for your filing fees and other out-of-pocket costs. Only some kinds of costs (called "allowable costs") can be recovered from the losing party but others can't. Costs that may be recovered include amounts you have paid for court filing fees; expenses of service of process (including the cost of locating the defendant for service, if reasonable); witness fees (but generally not for expert witnesses); and fees for service of subpoenas (of either witnesses or documents). Since other kinds of out-of-pocket expenses might be awarded at the judge's discretion, bring your receipts to the hearing. However, expenses other than those listed above are not ordinarily awarded.

If you have filed more than 12 cases during the preceding 12 months, you can claim as court costs only the *portion* of the court filing fee that you would have had to pay if you had filed 12 or fewer claims.

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The Judgment

Plaintiffs and Defendants...

THE JUDGMENT

Receiving the Judge's Decision

After hearing from the parties who appear at the hearing, the judge will make a decision. The judge will base the decision on the evidence, the law, and common sense. The judge may rule for either the plaintiff or the defendant, or may award something to both parties.

Sometimes the judge may decide the case immediately, announce his or her decision in court, and ask the clerk to give the parties the judgment form—called the *Notice of Entry of Judgment* (Form SC-130)—in the courtroom. Other times, the judge may not decide the case until later. This is called “taking the case under submission.” If the judge takes the case under submission, you’ll receive your copy of the Notice of Entry of Judgment in the mail, after the case is decided.

The judge may take the case under submission, either as a matter of practice, or to review the evidence, research a point of law, or consult an expert. Also, if you forgot to bring an important document or other evidence to court—for example, a written contract—the judge may allow you to bring it in promptly after the hearing so that it can be examined by the judge before a decision is made.

If you don't receive the Notice of Entry of Judgment (Form SC-130) within two or three weeks, call the small claims court and ask the small claims clerk to check on the matter. You may also be able to check the status of your case on a courts Web site. Be ready to give your case number when you call. If you change your address, be sure to give the clerk your new address. Do this by letter, and include the name and number of your case, as well as your old and new addresses.

A small claims judgment is a public record that is often listed in the credit record of the losing party (the **judgment debtor**), even after the judgment is fully paid. To avoid marring a person's credit

record, particularly if the losing party hasn't done anything morally wrong, some judges hear the case and issue a decision that becomes effective only if the losing party fails to do what the judge decides (e.g., pay a stated amount of money). This keeps the dispute out of the official records if the losing party performs. The judge has actually decided the case, but schedules a follow-up hearing to see if the losing party has paid the money or done the things that the judge has ordered. If the losing party performs the conditions described in the judgment, the judge will then dismiss the case with prejudice (alternative (4) on page 29).

If the judge doesn't rule in your favor, that doesn't necessarily mean that the judge didn't believe what you said. Instead, the judge's decision may be based on a law that must be applied to the facts of your case. You may write to the court for an explanation of the ruling, although the court isn't legally obligated to explain it. Also, you may write to the judge who heard the case, the presiding judge of the court, or the court administrator, to register your feelings, good or bad, about your small claims experience. Your comments will help the court monitor the performance of the court and its temporary judges and staff, as required by Judicial Council rules.

Judgment Against a Party Who Doesn't Come to the Hearing

Sometimes one of the parties doesn't come to the small claims hearing. If the defendant doesn't appear, the key question is whether the defendant received proper notice of the hearing. If the Proof of Service (Small Claims) (Form SC-104) shows that service of process was properly made, the judge will consider the plaintiff's evidence and decide the case, even if the defendant is absent.

A judgment isn't automatically awarded against a defendant who doesn't come to the hearing.

The Judgment (page 2 of 4)

The plaintiff must still prove the plaintiff's claim by evidence. If sufficient evidence is provided, the judge may award the plaintiff some or all of the amount claimed, and possibly also court costs and interest. If the defendant is an active duty member of the armed forces, a judgment can be awarded only if certain prerequisites are met.

If the *plaintiff* doesn't appear at the hearing, and doesn't notify the court of the reason for the absence, the court has several options. The judge may reschedule the case, dismiss the case *with prejudice*, dismiss the case *without prejudice*, or—if the defendant appears—enter a judgment against the plaintiff after considering the defendant's evidence.

Setting Aside a Judgment Against a Party Who Didn't Come to the Hearing

If a judgment is entered against a non-appearing party, the non-appearing party can ask the court to set aside, or vacate, the judgment in certain circumstances.

If the *plaintiff* doesn't appear at the hearing, and a judgment is entered against the plaintiff, the plaintiff has 30 days after the date of the clerk's mailing of the Notice of Entry of Judgment (Form SC-130) to ask the small claims court to set aside the judgment and hold another hearing. To make this request, the plaintiff must file a **Notice of Motion to Vacate Judgment and Declaration** (Form SC-135) and explain why the plaintiff didn't appear at the hearing. A hearing to consider the request will then be held. (The word "motion" means "request," and the words "notice of motion" mean that the person giving the notice desires to make a request.) The request to vacate (set aside) the judgment may be granted, but only if the judge finds **good cause** for the plaintiff not attending the hearing. If the request is granted, most courts will hold the hearing on the plaintiff's claim immediately, so both parties must attend that hearing and be prepared to present their cases.

If the *defendant* does not appear at the hearing, similar rules apply. A defendant who doesn't appear must first ask the small claims court to vacate (set aside) the judgment. If the defendant was properly served, the defendant must file a Notice of Motion to Vacate Judgment (Form SC-135) within 30 days after the date the court mailed the Notice of Entry of Judgment (Form SC-130). The Notice of Motion to Vacate Judgment and Declaration (Form SC-135) should be completed to show why the defendant didn't appear at the hearing. A hearing to consider the request will then be held. The request to vacate (set aside) the judgment may be granted only if the judge finds good cause for the defendant not attending the hearing. In that event, most courts will hear and decide the plaintiff's claim immediately, without rescheduling it. For that reason, both parties should attend and be prepared to present their claims and defenses.

If the *defendant* wasn't *properly served* with the plaintiff's claim, the defendant has up to 180 days after learning that the judgment was entered to file a Notice of Motion to Vacate Judgment (Form SC-135). A hearing to consider the request will then be held. If the court determines (1) that the defendant was not properly served, and (2) that the request to vacate the judgment was filed within 180 days after the defendant either discovered the judgment, or should have discovered the judgment, the defendant's motion will be granted. If both parties are present, and both parties agree that the case can be heard at that time, the case will be heard without rescheduling it. If both parties do not give their consent, the case will be set for hearing on a later date.

If the defendant's motion to vacate the judgment is *granted*, the case is re-heard by the small claims court, either then or later. If the defendant's motion is *denied*, the defendant has 10 days from the date of the denial (or of the mailing of the notice of denial) to obtain a review of the denial by another judge (one designated

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The Judgment (page 3 of 4)

Plaintiffs and Defendants... **THE JUDGMENT**

to hear small claims court appeals). The defendant's request is registered by filing with the small claims court a **Notice of Appeal** (Form SC-140). The new judge only decides if the original judge was correct in denying the defendant's motion to vacate the judgment, and does not decide the case again.

Correcting an Error or Appealing a Small Claims Court Judgment

Only the person against whom a claim is made may appeal a small claims court judgment. The party who files a claim in small claims court (the plaintiff) can't appeal the judge's decision on that claim. For that party, the court's judgment is final. Similarly, if the defendant files a claim against the plaintiff, the defendant may not appeal the court's ruling on the defendant's claim. Only the plaintiff can appeal a decision on a claim filed by the defendant.

There are two ways to have a dispute re-examined by a judge. The first is to appeal, which entails a re-hearing of the dispute before a different judge of the superior court. A defendant (or a plaintiff who loses on a claim filed by the defendant) who appeared at the small claims hearing may have the dispute re-heard by a different judge. Also, an insurer of a defendant may appeal the judgment if the judgment exceeds \$2,500 and the insurer's policy covers the matter to which the judgment applies.

The appeal from a judgment in small claims court is started by filing a Notice of Appeal (Form SC-140) with the small claims clerk within 30 days after the judgment is delivered or handed to the parties in court or, if the decision is mailed, within 30 days after the date the clerk mails the Notice of Entry of Judgment (Form SC-130) to the parties, whichever is earlier. The date of mailing (or in-court delivery) appears on the form. The fee for filing an appeal is \$75. Once the defendant files a Notice of Appeal, the judgment from which the appeal is taken can't be enforced, and the defendant (judgment debtor)

need not pay anything to the plaintiff (judgment creditor) unless and until the appeal is dismissed or the defendant loses the claim on appeal.

A plaintiff or defendant also has the right to invite but not require the small claims court to re-examine its decision. This is accomplished by filing with the small claims court a **Request to Correct or Cancel Judgment and Answer** (Form SC-108). While the defendant is the only party with a right to file an appeal, either party, whether plaintiff or defendant, may request the small claims court to correct "a clerical error in the judgment" or vacate a judgment and re-hear the dispute "on the grounds of an incorrect or erroneous legal basis for the decision." The request should describe the asserted error both clearly and persuasively.

The option to register such a request gives both parties to a small claims court action a limited opportunity to have the small claims court reconsider an allegedly erroneous decision, although not the right to another hearing unless the small claims court considers it necessary to re-hear the case. Such a request must be filed no later than 30 days after the small claims clerk mails or delivers the Notice of Entry of Judgment (Form SC-130) to the parties (but the court retains its inherent power to correct an error).

If a defendant files a request to correct an error (Form SC-108), the defendant should be mindful of the need to also file a Notice of Appeal (Form SC-140) within 30 days after receiving the Notice of Entry of Judgment. The reason is that the 30-day time limit for filing a Notice of Appeal is not extended. If the small claims court does not grant the request to correct the alleged error, the defendant's appeal right will have been lost unless a Notice of Appeal was filed.

The Judgment (page 4 of 4)

Re-Hearing Before a Different Judge on Appeal

The appealing party is entitled to a new hearing before a different judge of the superior court. The plaintiff's claim and any claim filed by the defendant are heard together, as in small claims court. That means that the parties must present their cases as if they were being presented for the first time. The results of the first hearing, and the testimony and other evidence offered at that hearing, are not considered by the second judge who hears the case.

- **Example:** If a plaintiff buyer seeks to cancel the purchase of a motor vehicle and recover the down payment, and the defendant car dealer files a claim against the plaintiff for the unpaid balance of the purchase price of the vehicle, an appeal by either party entails re-hearing the claims of both parties. At the new hearing on appeal, each party should be prepared to present his or her side of the case and bring any supporting witnesses and documents.
- **Example:** If the plaintiff files an action against two defendants and is awarded a judgment against defendant #1 but not defendant #2, and defendant #1 then decides to appeal, the appeal entails re-hearing plaintiff's claims against both defendants. This carries out the policy that treats an appeal as an entirely new case.

The judge who hears the appeal conducts the re-hearing in the same informal way that cases are heard in small claims court. The only exception is that an attorney may represent a party at the hearing on appeal. The judge who presides at the hearing on appeal allows the parties' attorneys to present evidence and examine witnesses under the judge's guidance and control.

At the close of the hearing, the judge issues a new judgment, and a new Notice of Entry of Judgment (Form SC-130) is delivered or mailed to the parties. If the judge awards costs to the prevailing party, the costs so awarded include those incurred by the prevailing party in both the small claims court and on appeal.

For good cause and where necessary to achieve substantial justice between the parties, the judge who hears an appeal may award reimbursement of the following expenses to a plaintiff who has prevailed at the hearings in both the small claims court and on appeal:

- Attorney's fees actually and reasonably incurred in connection with the appeal, but not exceeding \$150, and
- Actual loss of earnings and expenses of transportation and lodging, to the extent actually and reasonably incurred in connection with the appeal, but not exceeding \$150.

The court will make an award of expenses against a defendant who loses an appeal only if the court determines that the circumstances justify the award, and the award is necessary to achieve substantial justice between the parties.

If you are the appealing party, and the judge who hears the appeal finds that your appeal was not based on substantial merit or good faith, but was intended solely to harass or delay the other party or encourage the other party to abandon his or her claim, the court also can award the other party a judgment against you for up to \$1,000 for attorney's fees and up to \$1,000 for transportation and lodging.

If you are sued in small claims court and lose, don't appeal unless, after evaluating your defense, you have a good faith belief in the actual merits of your defense, and are not just trying to delay payment to the plaintiff.

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Collecting or Satisfying the Judgment

After the Judgment...

COLLECTING OR SATISFYING THE JUDGMENT

You'll have to collect the judgment yourself if you win in small claims court. The court will not collect it for you. If you're the prevailing party (the *judgment creditor*) and haven't received the money the judge awarded to you, make sure that the other party (the *judgment debtor*) is aware of the judgment and its amount, and also knows where to mail payment.

Often a personal note to the judgment debtor asking that the judgment be paid is all that is needed to end the dispute. If you believe that the judgment debtor may not have enough income or assets to pay in full, consider offering to accept weekly or monthly payments, or even waiving (forgiving) interest or part of the principal amount owing, in exchange for full payment of the rest.

The small claims court judgment becomes final and enforceable 30 days after the small claims clerk has delivered or mailed the Notice of Entry of Judgment (Form SC-130), provided that the defendant hasn't filed a timely Notice of Appeal (Form SC-140) or a Notice of Motion to Vacate Judgment and Declaration (Form SC-135). If the defendant files an appeal and loses, the judgment becomes enforceable after transfer of the case back to the small claims court.

If the court awards the other party a judgment against you, and you don't intend to appeal, it's better to pay the judgment as soon as possible, since that will save you from having to pay interest on the unpaid judgment debt. If you can't afford to pay it in full, consider making an offer to make weekly or monthly payments in amounts you can afford. If the judgment creditor won't accept payment by installments, the court will issue an order allowing you to pay by installments in amounts that you can afford (see page 39).

Once you have fully paid the judgment debt (including any *interest* and allowable *costs* which have accrued since the hearing), the judgment creditor is required to complete, sign, and file

with the small claims court an *Acknowledgment of Satisfaction of Judgment* (Form SC-290).

It's available for printing at the Judicial Council's self-help Web site at www.courtinfo.ca.gov.

If a judgment against you becomes final, and you don't pay it within 30 days, you must complete a *Judgment Debtor's Statement of Assets* (Form SC-133) and send the completed form to the judgment creditor. This form, which you receive along with the Notice of Entry of Judgment (Form SC-130), requires you to provide information concerning your property and sources of income. The judgment creditor can then use that information to assist in collecting the amount you owe. If you don't complete and mail the Judgment Debtor's Statement of Assets (Form SC-133) as required, the judgment creditor may bring you into court to complete this form by filing an *Application and Order to Produce Statement of Assets and to Appear for Examination* (Form SC-134). This will require you to submit a completed Judgment Debtor's Statement of Assets (Form SC-133) to the *court*.

Options for a Judgment Debtor

- **Payment to the court**—A judgment debtor may pay the amount of the judgment directly to the court. The judgment debtor can do this by completing a *Request to Pay Judgment to Court* (Form SC-145), and submitting the amount of the total judgment, including the plaintiff's post-judgment costs and interest. The court will then enter an Acknowledgment of Satisfaction of Judgment (Form SC-290). There are several reasons that you might want to make payment directly to the court: (1) You may wish to avoid contact with the plaintiff, (2) You can't find the plaintiff, or (3) You may wish to end the case immediately. The small claims clerk (and not the judgment creditor) then completes and files an Acknowledgment of Satisfaction of Judgment (Form SC-290), which documents your

Collecting or Satisfying the Judgment (page 2 of 5)

payment. Of course, you also may (and ordinarily should) pay the other party directly. In either case, the court clerk collects all fees related to the enforcement of the judgment.

- **Installment payments**—If a judgment debtor is willing to pay the judgment but can't pay the entire judgment debt at one time, then the judgment debtor may ask the court for authorization to pay the amount of the judgment in installments. The judgment debtor should first ask the judgment creditor if the judgment creditor is willing to accept weekly or monthly payments. (See the information on installment payments in "Have You Tried to Settle the Dispute Yourself?" on page 5.) If the judgment creditor insists on receiving the full amount of the judgment, or if both parties can't agree on an installment payment plan, the judgment debtor can file a *Request to Make Payments* (Form SC-220). This form must be filed with a *Financial Statement* (Form EJ-165). Both the request form and the financial statement form that you file are then mailed to the judgment creditor by the court. The judgment creditor can either oppose your request, or agree to it by filing a *Response to Request to Make Payments* (Form SC-221). A hearing may or may not be held.
- **Protecting property or income from collection**—A judgment debtor may be able to lawfully protect some or all of the judgment debtor's assets (property) and sources of income from being taken to pay the judgment. It may be possible to protect necessities of life such as one's house, furniture, clothes, car (within certain price limitations), tools of the trade, certain other personal property, and all or a portion of one's earnings. In addition, workers' compensation, unemployment, pension, Social Security, welfare, or insurance payments are protected and can't be taken to satisfy a judgment. At your request, the small claims

court clerk or a small claims adviser can give you a list of assets that are protected (**exempt assets**) in California. This information is itemized in a court form entitled *Exemptions From the Enforcement of Judgments* (Form EJ-155).

CAUTION: Some assets of a judgment debtor are automatically protected, but in the case of others, you must ask the court to determine that the assets are exempt from enforcement action. To protect these assets, you must file a *Claim of Exemption* (Form EJ-160) within 10 days after you receive notice that the judgment creditor is taking enforcement action against the particular asset. You can obtain this form from the small claims clerk or the sheriff's or marshal's office. List the property you believe is exempt. If enforcement action is taken against your earnings, use the *Claim of Exemption (Wage Garnishment)* (Form WG-006) and list all of your income and expenses. The court will decide which assets and how much of your earnings are protected from collection. To enjoy these rights, you must act quickly (within 10 days).

How a Judgment Creditor Can Enforce a Judgment

This section highlights ways for you to enforce (collect) your judgment using available court procedures. The following are some steps that you can take to try to enforce a judgment if the judgment debtor refuses to pay it voluntarily:

- **Locate the judgment debtor**—If you do not already know how to communicate with the judgment debtor, first get the judgment debtor's address and telephone number, so that you can communicate an informal request for payment to the judgment debtor or the judgment debtor's representative. It's also helpful, and may be necessary, to determine where the judgment debtor is employed, at what bank or other place the judgment debtor has a checking or savings

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Collecting or Satisfying the Judgment (page 3 of 5)

After the Judgment...COLLECTING OR SATISFYING THE JUDGMENT

account, and what other real estate or personal property the judgment debtor may own. For ways to locate the other party, see "Locating the Other Party" (page 18 of this handbook).

- **Levy execution on the debtor's wages—** A wage garnishment orders the judgment debtor's employer to periodically give the sheriff, who then sends you part of the judgment debtor's wages until the debt is paid. To levy execution on (garnish) wages, you need to complete a *Writ of Execution* (Form EJ-130), which (when issued by the court) directs the sheriff to enforce your judgment. A Writ of Execution is issued by the small claims clerk and only becomes effective then. You'll also need to complete and pay a fee for the issuance of an *Application for Earnings Withholding Order (Wage Garnishment)* (Form WG-001).
- **Levy execution on the debtor's checking or other account (bank levy)—**A bank levy means that money will be taken from the debtor's bank, checking or savings account to pay the judgment. You'll need the name and branch address of the bank or other financial institution. Get a Writ of Execution (Form EJ-130) from the small claims clerk. There is a fee of \$15 for issuing a Writ of Execution.
- **Record an Abstract of Judgment—** Recording an *Abstract of Judgment-Civil and Small Claims* (Form EJ-001) puts a lien on any land, house, or other building the debtor owns in the county where it is recorded. Obtain an Abstract of Judgment - Civil and Small Claims (Form EJ-001) from the small claims clerk, and record it with the county recorder in each county where the debtor owns or may own real property. If the property is sold with title insurance, the debt will be paid out of the proceeds of the sale. The clerk charges a fee of \$15 for issuing an Abstract of Judgment. Fees also must be paid to a county recorder for recording it.
- **Have the sheriff do a "till tap"—**If the debtor is a business with a cash register, the sheriff can go to the address of the business and take enough money out of the cash register to pay the judgment debt and the sheriff's fee. First complete a *Writ of Execution* (Form EJ-130), request the small claims clerk issue it, and take it to the sheriff. Then instruct the sheriff in writing to do a "till tap." A typical sheriff's fee for a till tap is \$85, paid in advance to the sheriff. You must know the name and address of the business. If there isn't enough money in the cash register to pay the judgment debt, you'll have to request subsequent till taps and be prepared to pay another fee each time the sheriff goes back.
- **Put a "keeper" in the debtor's business—** If the judgment debtor is a business, the sheriff will, for a fee, remain in the judgment debtor's business establishment and take all the funds that come in until the judgment is paid. The **keeper** can collect cash, checks, and bank credit card drafts. You'll need the name and address of the business. Complete a Writ of Execution (Form EJ-130), have the clerk issue it, and take it to the sheriff. Instruct the sheriff in writing that you desire to put a keeper in the business. You will need to pay the sheriff substantial fees up-front. If the debtor closes the business while the sheriff is there, you'll have to pay another fee each time the sheriff goes back.
- **Conduct a judgment debtor's examination—** In an examination of a judgment debtor, the judgment debtor is ordered to appear in court to answer your questions about the existence, location, and amount or value of the judgment debtor's salary, other income sources, bank accounts, tangible property, and anything else that could be used to generate proceeds to pay the judgment. If you wish, you can also subpoena the debtor's bank books, property

Collecting or Satisfying the Judgment (page 4 of 5)

deeds, paycheck stubs, and similar documents and require the judgment debtor to bring them to the hearing. At the examination, you may have the judge order the judgment debtor to turn over any assets in the judgment debtor's possession. You'll need to complete and pay a fee for an *Application and Order for Appearance and Examination* (Form EJ-125). If you want the judgment debtor to also bring certain documents, you should also ask the small claims clerk to issue a *Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration* (Form SC-107). The Application and Order for Appearance and Examination (and the subpoena if you want to serve that too) must be served on the debtor by the sheriff or a registered process server, or by a private person specially appointed by court order at the judgment creditor's request. The judgment debtor must reside or have a place of business within 150 miles of the court. If you do not know where the judgment debtor currently resides, see discussion on "Locating the Other Party" on page 18.

- **Suspend the judgment debtor's driver's license**—If you obtained a judgment for \$750 or less in an auto accident case and the judgment isn't paid within 30 days after the judgment becomes final, you may want to consider having the debtor's driver's license suspended for 90 days. You must complete DMV Form DL17. If your judgment is for more than \$750, you may have the license suspended indefinitely until the defendant pays the judgment. You do this by completing DMV Form DL30. You can view and print these forms by visiting the DMV's Web site at www.dmv.ca.gov, or obtain them from local offices of the Department of Motor Vehicles (DMV). For further information, call the DMV's Civil Judgment Unit at (916) 657-7573.

Prohibited Debt Collection Practices

Debtors are protected by Federal and California statutes and court decisions that create liability for certain abusive or unfair debt collection tactics. Debt collection agencies and businesses that regularly collect their own debts are generally prohibited from engaging in unfair or deceptive practices and from making false or misleading statements to collect a consumer debt. It is unlawful for such a collector to harass a consumer debtor, to request more than basic location information about the debtor from another person, to tell the debtor's employer or others that the debtor owes a debt (except in the course of wage garnishment proceedings), or to contact the debtor before 8 a.m. or after 9 p.m., or at any inconvenient time or place.

If you have questions or concerns regarding permissible debt collection activities, contact your small claims adviser, consult an attorney, or call the Federal Trade Commission (FTC) at its toll-free number, 1-877-FTC-HELP ((877) 382-4357). You may file a complaint at the FTC's Web site at www.ftc.gov, or with the California Attorney General's Public Inquiry Unit at www.ag.ca.gov.

Once the Judgment Debt is Paid

After the judgment debtor has paid the judgment debt in full (or a lesser amount if the parties agree to it), the judgment creditor must sign the short Acknowledgment of Satisfaction of Judgment portion of the Notice of Entry of Judgment (Form SC-130) and file it with the small claims court. Since completing this form is like giving a receipt, it's needed to end the case. If you have lost that document, print out a Notice of Entry of Judgment (Form SC-130) or an Acknowledgment of Satisfaction of Judgment (Form SC-290) at the Judicial Council's self-help Web site at www.courtinfo.ca.gov.

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Collecting or Satisfying the Judgment (page 5 of 5)

After the Judgment...**COLLECTING OR SATISFYING THE JUDGMENT**

If the judgment creditor has recorded an **Abstract of Judgment-Civil and Small Claims** (Form EJ-001) (see page 40) in any county where the judgment debtor owns real property, the longer Acknowledgment of Satisfaction of Judgment (Form EJ-100) must be used when payment in full is received. The judgment creditor must sign it before a notary public, and the signed and notarized document must be recorded with the county recorder of that county.

If the judgment debtor has paid the judgment in full and the judgment creditor doesn't complete and file an Acknowledgment of Satisfaction of Judgment

(Form EJ-100) with the court after the judgment debtor has requested it, the judgment debtor may ask the small claims court for help. If sufficient proof of payment is provided—for example, a cash receipt signed by the judgment creditor, or a canceled check or money order made out to and endorsed by the judgment creditor—the small claims court can issue an Acknowledgment of Satisfaction of Judgment (Form EJ-100). If a judgment creditor does not file an Acknowledgment of Satisfaction of Judgment (Form EJ-100) within 14 days after receiving a written request by a judgment debtor, the judgment creditor is liable to the judgment debtor for any resulting losses and a monetary penalty.



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Glossary of Terms

GLOSSARY OF TERMS

ALL FORM NUMBERS REFER TO OFFICIAL JUDICIAL COUNCIL FORMS

Abstract of Judgment (Form EJ-001)—A document issued by the clerk of the small claims court. When recorded by a county recorder, it places a lien on any real property owned by the judgment debtor in that county.

Acknowledgment of Satisfaction of Judgment (Forms EJ-100, SC-290)—A form that the judgment creditor must complete, sign, and file with the court as soon as the judgment is fully paid.

Agent for service of process—A person or legal entity that a corporation or other business entity designates as its agent for receipt of documents constituting service of process. Service on the agent is as effective as service on the entity authorizing the service.

Appeal—New hearing of all of the claims by a different judge of the superior court. See Request to Correct or Vacate Judgment (Form SC-108).

Application and Order to Produce Statement of Assets and to Appear for Examination (Form SC-134)—A judgment creditor's request for an order directing the judgment debtor to come to court to answer questions, and (if so requested) to bring described documents.

Application for Earnings Withholding Order (Wage Garnishment) (Form WG-001)—A form that a party who wins the case must complete and file with the small claims clerk to enforce a judgment against the losing party's earnings.

Assignee—A person or business that stands in the place of the original creditor. A debt collection agency is an assignee. Assignees can't sue in small claims court.

Authorization to Appear on Behalf of a Party (Form SC-109)—A form that a representative of a party (such as a corporation or a person in jail) must complete and file with the judge at a hearing in which the representative will represent that party.

Bank levy—Enforcement of a judgment by resort to the judgment debtor's checking or savings account at a bank, savings association, credit union, or other financial institution. For this to occur, a Writ of Execution and the judgment debtor's written instructions must be obtained from the court and delivered to a sheriff or other enforcement officer.

Claim of defendant—A claim filed by a defendant against the plaintiff who has started the lawsuit. (See Cross Claim and Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120)).

Claim of Exemption (Forms WG-006, EJ-160)—A document filed by the judgment debtor that lists the property that the judgment debtor claims is exempt from execution and therefore can't be taken by a sheriff or other enforcement officer to pay the judgment.

Claim splitting—Dividing a claim and filing two lawsuits instead of one, for the purpose of staying below the upper limits on amounts that can be sought in small claims court. Claim splitting is prohibited. The entire claim must be asserted and resolved.

Claimant—A person (including both a plaintiff and a defendant) who asserts a claim.

Conditional judgment—A decision whose effect depends on an election to be made after the hearing by one or both of the parties (such as a judgment providing that one party must either pay to the other party the fair value of certain property, or return the property itself to the other party).

Costs (or court costs)—Official fees and charges that a party pays to file a case or obtain documents needed to enforce a judgment. The judgment may require a losing party to pay costs incurred by the prevailing party, but only if they (a) are of a kind allowed by law, (b) were necessarily incurred, and (c) are reasonable in amount. Allowable costs do not include claims for travel expenses or loss of time to prepare for or attend the hearing.

Cross claim (or counter claim)—A claim of the defendant against the plaintiff. A claim of the defendant is usually heard and decided at the same hearing as the plaintiff's claim. It need not relate to the plaintiff's claim.

Damages—Money claimed or awarded in court, equal to the dollar value of the claimant's losses.

Default—If a party to an action does not attend the hearing it is said that the party is in "default." If the judge determines that the non-appearing party was properly notified of the action, the judge must consider the plaintiff's evidence and decide the case in the defendant's absence. The judgment in such a case is sometimes called a "default judgment."

Glossary of Terms (page 2 of 4)

GLOSSARY OF TERMS | D – N

Defendant—The person or other entity that is being sued.

Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120)—The form that is completed and filed by a defendant who asserts a claim against the plaintiff.

Defense—Facts and argument that demonstrate and explain why a person asserting a claim is not lawfully entitled to receive the money or other relief that the claimant is requesting.

Dismiss with prejudice—To set aside the present action, without the claimant having a right to file another lawsuit on that claim. A dismissal with prejudice ends the case.

Dismiss without prejudice—To set aside the present action, but leave open the possibility of another lawsuit on the same claim.

Disputant—A person who is involved in a dispute with another person, whether an actual or prospective plaintiff or defendant.

Enforce—Legal enforcement procedures to obtain money to pay a judgment, as by a bank levy or wage garnishment. A Writ of Execution or Abstract of Judgment is usually needed.

Exempt assets—Property and income of a judgment debtor that is legally protected from being forcibly taken to pay a judgment debt. (See Claim of Exemption (WG-006) EJ-160)).

Fictitious Business Name [Declaration] (Form SC-103)—A form stating that the business has complied with California's fictitious business name registration laws. A "fictitious business name" is a name, other than the business owner's true name, under which the business operates.

Financial Statement (Form EJ-165)—A form that a person claiming an exemption of earnings must complete and file.

Good cause—A sufficient reason.

Guardian ad litem—A person appointed by the court to represent a minor (a person who is under age 18 and not legally emancipated). The representative is usually the minor's parent. A guardian ad litem may also represent a person who is mentally incompetent.

Guarantor—An individual or company that has agreed to be responsible for the acts or omissions of another.

Interest—An amount added to certain kinds of debts when payment of the debt is delayed. Interest is recoverable only if specifically awarded by the judge hearing the case.

Judgment—The decision of the judge. It usually states the amount the judgment debtor must pay the judgment creditor, and may include other terms such as an award of pre-judgment interest and court costs, an authorization to pay the judgment debt by installments, and provisions on calculation and payment of post-judgment interest.

Judgment creditor—The party (the plaintiff or the defendant) in whose favor a judgment has been awarded.

Judgment debtor—The party (the plaintiff or the defendant) against whom the judgment has been awarded.

Judgment Debtor's Statement of Assets (Form SC-133)—A form, completed by the judgment debtor, that lists the judgment debtor's assets and sources of income. The judgment debtor must complete and transmit this form to the judgment creditor within 30 days after receiving notice of the court's decision.

Keeper—A levying officer (usually a sheriff) who takes over the operation of the judgment debtor's business for a limited duration to obtain cash and credit card receipts for payment to the judgment creditor to satisfy the judgment.

Mediation—A process in which a neutral third person—a "mediator"—helps the parties to a dispute discuss their problem and work out their own mutually acceptable solution.

Monetary limit (or "jurisdictional limit")—The most that a plaintiff or defendant may seek in a small claims court action. With important exceptions, the monetary limit is \$5,000.

Motion—A written request to the court.

Natural person—An individual person, as distinguished from a legal entity such as a corporation or limited liability company. With certain exceptions, the monetary limit on a claim by a natural person is \$7,500.

Glossary of Terms (page 3 of 4)

GLOSSARY OF TERMS | N – R

Notary public—A person whose most common function is to certify that the signature of the person signing a document is the signature of the person named in the document.

Notice of Appeal (Form SC-140)—A request for a new hearing of a small claims court case before a different judge of the superior court.

Notice of Entry of Judgment (Form SC-130)—A form notifying the parties of the judge's decision after a hearing.

Notice of Motion to Vacate Judgment (Form SC-135)—A request to vacate (set aside) a judgment issued at a hearing at which the person making the request was not personally present. A request of this kind is only granted upon a showing of good cause.

Order to Appear for Examination (Form SC-134)—A court order instructing the judgment debtor to appear in court at a specified date and time to answer questions about his or her property and sources of income. (The full title of this form is Application and Order to Produce Statement of Assets and to Appear for Examination (Form SC-134).)

Party—A person named as a plaintiff or a defendant in a small claims court action (may be a natural person, or a legal entity such as a corporation or limited liability company).

Personal service—Handing a copy of court papers directly to the person to be served.

Plaintiff—The individual person or entity who files the lawsuit.

Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100)—The form that the plaintiff completes and files to begin a lawsuit in a small claims court. A copy must be served on each defendant. This form is ordinarily called the "plaintiff's claim."

Pro tem judge—See temporary judge.

Process—Court papers that notify a person that the judgment debtor is being sued. In small claims court, this might be the Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100), or the Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120).

Process server—A person who serves court papers on a party to a lawsuit. This may be an adult relative or friend, a professional process server, or a county sheriff (where available).

Proof of Service (Small Claims) (Form SC-104)—A form that is completed and signed by the person who has served court papers on a party, stating when, where, and on whom service of process was made.

Proof of Mailing (Substituted Service) (Form SC-104A)—A form that is completed and signed by the person who has effected service of process on a party using substituted service.

Request for Dismissal (Form CIV-110)—A form filed with the small claims court if a settlement or agreement is made between the parties before commencement of the small claims court hearing. The dismissal cancels the hearing and stops the proceeding. (See dismiss without prejudice and dismiss with prejudice.)

Request to Correct or Vacate Judgment (Form SC-108)—A request to the small claims court to correct either a clerical error or an inadvertent judicial error in a judgment issued by the small claims court. Compare Appeal.

Request to Make Payments (Form SC-220)—A form that is completed and filed by the judgment debtor (along with the judgment debtor's Financial Statement (Form EJ-165)), if the parties can't agree on an installment payment plan. The judgment creditor may oppose or agree to the judgment debtor's request to pay by installments using Response to Request to Make Payments (SC-221).

Request to Pay Judgment to Court (Form SC-145)—A form completed by the judgment debtor seeking authorization to pay the judgment directly to the court, rather than to the judgment creditor.

Request to Postpone Small Claims Hearing (Form SC-110)—A form that either party may file to seek a postponement of the hearing.

Request to Waive Court Fees (Form FW-001)—A form that must be completed by a party who desires the court to waive (forgive) filing fees or court mailing costs. Eligibility rules are provided in an Information Sheet on Waiver of Court Cover Fees and Costs (Form FW-001-INFO).

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Glossary of Terms (page 4 of 4)

GLOSSARY OF TERMS | S – W

Satisfaction of Judgment—See Acknowledgment of Satisfaction of Judgment (Form SC-290, EJ-100).

Service of process—Usually involves delivering to a party who is sued a copy of the plaintiff's claim (Form SC-100). Other methods also may be used. See Proof of Service (Form SC-104); What is "Proof of Service?" (Form SC-104B); How to Serve a Business (Form SC-104C).

Settlement—An agreement reached by the parties to a dispute—often involving a compromise of one or more claims—that resolves the dispute. It typically states the terms (including total amount and payment dates) to which the parties have agreed.

Sheriff—A county law enforcement officer whose duties include enforcing court judgments—for instance, by seizing and selling a judgment debtor's assets (pursuant to a Writ of Execution (Form EJ-130) and the judgment creditor's written instructions) and transmitting the proceeds of sale to the judgment creditor. In some counties, marshals and constables enforce court judgments.

Small claims adviser—Someone who is employed by the county or who volunteers his or her services to advise and assist parties and prospective parties to small claims court actions, other than by representing them in court. Unless exempt, each county must provide individual, personal advisory services to small claims disputants at no charge.

Small claims clerk—A court employee whose duties include a wide array of clerical, administrative and record keeping services to the small claims court and the public.

Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration (Form SC-107)—An order for a person to appear in court and (if applicable) bring described documents. This is typically called a "subpoena."

Statement of Assets—See Judgment Debtor's Statement of Assets (Form SC-133).

Statute of limitations—The period of time following a transaction or occurrence within which a lawsuit must be filed in order to avoid loss of the claim.

Stipulate—To agree to something; to give one's consent.

Subpoena—A court order that requires a named person to come to court to testify as a witness. (See Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration (Form SC-107).) A party to a small claims court action may request the small claims clerk to issue a subpoena.

Substituted service—Service of process by delivering the court papers to someone other than the party, mailing copies to the party at that address, and complying with other statutory requirements.

Temporary judge—An attorney who volunteers his or her time to hear and decide small claims court cases. Also called a pro tem judge.

Testify—To tell something to the judge in court. A person who testifies is a witness. What the person says in court is called testimony.

Venue—A county in which an action may be filed. In large counties, the county is divided into areas of court location, and the action must be filed in a court located within the proper area of court location within that county.

Wage garnishment—A judgment enforcement procedure that requires the employer of a judgment debtor to withhold a portion of the judgment debtor's wages to satisfy the judgment. For this to occur, a judgment creditor must complete and file an Application for Earnings Withholding Order (Wage Garnishment) (Form WC-001).

Waive—To abandon or give up a claim or a right or to forgive some other requirements.

Witness—A person who comes to court to tell the judge something that relates to the case—that is, to testify. What the person expresses to the judge in court is called testimony.

Writ of Execution (Form EJ-130)—A document, issued by the small claims court clerk at the judgment creditor's request, that directs the sheriff of a particular county to enforce a judgment.

Checklist

CHECKLIST

Before the Hearing—For the Plaintiff

- 1. Contact the other party to discuss the issues and try to resolve the problem.
- 2. Offer to resolve the problem by mediation or other informal dispute resolution methods.
- 3. Familiarize yourself with small claims court procedures. Read this handbook.
Talk to a small claims adviser. Attend a court session.
- 4. Determine the exact amount in dispute, and how it's calculated.
- 5. Identify a court where venue is proper.
- 6. File a Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100), and pay the filing fee. If you're a business, also file a Fictitious Business Name [Declaration] (Form SC-103) if appropriate.
- 7. Arrange for service of process on each defendant sufficiently in advance of the hearing as required. Make sure that the Proof of Service (Small Claims) (Form SC-104) is completed and returned to the court the required number of days before the hearing.
- 8. Prepare for the court hearing. Organize your thoughts. Collect evidence.
Talk to witnesses.
- 9. Keep communication open. Try to resolve the dispute with the other party before the hearing.
- 10. Attend the hearing and present your case.

Before the Hearing—For the Defendant

- 1. Determine whether you may be legally obligated to pay the claim, and, if so, why. Consult a small claims adviser or an attorney to determine how much, if anything, you owe.
- 2. Contact the plaintiff to discuss the issues and try to resolve the dispute.
- 3. Suggest or agree to try mediation or some other informal dispute resolution method.
- 4. Familiarize yourself with small claims court procedures. Read this handbook.
Talk to a small claims adviser. Attend a court session.
- 5. If you have a claim against the plaintiff, consider asking the court to resolve it at same hearing. (Complete and file a Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120).)
- 6. Prepare for the court hearing. Organize your thoughts. Collect evidence.
Consult witnesses.

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Checklist (page 2 of 2)

CHECKLIST

Before the Hearing—For the Defendant (continued)

- 7. Keep communication open. Try to resolve the dispute before the hearing.
- 8. If you and the other party haven't met and discussed the claim, ask the court to postpone the hearing to let you and the other party meet and resolve the dispute informally if you can.
- 9. If you owe something, try to pay it, or to work out a payment plan before the hearing.
- 10. Try to avoid having a court judgment entered against you, since it probably will appear on your credit record for a long time, even after you've paid it.
- 11. Attend the hearing and present your defense.

After the Hearing—Plaintiff and Defendant

- 1. Read the Notice of Entry of Judgment (Form SC-130) that you have received from the small claims court. It tells you and the other party how the judge ruled. If you discover an error in the judgment, you may file a Request to Correct or Vacate Judgment (Form SC-108). Either a plaintiff or a defendant may file such a request.
- 2. If either of the parties was unable to attend the hearing for good cause, the party who did not appear may file a Notice of Motion to Vacate Judgment (Form SC-135) to request a new hearing in the small claims court.
- 3. Judgment debtor—If the other party asserted a claim asserted against you, and you appeared at the hearing, and the judge decided against you, and there is good reason for you to believe that the judge made a mistake, you may file a Notice of Appeal (Form SC-140) to obtain a new hearing before a different judge.
- 4. Judgment debtor—You may comply with the judgment (for instance, by payment to the judgment creditor or the court). If you can only make weekly or monthly payments, the court probably will issue an installment payment order if you request it by filing a Request to Pay Judgment in Installments (Form SC-106).
- 5. Judgment debtor—If you haven't paid the judgment in full within 30 days after receipt of the Notice of Entry of Judgment (Form SC-130), complete the Judgment Debtor's Statement of Assets (Form SC-133) that accompanied the Notice of Entry of Judgment (Form SC-130) and send it to the judgment creditor.
- 6. Judgment debtor—After the judgment creditor has received full payment, make sure that the judgment creditor files an Acknowledgment of Satisfaction of Judgment (Form SC-290) with the small claims court.
- 7. Judgment creditor—File an Acknowledgment of Satisfaction of Judgment (Form EJ-100) with the court when the judgment debt is paid, or take steps to collect the judgment.

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