

STATE OF CALIFORNIA • DEPARTMENT OF CONSUMER AFFAIRS

the dos and don'ts of

USING THE SMALL CLAIMS COURT



Arnold Schwarzenegger
GOVERNOR
STATE OF CALIFORNIA

George Valverde
Interim Secretary
STATE & CONSUMER SERVICES AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

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USING THE SMALL CLAIMS COURT

Dear Consumer:

The California Department of Consumer Affairs regulates more than 2.3 million practitioners in more than 230 professions in order to ensure fair marketplace practices and the protection of California consumers.

We know, however, that sometimes disputes occur. When that happens, we encourage consumers to contact the business directly to discuss a resolution. If a consumer and business are not able to resolve their differences, the Department of Consumer Affairs offers various consumer complaint mediation programs to provide additional assistance. Information about Department programs is available at www.dca.ca.gov, or you can call (800) 952-5210. In most cases, disputes can be settled in an equitable and timely way.

When consumers are not able to work out a solution with a business, Small Claims Court is an effective, fair option.

We hope you find this guide to using the Small Claims Court helpful.



California Department of Consumer Affairs

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Introduction

Many disputes that you haven't been able to resolve by other means can be decided in small claims court. Some people think that 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 the questions people frequently ask, and it describes the procedures used in most small claims courts.

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

Small claims clerks can answer many kinds of questions and provide the forms you need. However, the law prohibits them from giving legal advice. Most counties provide small claims advisors, who can:

- ◆ Explain small claims 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

Small claims advisors can help both plaintiffs and defendants. Their assistance is provided at no charge.

Throughout this handbook, legal terms and the names of forms are printed in ***bold italics*** and are included in the Glossary on pages 32–34.

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Department of Consumer Affairs

Legal Affairs Division

Doreathea Johnson

Deputy Director

Richard A. Elbrecht

Supervising Attorney

Albert Y. Balingit

Staff Counsel

Communications & Education Division

Mike Luery

Deputy Director

Rick Lopes

Editing

Angelica Anguiano

Graphic Design

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Basic Considerations and Questions

What Is Small Claims Court?

The small claims court is a special court in which disputes are resolved inexpensively and quickly. The rules are simple. The hearing is informal. Attorneys are not allowed. The person who files the lawsuit is the **plaintiff**, and the person being sued is the **defendant**.

The claims are limited to disputes up to \$5,000. However, a claimant can't file more than two small claims court actions for more than \$2,500 anywhere in this state during any calendar year. For example, if you file a claim for \$3,000 in February of 2002, and another claim for \$4,000 in March of 2002, you can't file another claim for more than \$2,500 in any small claims court until January 1, 2003. However, you can still file as many claims as you wish for \$2,500 or less.

The filing fee is only \$20. It is paid by the plaintiff to the clerk of the small claims court. (Multiple filers — claimants who have filed 13 or more claims within the previous 12 months — pay \$35 per claim.)

Since the limits on the claim and the filing fees are subject to change by legislative action, you should check with your local court or **small claims advisor** or small claims clerk to determine the correct filing fees and the current limits on claims.

Small claims courts can order a defendant to do something, as long as a claim for money is also part of the suit. The court can cancel a contract. The court can order your neighbor to pay you for your lawn mower or to return it promptly.

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 fender and refuses to pay for repairs
- ◆ Your new TV will not work, and the store refuses to fix 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 lent money to a friend, and he or she refuses to repay it

You don't need to be a United States citizen to file or defend a case in small claims court. If you don't speak English and will have difficulty presenting your case in court, ask the court clerk about having an interpreter attend the hearing with you. If you can't afford an interpreter, ask if one can be provided by the court. The interpreter can't be an attorney and can't represent you. If the court doesn't provide interpreters, you should bring someone who speaks English and ask the court to allow that person to be your interpreter.

In most small claims courts, cases are heard within 30–40 days after filing of the plaintiff's claim. However, cases against defendants who live outside the county are heard within 60–70 days after the filing of the plaintiff's claim. Most cases are heard on weekdays, but some courts also have evening and Saturday sessions.

Is Small Claims Court Your Best Option?

Before filing a small claims case, it's important to decide whether small claims court is the best place 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 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 will 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 on your side, you may get more favorable results 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**. 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 or may simply refuse to pay. Enforcement procedures are available, but these require extra effort and money on your part.

In deciding whether to file a small claims case, remember that you can't **appeal**. By choosing the small claims court to resolve the dispute, a plaintiff gives up the right to have another court review the small claims judge's decision. So if you should lose, that's probably the end of the case for you. However, the person or entity you sue (the defendant) may appeal the judge's ruling to the superior court, where the entire case will be heard again.

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 filing suit, why not try? At the very least, you should ask the defendant for the legal remedy that you hope the judge will award you before you file your small claims court case.

Are you able to give the other person some added incentive to perform? If he or she owes you money, you might consider offering to accept less than the full amount, if it is paid now. 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 a court hearing and results in a judgment against you, the amount that 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 you to pay

the judgment by weekly or monthly installment payments.)

Have You Considered Mediation?

Mediation is a procedure 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 that way. Disputes involving neighbors and family members are particularly well suited for mediation because of the relationships between the parties.

If you decide that mediation (rather than small claims court) might resolve the 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 Consumer Information Center of the California Department of Consumer Affairs at (800) 952-5210 outside the Sacramento area, or (916) 445-1254 in the Sacramento area. Hearing-impaired persons may call TDD (800) 326-2297 or, in the Sacramento area, TDD 322-1700.

Where Can You Obtain More Information and Advice?

- ♦ **Small Claims Advisor** — A small claims advisor gives free advice to small claims disputants. The law requires each county to provide a small claims advisory service. Some advisors are available only by phone, while others may be visited in an office setting. Some advisory services provide recorded advice by phone. All small claims advisors provide information regarding the procedural rules, and some will also assist you in preparing your case. To locate your local advisor, contact the local small claims clerk or look in your telephone directory.

◆ **Publications** — Small claims court procedural rules and basic consumer laws are summarized in a publication entitled *Consumer Law Sourcebook for Small Claims Court Judicial Officers*. While the three-volume *Sourcebook* is written for judges and small claims advisors, 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.



◆ **Internet** — The Internet offers many sources of information. If you don't have access to the Internet at home, visit your public library. The Department of Consumer Affairs offers a variety of fact sheets and information on landlord-tenant issues, auto repairs, contractor hiring, and the professions and occupations regulated by the department: www.dca.ca.gov. The Judicial Council offers advice on the small claims process, and downloaded court forms: www.courtinfo.ca.gov. The Consumer Information Center of the U.S.. General Services Administration: www.pueblo.gsa.gov. *Consumer Reports* offers links to numerous other Web sites: www.consumerreports.org.

◆ **Attorneys** — An attorney may be able to advise and assist you in a complex case. 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. The attorney should be familiar with the *Consumer Law Sourcebook for Small Claims Court Judicial Officers*. You can't have the attorney represent you in court. Except in rare instances, attorney consultation fees and fees charged for other private assistance will not be recovered as costs.

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. A person or an entity (for

example, a corporation) that files a small claims action is called the plaintiff. The party who is sued is called the defendant.

An individual can sue another individual or a business, but may not file a claim against a federal agency. Businesses, in turn, can sue individuals or other businesses. 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.

In order to file or defend a case in small claims court, you must be at least 18 years old and be mentally competent. Persons who are under 18 or who have been declared mentally incompetent by a court must be represented by a **guardian ad litem**. For a minor, the representative is ordinarily one of his or her parents. The court clerk or small claims advisor can explain how to have a guardian ad litem appointed.

If the court determines that a party can't properly present his or her claim or defense and needs assistance, the court may allow another individual to assist that party. The individual must provide assistance only — the individual's actions must not constitute representation.

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 collection agencies or insurance companies) may not act as representatives. Self-representation is usually required. There are, however, several exceptions to this general rule:

◆ **Corporation or other legal entity** — A corporation or other legal entity (but not a natural person) can be represented by a regular employee, an officer, or a director, and a partnership can be represented by a regular employee or a partner, but these representatives may not be attorneys or others whose only job is to represent the party in small claims court.

◆ **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 principally to manage the property, or this statement may be in a written declaration.

- ◆ **Sole proprietorship** — A sole proprietorship (such as a physician) can be represented by an employee, officer, or director *if* the claim can be proved or disputed by evidence of an account *and* there is no other issue of fact in the case. If both of these requirements are met, the claimant's representative 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.

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 on behalf of others four or more times during the calendar year.

- ◆ **Nonresident real property owner** — A nonresident 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, or who is transferred out of California for more than six months after the claim arose, can be represented by a non-attorney, and can submit written declarations in

support of his or her claim or defense. For example, a tenant who is on active duty and who 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 and represent the tenant at the hearing against the landlord to recover the security deposit.

- ◆ **Jail or prison** — A person who is in jail or prison may be represented by someone else who isn't an attorney, and may file written declarations in support of his or her claim or defense.

An individual who represents a party to a small claims court action must sign a written declaration — a form provided by the clerk of the small claims court. The declaration must state that the individual signing it is actually authorized to represent the party, and it also 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 declaration 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 declaration 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 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.

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 and 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 oral or in writing, but it's a good idea to do it both ways. Always keep copies of any letters and other written communication. It's wise to send written communication by mail and 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** — to request. The judge will ask you to prove that you're entitled to the amount that you claim. You can receive a judgment only for an amount you can prove. You can prove your claim by using written contracts, warranties, receipts, canceled checks, letters, professional estimates of damage, photographs, drawings, your own statements, and the testimony of witnesses.

Small claims courts have an upper limit — called a **jurisdictional limit** — on the amount of money that a person can claim. The most you can claim is \$5,000, and you can't divide a claim into two or more claims (**claim splitting**) in order to fall within the jurisdictional limit. A claimant can't file more than two small claims court actions for more than \$2,500 anywhere in the state during any calendar year. If your claim exceeds \$2,500, you'll be asked to check the box on the **Plaintiff's Claim and Order to Defendant** form that states that you have filed no more than two actions for more than \$2,500.

If your claim is over the small claims limit, you may file a case in the municipal court or in a consoli-

dated court (the superior court) and either represent yourself or hire an attorney to represent you. Or you may choose to reduce the amount of your claim and **waive** the rest in order to stay within the small claims court's upper limit on claims for damages. Before reducing your claim, talk to a small claims advisor or an attorney. Once the dispute is heard and decided by the small claims court, your right to collect the amount that you waived is lost forever.

It's always wise to ask for the amount that you can prove, because if the defendant doesn't appear, your judgment will be limited to the claim you 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, the maximum claim against a guarantor is \$4,000 if the guarantor charges a fee for its guarantor or surety services, or if the defendant guarantor is the Registrar of the Contractors State License Board because you are suing on a contractor's bond. 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: www.cslb.ca.gov).

Where Do You File Your Case?

It's important to file your case in a court in the appropriate county. In legal terms, you must file in a proper **venue** (place). As a general rule, a case must be filed in the county where the defendant resides. This general rule promotes fairness, since it's usually easier for a defendant to defend a case if it's filed where he or she resides.

When you file your case, you must state on the **Plaintiff's Claim and Order to Defendant** form why the court where you filed your claim **is**



the proper court. In cases against defendants who live outside the county, the judge must always inquire and determine if the court is a proper court for that case. If the judge finds that the case wasn't filed in a proper court — in legal terms, that venue isn't proper — the judge must **dismiss** the case **without prejudice** unless all defendants are present and agree that the case may be heard.

The following are some exceptions to the general rule that a case must be filed and heard in the county where the defendant resides:

- ◆ **Automobile accidents** — The claim may be heard in the appropriate county where the accident occurred **or** where the defendant resides.
- ◆ **Contract** — The claim may be heard in the county where the contract was entered into, where the contract was to be performed by the defendant, or where the plaintiff is entitled to receive payment, 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 (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 the 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 goods, consumer services, or consumer credit. Suit 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).

The exceptions to the general rule that requires filing the case in the county where the defendant resides are complex and difficult to understand. If you intend to file a claim against a defendant out-

side the county where the defendant resides, you should consult with your local small claims advisor to determine if your case falls within an exception to the general rule.

If there is more than one county where your claim can be properly filed, you may be able to select the location that is most convenient for your witnesses. If you file in a county in which the defendant doesn't reside, you must give the defendant a longer period of time for responding to your notice of the claim, and it will take longer for your case to get to court for hearing.

Special rules govern venue in 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, or Los Angeles. Also, a defendant sued by a state agency can have the case moved to whichever of the Attorney General's offices is closest to the residence of the defendant.

How Quickly Must You File Your Case?

Most claims must be filed within a set time limit, called a **statute of limitations**. 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 the operation of the statute of limitations was suspended and the time limit extended.

The statute of limitations prevents the filing of cases that are old. Memories fade, witnesses die or move away, and once-clear details tend to blur together. As a general rule, you should file your case as soon as reasonably possible. Statutes of limitations are generally not less than one year.



Here are some examples of various statutes of limitations:

- ◆ **Personal injury** — One year from the date of the injury. If the injury isn't immediately discovered, one year from the date it is discovered. A minor has one year 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 file a written claim with that entity. For cases involving personal injury and/or damage to personal property, you must file the claim with the government entity within six months. For cases involving breach of contract and damage to real property, you must file the claim within one year. If your claim is rejected by the government entity, you must usually file a court action within six months of the rejection, or you'll lose your right to sue.

Rules governing the statute of limitations 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 have been extended.

You might assume that a contract was an oral contract, which has a limitation of two years, while it is really 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.

What Forms Do You File With the Court?

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 Web site: www.courtinfo.ca.gov. At most courts, the court clerk will give you an Information for Plaintiff sheet that describes small claims court procedures. The court clerk will ask you to complete and sign a ***Plaintiff's Claim and Order to Defendant*** form. Or you may be asked to complete a ***Plaintiff's Statement***, a local form that the clerk uses to prepare the ***Plaintiff's Claim and Order to Defendant*** form for your signature. In some courts you can file your forms via the Internet.

Businesses that use fictitious business names — for example, “Joe Jones doing business as Joe's Garage” — also must submit a ***Fictitious Business Name Declaration*** form that states the business has complied with California's fictitious business name registration laws.

You must pay the filing fee when you submit your papers. If you can't afford this cost, you may request the court to waive those fees. You can request a court waiver by completing and filing an ***Application for Waiver of Court Fees and Costs***. For information on the standards used by the court in ruling on such applications, ask the court clerk for the Judicial Council's ***Information Sheet on Waiver of Court Fees and Costs***.

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 Do You Name the Defendant?

Try to name the defendant or defendants correctly on your ***Plaintiff's Claim and Order to Defendant*** form. In order for a claim to be enforced, the defendant must be named correctly. However, 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 or later.

If you're not sure which of several possible defendants is responsible for your claim, you should name each person you believe is liable. The court will decide whether the people you named are proper defendants and are 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."
- ◆ **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." If you win your case, you can enforce your court judgment against assets (e.g., a checking account balance) in the names of either John A. Smith or Smith Carpeting.
- ◆ **A business owned by partners** — Write the name of both the business partnership and the individual partners. Example: "Suburban Dry Cleaning" and "John A. Smith and Mary B. Smith." If you win your case, you'll be entitled to collect from the assets of either the partnership or an individual partner. They should be sued as "John A. Smith and Mary B. Smith, individually and doing business as Suburban Dry Cleaning."
- ◆ **A corporation** — Write the exact name of the corporation, as you know it, on the claim form. You need not name an individual. Example: "Fourth Dimension Graphics, Inc., a corporation." If the corporation operates through a division or subsidiary, both should be listed. Example: "Middle Eastern Quality Petrol, a corporation, individually and doing business as Fast Gas."



- ◆ **A vehicle accident defendant** — If you're suing to recover your losses 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."

You also need the defendant's correct address so that he or she can be notified of the case. If you're suing a local business or a corporation, you can find the defendant's correct name and address in the telephone directory or the city directory or by checking the city's business licensing bureau, the city or county tax assessor's office, or the county clerk's fictitious business name index. If the defendant lives outside of your area, try www.smartpages.com or other online phone directories.

The Secretary of State's Corporate Status Division can give you the names and addresses of persons who may be served on behalf of corporations that are doing business in California. (See "Determining a Corporation's Directors and Agents for Service of Process" on page 16.)

In order to amend your claim if it hasn't yet been served, go to the small claims clerk's office and ask to have an amendment sheet added to the claim you filed. Be sure to bring your copy of the original claim form with you. If any of the defendants have been served on the original claim, you'll need to submit a letter to the court requesting the court's permission to amend your claim.

In order to delete one or more defendants from your claim, use the dismissal form that you received with your claim. 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?

The ***Plaintiff's Claim and Order to Defendant*** form, when it is completed and issued by the court clerk, tells the defendant the basis for the claim and the date, time, and place of the hearing.

After you have filed your claim in the small claims court and obtained a hearing date, you must arrange for someone to give each defendant a copy of the ***Plaintiff's Claim and Order to Defendant*** form that you filed. This must be done before your case can be heard. Giving this document to a defendant is called ***service of process***. 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 more advance notice than is legally required.

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 nonresident 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 nonresident defendant may send a representative or submit an affidavit to defend the claim.)
- ♦ **A nonresident 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.

Since out-of-state corporations and partnerships that operate here usually designate a California agent for service of process, you may be able to meet the in-state service requirement by serving the corporation's agent for service of process. To obtain that information, call (916) 653-7315 (recorded message).

You can have your ***Plaintiff's Claim and Order to Defendant*** form 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 about \$6.00. 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 ***Plaintiff's Claim and Order to Defendant***, you should call the small claims clerk to determine that 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 ***Plaintiff's Claim and Order to Defendant*** on the defendant.

- ♦ **Personal service** — A ***process server***, someone other than yourself who is 18 years or older and not a party to the lawsuit, may give a copy of the ***Plaintiff's Claim and Order to Defendant*** to the defendant. Most plaintiffs use a professional process server, or the sheriff where available, as a process server. You are entitled to reasonable reimbursement from the defendant for the cost of service if you win the case. If you decide not to use a professional process server or the sheriff, and have a friend serve the papers, make sure that the papers are properly served on the defendant. It's not enough merely to drop the papers at the doorstep or serve a member of the household. Service of process is ordinarily accomplished by delivering a copy of the ***Plaintiff's Claim and Order to Defendant*** to the following person:



- **In the case of an individual defendant** — To the defendant in person, or to someone that the defendant has authorized to receive service.
 - **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, (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.
- ♦ **Substitute service** — A process server may also leave a copy of the *Plaintiff's Claim and Order to Defendant* at the defendant's home or usual place of business. It must be left in the presence of a competent member of the household who is 18 years or older, or with the person in charge at the defendant's place of business during normal office hours. In addition, the process server must tell the person being served what the papers are for, and a copy of the papers must also be mailed to the defendant by first class mail at the place where the papers were left. Substitute service is considered to be completed on the *tenth* day after mailing. You must state the name of the defendant and the name of the person who served the papers on the *Proof of Service* form and return this to the clerk of the court.
- ♦ **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, 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 court clerk or small claims advisor 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. Personal service must be completed 10 days before the hearing if the defendant lives or has his or her principal place of business in the same county where the court is located, and 15 days before the hearing if the defendant lives or has his or her principal place of business outside the county. If you used substitute service after service on the household or business, the *Plaintiff's Claim and Order to Defendant* form must be mailed at least 20 days before the hearing for in-county defendants, and 25 days for out-of-county defendants.

If you don't serve the defendant within these explicit time limits, the defendant may ask for a postponement and, in most cases, a postponement will be ordered. In counting the days, don't count the day in which service was completed, but do count the date of the hearing.

Locating the Other Party

You need the defendant's address for a number of 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, when you file your case in small claims court, you'll need an address to give to the process server to serve the ***Plaintiff's Claim and Order to Defendant***. 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.

Directories

The most obvious source of addresses, and one often overlooked, is the telephone directory. For defendants living outside your area, try www.smartpages.com or other online phone directories. 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.

County Assessor's Office

If the person you're seeking owns 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.

Change of Address

If the person has moved, the Postal Service will not give out the new address for a private individual to another private individual merely upon written request. The new address for a business is available for a \$3.00 fee. However, once you have filed your lawsuit, you may obtain the forwarding address of a person or a business for the purpose of serving legal process using the steps listed below.

Obtaining Post Office Box Records

The Postal Service will give you the street address of the holder of a post office box ***if*** the box is being used to solicit or engage in business with the public. You should visit or write the post office that services the box and provide an advertisement or other evidence that shows that the box is being used for a business purpose.

The Postal Service also will give you a forwarding address or the street address of a post office box for either a business or a person ***if*** you can certify that the information is needed to serve that party with court process and that it will be used solely for that purpose. To do this, you should visit or write the post office that services that box and complete a form, which you may pick up at the post office, or submit a written request that includes the following information:

- Your name and address
- The name of the box holder
- The box number
- The zip code
- The fact that you're representing yourself in a legal action
- The name of the court
- The title of the case
- The case number
- A brief description of the nature of the case
- The identity of all other parties to the case
- The fact that the box holder is a party to the case (for instance, defendant or judgment debtor)
- A statement that the information will be used only for serving a court paper (for instance, ***Service of Process*** or ***Order to Appear for Examination***)
- The citation of the law (for a ***Service of Process***, CCP Section 116.340, and for an ***Order to Appear for Examination***, CCP Section 708.110). See Post Office Manual Section 352.44, subd. [e].



Locating Sole Proprietorships and Partnerships

The county clerk's office 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. Check the computer listing of the business to obtain the 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. It's usually listed in the county section under the heading "Assessor — County Clerk-Recorder" or "County Clerk."

Locating Partnerships and Limited Liability Entities

The Secretary of State's Web site www.ss.ca.gov also includes records of general partnerships, limited partnerships, limited liability companies, and limited liability corporations. (See "Determining a Corporation's Directors and Agents for Service of Process" below.)

Locating a Business Through the City Clerk's Office

The city clerk's office, tax and permit division, maintains a list of the names and addresses of most persons 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 phone book. It's usually listed in the city section under the heading "Clerk."

Determining a Corporation's Directors and Agents for Service of Process

The Secretary of State maintains a record of the names and addresses of the officers of corporations and their agents for service of process who can be served with the claim in a small claims action. For instructions on how to obtain this information, call

(916) 657-5448 (recorded message). You can download instructions and an order form from the Internet 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 will not release residential addresses to litigants and process servers. The DMV will release residential addresses in the following situations:

- ◆ **To courts and other governmental entities** — 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 their 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** — The 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** — The financial institution must have obtained a written waiver from the individual driver or vehicle owner whose residential address is requested.

The Internet

Many resources exist on the Internet to locate an individual or business. The major browsers have search capabilities if you know an individual's name. Reverse directories now exist online. Most regulatory agencies' Web sites have a directory of their licensees. Some Internet addresses are given in this pamphlet. However, since Internet resources change constantly, you should research the different existing Internet resources.

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 action, and have received an order to appear at a small claims hearing. This means that you're the defendant and are being sued by someone else — the plaintiff. You probably know why you have been 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 and Order to Defendant** form that you have received.

Never ignore an order to appear in court, even if you think the case is wrong, unfair, has no basis, or if you think you were not given the order properly. If you don't appear in court on the proper date and time, the court may hear and decide the case without you, and you may lose the suit by **default**. A **default judgment** may then be entered against you, in your absence, without the judge ever hearing your version or side of the dispute. Your money or property and maybe a portion of your earnings can then be taken legally by the judgment creditor to pay the judgment against you, and your credit record may show that there is a judgment against you. If you're a member of a licensed profession or occupation, the judgment may be listed in the records of the agency that licenses you.

What If You Owe the Claim?

If the plaintiff's claim is valid, you 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'll probably also have to pay the plaintiff's court costs, and possibly interest, in addition to the amount you already owe. The judgment may appear on your credit record, even after you've paid it.

You can either try to reach a **settlement** with the

plaintiff, or let the court decide the case. If you're unable to resolve the dispute directly with the other party, you must appear at the hearing, unless you have received notice of a new court date, a transfer to another court, or some other official action by the court that excuses you from appearing.

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 can clear up. If you believe that you owe the plaintiff something, but don't have the money to pay it now, you can offer to pay the amount that you believe you owe by weekly or monthly payments. If that is the situation, you should take the following steps: (1) ask the plaintiff to dismiss the case without prejudice (which means that the plaintiff can refile the claim if you don't carry out your promises), and (2) enter into a precise agreement for payment that includes the agreement you've made with the plaintiff on each of the following subjects:

- The grand total amount that you agree to pay, including any interest and court costs
- The amount of each installment payment
- The total number of installment payments
- The date (such as "the first of each month") on which each installment payment will be paid
- The exact date on which the installment payments begin
- The length of any "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 can persuade the plaintiff to dismiss the case without prejudice, and you pay the amount you agree to pay, the claim will not appear on your credit report as a judgment. Keep in mind that by entering into an installment payment agreement, you probably 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 set forth in that agreement.

Even though you may have a justifiable defense to all or part of the plaintiff's claim (and believe you owe nothing, or less than the amount of the plaintiff's demand) and have informed the plaintiff why this is so, the plaintiff may refuse to reduce or withdraw the claim. In that situation, you should call a neighborhood mediation center to try to persuade the plaintiff to select a neutral third person to help you and the plaintiff resolve the dispute informally. Most neighborhood dispute resolution centers offer mediation services. (See "Have You Considered Mediation?" on page 6.)

If there isn't enough time to obtain help from a neutral third person or a dispute settlement center before the hearing, you can appear at the hearing and ask the small claims judge to postpone the hearing to a later date in order to give you and the plaintiff sufficient 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 reason.

What If You Can't Resolve the Dispute Informally?

If you can't resolve the dispute, make sure you attend the hearing and explain your side to the judge. Remember that unless you're there, the judge can't possibly know whether you have a valid defense to the plaintiff's claim. For example, if you think the case is too old to be enforceable, or that the plaintiff, not you, caused the problem, you must explain this to the judge. The judge will want to hear both sides of the dispute before deciding and may agree with you.



Also, look closely at the amount claimed by the plaintiff. If it's a total of several items, ask yourself, Do I actually owe each item? Are the plaintiff's calculations correct? Are the claims for extras such as interest or late charges all valid? If you have questions, check with a small claims advisor before the hearing, or state your concerns to the judge at the hearing.

What If You Can't Attend the Hearing?

If you have a good reason to postpone the hearing to a different date, you can write a letter to the court and ask for a different hearing date. (Attorneys refer to this as a "continuance.") You must send a copy of your letter to the other party.

As a general rule, you must pay a fee of \$10 with your written request for postponement. However, no fee is required if a defendant requests a postponement because he or she wasn't served in a timely manner before the hearing, or requests a continuance before the plaintiff has served the claim form on the defendant.

You must have a good **reason** to receive a postponement of a court hearing date. The court usually will postpone the 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 in advance of the hearing date, (3) the defendant filed a **cross claim** and the plaintiff wasn't served with the cross claim at least five days before the hearing date (unless the defendant was served less than ten days before the hearing date, in which case the defendant may serve the plaintiff until the day before the hearing), or (4) the court determines that the parties desire to engage in mediation or other forms 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 advisor in your county.



What If Service of Process Is Improper?

You're entitled to receive at least 10 days' advance notice of the hearing (15 days' 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 a good idea 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.

Even if you weren't served properly, however, you still may want to attend. Ordinarily, you shouldn't refuse to attend simply because you received a late notice, but only if the late notice has made it much more difficult to prepare for the hearing or attend it. 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 you knew about the claim and had sufficient time to prepare.

By attending the hearing, even if service of process was late or otherwise improper, you can present your defense and perhaps resolve the dispute without further delay. If you don't attend, the plaintiff may incur additional costs to serve you, and if you later lose, you may have to pay these added costs. If you don't appear, a default judgment may be rendered against you. In that event, you would have to prepare and file a request to overturn this judgment.

If you were not served within the legal time limits (10 days before the hearing if you live within the county and 15 days if you live outside) and you need more time to prepare, you probably should call *and write* the clerk of the small claims court and ask that the case be postponed.

What If the Plaintiff Has Filed in a Wrong Court?

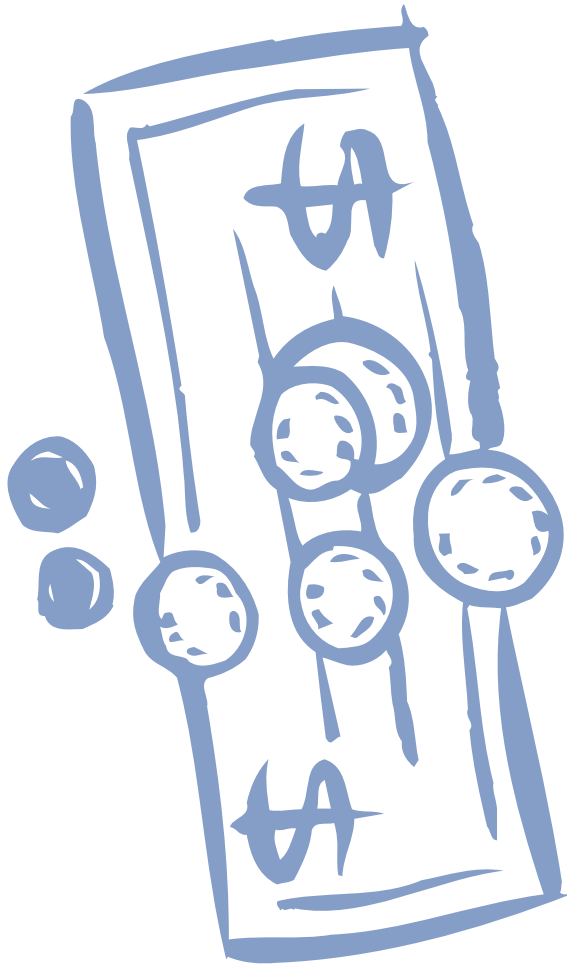
If you feel that the plaintiff has filed in the wrong court, or venue (see "Where Do You File Your Case" on page 9), you have the following options:

- ♦ **Appear at the hearing and not challenge venue.** If you feel that it would not be inconvenient to have the hearing in the county 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 venue.
- ♦ **Challenge venue at the hearing.** You could challenge (that is, object to) the venue at the hearing. If the judge decides that plaintiff's choice of venue was proper, then you can proceed with the hearing. If the judge decides that the plaintiff's choice of venue was improper, the case must be dismissed without prejudice.
- ♦ **Challenge venue by writing to the court.** This is probably the easiest option, particularly if you live a long way from the court or it's not convenient to attend. You merely write a letter to the court explaining why the plaintiff's choice of venue 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. The judge can't render a decision if you're not present, if you have challenged venue. If the judge believes that venue is improper, then the case must be dismissed without prejudice.

Even if you don't challenge venue, it's a duty of the judge to find that the location of the hearing is proper — to determine after checking the facts that there is some legal basis for the plaintiff's



choice of that court. Also, even if the location of the court selected by the plaintiff is correct, the judge may, on rare occasions, transfer the case to another court that is more convenient for 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 that the case be transferred to a court near that location. In evaluating transfer requests, the courts give greater weight to the convenience of those 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 claim against the plaintiff in the same small claims court action. If your case is related to the subject of the plaintiff's case, it may be helpful and convenient to resolve it at the same hearing by filing a ***Defendant's Claim and Order to Plaintiff***. It's not necessary that your claim against the plaintiff be related to the plaintiff's claim against you. 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, also apply. Ordinarily, the plaintiff must receive a copy of the ***Defendant's Claim and Order to Plaintiff*** at least five days before the scheduled hearing. However, if you received the ***Plaintiff's Claim and Order to Defendant*** less than 10 days before the hearing, then you can serve the ***Defendant's Claim and Order to Plaintiff*** as late as one day before the hearing. Always have the papers served as early as possible.

Think carefully if your claim against the plaintiff is for more than \$5,000 (or \$2,500 if you have already filed more than two small claims court actions for more than \$2,500 anywhere in the state during the calendar year). In these situations, you may be able to transfer your case or both cases to the superior or municipal court.

If your claim is for a large amount, you should consult with an attorney or small claims advisor before filing a ***Defendant's Claim and Order to Plaintiff*** in the small claims court. (Review page 9 in this handbook.)

Plaintiffs and Defendants...

Making the Best of Your Day in Court

While you're waiting for your hearing date, 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, and decide what you'll say to the judge.

Organize your thoughts and evidence to make your claim as easy as possible to understand. Consider preparing 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 he or she may bring to court.

By thinking ahead, you'll be in a better position to present your case. Remember that judges are under pressure to hear and decide cases quickly, and that you can help yourself by being well prepared. It's also a good idea to sit through a small claims court session before the date of the hearing. This will give you firsthand 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 find 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.

Resolving Your Dispute Before the Hearing

For most people, a dispute, especially a lawsuit, is very 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.

If you resolve the problem, it's best to put your settlement agreement in writing. If possible, the agreement should be signed and dated by both of you. The written agreement should describe the arrangements for making payments. If periodic payments will be made, the agreement should indicate the amount of each payment, the date each payment is due, and the consequences of any late payments. (See "What If You Owe the Claim?" on page 17.)

If the parties settle the dispute before the hearing date, the plaintiff can file a ***Request for Dismissal*** with the small claims court. Before doing this, however, the plaintiff has the right to receive full payment of the agreed-on amount in cash. If it is paid by check, the plaintiff is entitled to wait until the check clears before filing the ***Request for Dismissal***.

If the dispute is resolved on the day of the hearing, there may not be enough time to dismiss the case. In that event, both of you should attend the hearing and tell the judge that you have settled the dispute. The judge may (1) dismiss the case without prejudice, or (2) postpone the hearing for a short period to enable the defendant to pay the claim, or (3) include the settlement agreement as part of a regular court judgment.

If the dispute is resolved and the case is dismissed without prejudice, no judgment will appear on the defendant's credit report. If the defendant violates the settlement agreement, such as by missing payments he or she agreed to make, the plaintiff may refile the case and submit the settlement agreement as evidence that the plaintiff agreed to pay the amount set forth in the agreement. In most cases, the plaintiff need not prove the original basis for the amount being owed but can rely on the settlement agreement to prove the amount owing.

Gathering Your Documents

Gather 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. Whenever possible, bring originals rather than copies of documents.



In property damage cases, some courts ask the plaintiff to provide two or three 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.

In small claims court, judges take an active role and ask any questions that will enable them to 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 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. If you believe this information is essential to your case 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 the witness would like to tell the judge about your case 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." The witness should also 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 phone number in case the judge needs to call the witness. (The judge isn't required to accept a written statement, so it's best to have an important witness come to the hearing.)

You also may want to consult with the small claims clerk or small claims advisor 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 at a long distance 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. If the court 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 the same way 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). 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, you can subpoena the witness. A form called a **Small Claims Subpoena** (or **Civil Subpoena**) is a court order that requires a person to come to court. This form, when issued by the court, can also order a person to bring described records or other documents to court.

It's 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.

You can obtain a **Small Claims Subpoena** from the clerk of the small claims court or in some counties from the small claims advisor. After you have completed the **Small Claims Subpoena**, it is issued by the clerk of the court and is a court order. You then need to serve a copy of the **Small Claims Subpoena** on the witness. Unlike the **Plaintiff's Claim and Order to Defendant** form, you or anybody else can lawfully deliver a copy of the subpoena to the witness. After giving the witness a copy of the subpoena, the original subpoena must be returned to the court with the completed **Proof of Service** on the back.

A witness can ask for 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 unless the required fees are paid to and received by the witness. The person who serves the subpoena 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 have to offer them.

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. Both the **Small Claims Subpoena** and a copy of the declaration form must be served on the witness. The **Small Claims Subpoena** gives you two options: You can require the witness to bring the documents and testify or merely to deliver the documents you requested to the court. (You need not require the witness to appear at the hearing.)

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

Hearings Before Temporary Judges

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

On the day of the hearing, you may be asked to consent, or **stipulate**, that a temporary judge (rather than a regular judge or a court commissioner) can 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 doesn't consent, the clerk probably will 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 have basic knowledge about consumer law.
- All courts must provide special training programs for their temporary judges.

Presenting Your Case 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 participate in the hearings will be asked to take an oath promising to tell the truth.

The court will then hear each case. Usually, the cases in which the defendant isn't present — called “default cases” — are heard first. As you listen to the other cases, you'll learn more about how to present your own case 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 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 the hearing 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 or answer questions, so be sure to present your most important points first. You can usually use a written outline or notes, but you should not 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 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, giving all details, build some suspense, and then finish with an ending. In court, you want to place in the mind of the judge the primary *issue* or *issues* of your case.

Many judges will ask for a short overview of the case. In an auto accident case, if the defendant 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 he performed defective work on my roof, and it cost me \$1,000 to get it done right.” In an auto repair case, the plaintiff might say, “Your Honor, I am 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 giving this overview, you give the judge guidance on what facts to 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 information. For example, a judge might ask the Bureau of Automotive Repair to investigate allegations from a consumer that an auto repair shop had 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 your car. A judge might visit the location where an auto accident occurred. However, it's up to the judge to determine if an investigation is appropriate.

Be brief in making your points. Do your best to be objective and unemotional. The judge will be interested only in hearing the facts about your dispute. Don't raise your voice or make insulting remarks about the other party or any witness, no matter how angry you are. During the hearing, speak to the judge and not to the other party. Most important, be truthful in everything you say.

Answer the judge's questions thoughtfully. If you don't understand the question, politely ask the judge to explain the question or 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 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 explain how this figure was determined. If interest is also claimed, the plaintiff should be prepared to show exactly how it was calculated. It is beneficial to provide the judge with a written itemization or calculation of your damages.

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 afford.

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 time to reply.

Asking for Your Court Costs

At the hearing, you should ask the judge to award your court costs if you win. Most judges award court costs routinely to the winning party, but you should still ask the judge for them at the hearing. 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. If neither party is the “losing party,” the judgment might not include court costs.

Be sure to keep receipts for your filing fees and other out-of-pocket costs. Only some kinds of costs can be recovered from the losing party. Costs that may be recovered include amounts you have paid for filing fees, service of process fees (if reasonable), witness fees (but generally not for expert witnesses), and fees for service of subpoenas (of witnesses or documents). Other kinds of out-of-pocket expenses may be awarded at the judge’s discretion, so you should bring your receipts to the hearing.



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 give the parties the judgment form — called the **Notice of Entry of Judgment** — 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 **Notice of Entry of Judgment** in the mail.

The judge may take the case under submission to review the evidence, research a point of law, or consult with 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 reviewed before a decision is made.

If you don’t receive the **Notice of Entry of Judgment** within two or three weeks, you can call the small claims court and ask the court clerk to check on the delay. Be ready to give your case number when you call. If you change your address, be sure to give the court 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 losing party’s (judgment debtor’s) credit report, even after the judgment is paid. To avoid that, some judges hear the case and issue a decision that becomes effective only if the losing party fails to do what the judge decides. 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 at a later date to see if the losing party has done the things or

paid the money that the judge has ordered. If the losing party performs the conditions set forth in the judgment, the judge will then dismiss the case.

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 upon 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. Most courts will look into complaints but will rarely reconsider a judge’s ruling.

Judgment Against a Non-Appearing Party

Sometimes one of the parties doesn’t come to the small claims hearing. If the defendant doesn’t appear, the key question is whether he or she received proper notice of the hearing. If the **Proof of Service** form 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 non-appearing defendant in small claims court. The plaintiff must still “prove” the case. If enough evidence is provided, the judge may award the plaintiff some or all of the amount that is claimed. If the defendant is an active duty member of the armed forces, however, special rules apply before a judgment against the non-appearing defendant can be awarded.

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

Setting Aside the Judgment

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 was unable to appear at the hearing and a judgment was entered against him or her, the plaintiff has 30 days after the date of the mailing of the **Notice of Entry of Judgment** 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 and explain why he or she didn't appear at the hearing. A hearing to consider the request will then be held. The request to vacate the judgment may be granted, but only if the judge finds **good cause** for the plaintiff's not having attended 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 didn't appear at the small claims court hearing, other rules apply. A defendant who failed to appear must first ask the small claims court to vacate or set aside the judgment. If the defendant was properly served, he or she must file a **Notice of Motion to Vacate the Judgment and Declaration** with the small claims court within 30 days after the date the court mailed the **Notice of Entry of Judgment**. If the defendant wasn't properly served, he or she has up to 180 days after learning that the judgment was entered to file the **Notice of Motion to Vacate Judgment and Declaration**.

If the defendant's motion to vacate the judgment is granted, the case will be reheard by the small claims court. If the motion is denied, the defendant has 10 days from the date of denial or of the mailing of the notice of denial to request a review of the denial by the superior court. This request is accomplished by filing a **Notice of Appeal** of the denial with the small claims court.

Having the Judgment Reviewed

Only the defendant 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.

There are two ways to have a judgment reviewed. The first is by having a new hearing in the superior court. A defendant (or a plaintiff who loses on a cross claim) who appeared at the small claims hearing may have the judgment reviewed in superior court. Also, an insurer of a defendant may appeal the judgment if the judgment exceeds \$2,500 and its policy covers the matter to which the judgment applies. The appeal is started by filing a **Notice of Appeal** form with the small claims court within 30 days after the judgment is delivered or handed to the disputants in court or, if the decision is mailed, within 30 days after the date the

clerk mails the **Notice of Entry of Judgment**, whichever is earlier. The date will appear on the form you receive. The filing fee varies from county to county, but it usually ranges from \$50–\$90. Once the defendant files an appeal, the small claims judgment can't be enforced, and the defendant need not pay on the claim unless the appeal is dismissed or the defendant loses the claim on appeal.

The second method to have a judgment reviewed is by filing a **Request to Correct or Vacate Judgment** form. Although the defendant is the only party with a right to file an appeal, a plaintiff who loses may request the small claims court to correct "a clerical error in the judgment" or set aside and vacate a

judgment "on the grounds of an incorrect or erroneous legal basis for the decision." This request gives a plaintiff a limited opportunity to have the small claims court reconsider its decision, although not necessarily the right to a hearing. Please note that if a defendant files a request to correct an error in the judgment, he or she should

A small claims judgment is a public record that is often listed in the losing party's credit report, even after the judgment is paid.

also file an appeal within 30 days after receiving notice of the small claims judgment.

The New Hearing

The appealing party is entitled to a whole new hearing at the superior court, where the claims of both the plaintiff and defendant are heard again. For example, if the defendant appeals and also files a cross claim against the plaintiff and loses, both the plaintiff's claim and the defendant's cross claim are heard again at the superior court hearing. Similarly, if a plaintiff loses on both the plaintiff's claim and the defendant's cross claim, the plaintiff may appeal the loss on the cross claim and have both the plaintiff's claim and the defendant's cross claim heard anew in superior court.

The Legislature requires that the superior court judge conduct the new hearing in the same informal fashion as the small claims judge conducted the original hearing. However, an attorney may represent a party at the appeal, and the court will allow the attorney to cross-examine witnesses. Each party should be fully prepared to present his or her side of the case and bring any supporting witnesses and documents.

After the appeal hearing, a new **Notice of Entry of Judgment** is delivered or mailed to the parties. If the new judgment is for the plaintiff, the defendant may be required to pay some of the plaintiff's actual expenses. For good cause, and where necessary to achieve substantial justice between the parties, the superior court may award a plaintiff who prevails in the hearings in both the small claims court and the superior court reimbursement of:

- ◆ Attorney's fees actually and reasonably incurred in connection with the appeal, but not exceeding \$150
- ◆ 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 his or her appeal only if the court determines that (1) the circumstances justify the award and (2) the award is necessary to achieve

substantial justice between the parties.

If you're the appealing party and the superior court finds that your appeal wasn't 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 can award the other party judgment against **you** for up to \$1,000 for attorney's fees and up to \$1,000 for transportation and lodging. Therefore, if you filed a claim in small claims court and lost, you should not appeal unless, after carefully evaluating your claim, you have a good faith belief in its actual merits, and are not appealing just to delay payment or hurt the other party.

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 **judgment creditor** and haven't received the money the judge awarded, 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 simple personal note to the judgment debtor asking that the judgment debt be paid is all that is needed to end the dispute.

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**, if the defendant hasn't filed a timely appeal or **Notice of Motion to Vacate Judgment and Declaration**. If the defendant files an appeal and loses, the judgment becomes enforceable after transfer of the case from superior court back to the small claims court. This transfer must occur within 10 days.

If a judgment is rendered against you and you don't intend to appeal, you should pay the judgment as soon as possible, since that will save you from having to pay interest on the judgement.

If a judgment is rendered against you and becomes final, and you haven't paid it within 30 days, you must complete and return a **Judgment Debtor's Statement of Assets** form to the judgment creditor. This form, which accompanies the **Notice of Entry of Judgment**, gives the judgment creditor information concerning your property and sources of income. The judgment creditor can use this information to assist in the collection of the amount owed. If you don't complete the **Judgment Debtor's Statement of Assets**, the judgment creditor may bring you into court to complete this form through an **Order to Produce Statement of Assets and to Appear for Examination**.

Options for Judgment Debtors

- ♦ **Pay the judgment to the court** — The judgment debtor may pay the judgment directly to the court for a fee of \$25. The judgment debtor pays the judgment by completing the form **Request to Pay Judgment to the Court** and submitting the amount of the total judgment, including the plaintiff's costs. There are several reasons why you might 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 resolve this immediately. The court (and not the judgment creditor) then files the form **Acknowledgment of Satisfaction of Judgment**, which states that you have paid the judgment in full.
- ♦ **Installment payments** — If the judgment debtor is willing to pay the judgment but can't pay the whole judgment at one time, then the judgment debtor may 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 installment payments. (See the information on installment payments in "Have You Tried to Settle the Dispute Yourself?" on page 6.) If the judgment creditor insists on receiving the full amount, or if both parties can't agree on an installment payment plan, the judgment debtor can file a **Request to Pay Judgment in Installments** form. This form must be filed with a **Financial Statement**, a financial declaration form. Both the **Request to Pay Judgment in Installments** and the **Financial Statement** will be mailed to the judgment creditor by the court. The judgment creditor can either oppose your request or agree to it. A hearing may or may not be held.
- ♦ **Protecting property or income from collection** — A judgment debtor may be able to legally protect some or all of his or her assets

(property) and 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), 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 advisor can give you a list of assets that are protected (**exempt assets**) in California.

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 within 10 days after you receive the notice that the judgment creditor is taking enforcement action. You can obtain the 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, list all of your income and expenses. The court will decide which assets and how much of your earnings are protected from collection.

Ways for Judgment Creditors to Collect the Judgment Debt

This section highlights ways for you to collect your judgment. Several books give a far more thorough treatment of this area than is possible here. One is *How to Collect When You Win a Lawsuit*, a comprehensive and well-written book available from bookstores and Nolo Press at (800) 992-6656 or order online at www.nolo.com. You should consult with a good legal text or expert on judgment enforcement procedures before using any of the steps discussed below.

The following are some things you can do to try to collect a judgment debt if the judgment debtor refuses to pay:

- ◆ **Levy execution on the debtor's wages** — A **wage garnishment** orders the debtor's employer to give the sheriff, who then sends you, part of the debtor's wages until the debt is paid.

To levy execution on (garnish) wages, you need to complete a **Writ of Execution** form, which directs the sheriff to enforce your judgment. It is issued by the small claims clerk. You'll also need to complete and pay a fee for an **Application for Earnings Withholding Order**.

- ◆ **Levy execution on the debtor's checking or other bank account (bank levy)** — A **bank levy** means that money will be taken from the debtor's bank account to pay the judgment. You'll need the name and branch address of the bank. Get a **Writ of Execution** from the small claims clerk. There is a fee to issue a **Writ of Execution**.
- ◆ **Record an Abstract of Judgment** — An **Abstract of Judgment** puts a lien on any land, house, or other building the debtor owns in the county where the **Abstract of Judgment** is recorded. Record the abstract with the county recorder in all counties where the debtor may own property. If the property is sold with title insurance, the debt will be paid out of the proceeds of the sale.
To record an **Abstract of Judgment**, take your judgment to the small claims clerk, ask for an **Abstract of Judgment**, have it issued by the court, and take it to the county recorder to record.
- ◆ **Have the sheriff do a "till tap"** — If the debtor is a business with a cash register, the sheriff can go to the business and take enough money out of the register to pay the judgment and the sheriff's fee. First complete a **Writ of Execution**, have the clerk issue it, and take it to the sheriff. Instruct the sheriff to do a till tap. You must know the name and address of the business. If there isn't enough money in the register to pay the judgment, you'll have to pay another fee each time the sheriff goes back.
- ◆ **Put a "keeper" in the debtor's business** — If the debtor is a business, the sheriff will, for a fee, remain in the 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. Get a **Writ of Execution**, have the clerk issue it,

and take it to the sheriff. Tell the sheriff you want 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 a judgment debtor’s examination, the debtor is ordered to appear in court to answer your questions about the existence, location, and amount or value of his or her salary, bank accounts, property, and anything else that could be used to pay the judgment. If you wish, you can also subpoena the debtor’s bank books, property deeds, paycheck stubs, and similar documents and require the debtor to bring them to the hearing. At the judgment debtor’s examination, you may have the judge order the defendant to turn over any assets in his or her possession. You’ll need to complete and pay a fee for an **Application and Order to Appear for Examination** form and, if you want the debtor to also bring documents, a **Subpoena for Personal Appearances and Production of Documents**. The **Application and Order to Appear for Examination** must be served on the debtor by the sheriff or a registered process server. The debtor must be within 150 miles of the court. If you do not know where the debtor currently resides, see discussion on “Locating the Other Party” on page 15.
- ◆ **Suspend debtor’s driver’s license** — If you obtained a judgment for \$500 or less in an auto accident case and the judgment isn’t paid within 90 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 form DL17, available from local offices of the Department of Motor Vehicles. If your judgment is for more than \$500, you may have the license suspended indefinitely until the defendant pays the judgment. For further information, call the Department of Motor Vehicles Civil Judgment Unit at (916) 657-7573.

Prohibited Debt Collection Practices

Debtors are protected from certain abusive or

unfair debt collection tactics. Creditors, including judgment creditors, can’t do or say certain things. For example, commercial debt collection agencies and businesses that regularly collect their own debts are generally prohibited from making false or misleading statements to collect a consumer debt. It’s also unlawful 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 8:00a.m. or after 9:00p.m., or at any inconvenient time or place.

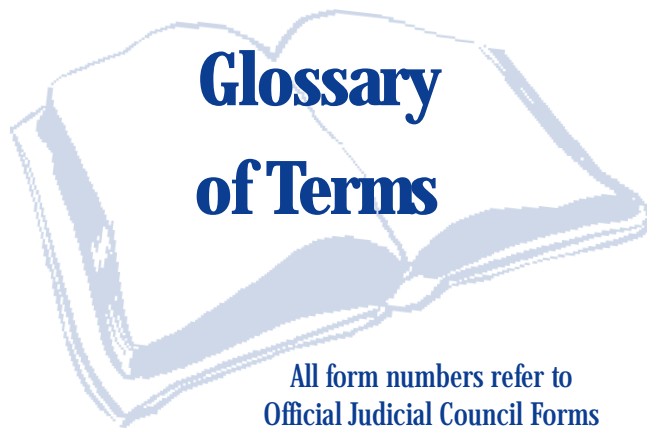
If you have any questions or concerns regarding permissible debt collection activities, call your small claims advisor, consult an attorney, or call the Federal Trade Commission at its toll free number, 1-877-FTC-HELP (1-877-382-4357). You may file a complaint at the Federal Trade Commission Web site at www.ftc.gov.

Once the Judgment Is Paid

After the judgment debtor pays the judgment (in full or for a lesser amount if the parties agree), the judgment creditor is required to immediately sign the short **Acknowledgment of Satisfaction of Judgment** portion of the **Notice of Entry of Judgment** form and file it with the small claims court. This form is like a receipt; it’s needed to end the case.

If the judgment creditor has recorded an **Abstract of Judgment** (see page 30) in any county where the judgment debtor owns real property, a different acknowledgment form must be used, and the judgment creditor must sign the form in front of a notary public.

If the judgment creditor doesn’t file the **Acknowledgment of Satisfaction of Judgment** with the court, the judgment debtor may ask the small claims court for help. If proper 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 order a Satisfaction of Judgment at the request of the judgment debtor.



Glossary of Terms

All form numbers refer to Official Judicial Council Forms

Abstract of Judgment — A document issued by the clerk of the court. When recorded at the county recorder, it places a lien on any real property owned by the judgment debtor in that county. (Form 982(a)(1))

Acknowledgment of Satisfaction of Judgment — A form that the judgment creditor must complete, sign, and file with the court when the judgment is fully paid. (Form SC-130, EJ-100)

appeal — New hearing of all of the claims by the superior court.

Application for Waiver of Court Fees and Costs — A form to be completed by a party who desires the court to waive the filing fee or court mailing costs. (Form 982(a)(17)) Eligibility rules are provided in an **Information Sheet on Waiver of Court Cover Fees and Costs** (Form 982(a)(17)(A)).

assignee — A person or business that stands in the place of the original creditor, such as a collection agency. Assignees can't sue in small claims court.

bank levy — Enforcement of a judgment against the judgment debtor's checking or savings account at a bank, savings association, or credit union, or other financial institution.

Claim of Exemption — A document filed by the judgment debtor that lists the property that the judgment debtor claims is exempt and there-

fore can't be taken to pay the judgment. (Forms 982.5(5), EJ-160)

claim splitting — Dividing a claim and filing two lawsuits to stay below the limits on amounts of claims. Claim splitting is prohibited.

costs (or court costs) — Certain fees and charges a party pays to file and present a case or to enforce a judgment.

cross claim — A demand by the defendant against the plaintiff. The cross claim is usually heard 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 — Failure of a party to the lawsuit to attend the small claims court hearing. If the party was properly notified of the action (served), the judge may consider the evidence and decide the case without hearing the absent party's side.

default judgment — A decision entered when one party doesn't attend the small claims court hearing. The other party must still prove his or her claim.

defendant — The person being sued.

Defendant's Claim and Order to Plaintiff — The form filed by a defendant who asserts a claim against the plaintiff. (Form SC-120)

defense — The defendant's facts or arguments that demonstrate why the plaintiff isn't entitled to the relief requested.

dismiss with prejudice — To set aside the present action and deny the right to file another suit on that claim.

dismiss without prejudice — To set aside the present action but leave open the possibility of another suit on the same claim.

enforce — To put the judgment into effect by taking legal steps to bring about compliance.

exempt assets — Property of a judgment debtor that is legally protected (See *Claim of Exemption*).

Fictitious Business Name Declaration — A form stating that the business has complied with California's fictitious business name registration laws. (Form SC-103)

good cause — A sufficient reason. For example, a party must have good cause for not attending the small claims court hearing (better than not having a car or not being able to find a baby sitter).

guardian ad litem — A person appointed by the court to represent a minor (under 18 years old). The representative is usually the minor's parent. A guardian 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.

judgment — The decision of the judge. It states the amount that the judgment debtor owes the judgment creditor and may also include other terms such as the date when payment must be made.

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

judgment debtor — The party (may be the plaintiff or the defendant) against whom the judgment has been entered.

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

jurisdictional limit — The maximum monetary amount that may be awarded by the small claims court. The limit is \$5,000 for most claims, but a claimant can't file more than two small claims court

actions for more than \$2,500 anywhere in the state during any calendar year.

keeper — A judgment enforcement procedure in which the levying officer 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.

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

mediator — A neutral third person who helps disputants arrive at their own settlement. The mediator doesn't decide the dispute.

motion — A request to the court.

notary public — A person whose most common function is to certify the signature of an individual.

Notice of Appeal — A request for a new trial of the small claims case in the superior court. (Form SC-140)

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

Notice of Motion to Vacate Judgment and Declaration — A request that asks the court to cancel a judgment that was entered and to hold a new hearing. (Form SC-135)

Order to Appear for Examination — 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. (Forms SC-134, EJ-125)

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

plaintiff — The person who files the lawsuit.

Plaintiff's Claim and Order to Defendant — The form that the plaintiff completes and files to begin a lawsuit in a small claims court. A copy must be served on the defendant. (Form SC-100)



Plaintiff's Statement — A form used by small claims court clerks in some counties to prepare the Plaintiff's Claim and Order to Defendant.

pro tem judge — See *temporary judge*.

process — Court papers that notify a person that he or she is being sued.

process server — A person who serves court papers on a party to a suit.

Proof of Service — A form that must be completed by the person serving court papers on a party, stating that service was properly made. (Form SC-104)

Request for Dismissal — A form filed with the small claims court if a settlement or agreement is made between the parties before the small claims court hearing is held. The dismissal will cancel the scheduled court hearing and stop the proceeding. (Form 982(a)(5))

Request to Correct or Vacate Judgment — A form filed with the small claims court to modify a recently issued judgment. (Form SC-108)

Request to Pay Judgment in Installments — A form filed, along with a financial declaration, by the judgment debtor if the parties can't agree on an installment payment plan. The judgment creditor may oppose or agree to the request. (Form SC-106)

Request to Pay Judgment to the Court — A form completed by the judgment debtor to pay the judgment directly to the court. (Form SC-145)

Satisfaction of Judgment — See *Acknowledgment of Satisfaction of Judgment*.

service of process — The giving of formal notice to the defendant that a suit has been filed against him or her, made by certified mail, personal service, or substituted service.

Service of Process — The form used by the plaintiff to give notice (see above) to the defendant.

settlement — An agreement reached by the parties to a dispute that resolves the dispute and states the terms to which they have agreed.

small claims advisor — An individual hired by the local county to give free small claims advice.

Small Claims Subpoena — An official order for a person to appear in court. The person may be ordered to bring documents. (Form SC-107)

Statement of Assets — See *Judgment Debtor's Statement of Assets*.

statute of limitations — The period of time following an occurrence in which a lawsuit must be filed.

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

substitute service — Service of process on a party by leaving the court papers with someone other than a party to the lawsuit, valid only if certain specified procedures are followed.

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

venue — The particular court in which an action may properly be brought. Generally, venue is proper in the county in which the defendant resides or does business, in which the accident occurred, or in which the contract was entered into. In commercial transactions, the place of performance is also proper.

wage garnishment — A legal procedure that requires the employer of a judgment debtor to withhold a portion of the judgment debtor's wages to satisfy the judgment.

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

Writ of Execution — A document that directs the sheriff to enforce a judgment. (Form EJ-130)

Small Claims Court Checklist

Before the Hearing – For the Plaintiff

1. Contact the other party to discuss and try to resolve the problem.
2. Offer to resolve the problem by mediation or other informal dispute resolution method.
3. Familiarize yourself with small claims court procedures (read this booklet, talk to a small claims advisor, attend a court session).
4. Determine the exact amount in dispute.
5. Identify the court where venue is proper.
6. File a Plaintiff's Claim and Order to Defendant and pay the filing fee, and, if you're a business, file Fictitious Business Name Declaration, if appropriate.
7. Arrange for service of process on each defendant. Make sure the Proof of Service form is returned to court before the hearing and the minimum days of notice are met.
8. Prepare for court hearing. Organize your thoughts, collect evidence, talk to witnesses, etc.
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. Contact the plaintiff to discuss and try to resolve the dispute.
2. Suggest or agree to try mediation or some other informal dispute resolution method.
3. Familiarize yourself with small claims court procedures (read this booklet, talk to a small claims advisor, attend a court session).
4. If you have a claim against the plaintiff, consider resolving it at same hearing. (File a Defendant's Claim and Order to Plaintiff.)
5. Prepare for court hearing. Organize your thoughts, collect evidence, consult witnesses, etc.
6. Keep communication open. Try to resolve the dispute before the hearing.
7. If you owe something, try to pay it or to work out a payment plan before the hearing.
8. If necessary, ask court to postpone the hearing to let you and the plaintiff resolve the dispute informally.
9. Try to avoid having a court judgment entered against you, since it probably will appear on your credit record.
10. Attend the hearing and present your defense.

After the Hearing – Plaintiff and Defendant

1. Get a Notice of Entry of Judgment form in small claims court. It tells you and the other party how the judge ruled.
2. If the plaintiff or defendant was unable to attend the hearing for good cause, file Notice of Motion to Vacate Judgment and Declaration to request a new hearing. If a judgment was issued against a defendant who appeared at the hearing, file a Notice of Appeal to request a new hearing in the Superior Court.
3. Judgment debtor: Take action to comply with the judgment (pay the judgment creditor directly or make payment to the court). After payment, make sure an Acknowledgment of Satisfaction of Judgment is filed by the judgment creditor with the small claims court. If judgment isn't paid within 30 days, complete and return the Judgment Debtor's Statement of Assets form that accompanied the Notice of Entry of Judgment that you received.
4. Judgment creditor: File an Acknowledgment of Satisfaction of Judgment with the small claims court after the judgment is satisfied, or take steps to collect the judgment.



California Department of Consumer Affairs

Ordering Information for **Consumer Law Sourcebook for Small Claims Court Judicial Officers**

Consumer Law Sourcebook for Small Claims Court Judicial Officers (1996).

This three-volume, 1,280-page reference handbook is written for use by small claims judges and temporary judges, superior court judges who handle small claims appeals, court administrators, and small claims advisors. It's also a handy reference book on consumer law. The present text does not include changes in the text since 1995. A new updated edition is now being prepared.

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