The Small Claims Court

A Guide to Its Practical Use

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

State of California Governor Edmund G. Brown Jr.

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

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Introduction

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

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

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

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

They can:

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

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

Legal terms are defined in the **Glossary of Terms** on pages 47–50.

A **Checklist** for plaintiffs and defendants appears on pages 51–52.

Basic Considerations and Questions

What is Small Claims Court?

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

In general, claims are limited to disputes up to $5,000. However, **natural persons** (individuals) can claim up to $10,000. Corporations, partnerships, unincorporated associations, governmental bodies, and other legal entities cannot claim more than $5,000. Also, no claimant (natural person or legal entity) may file more than two small claims court actions for more than $2,500 anywhere in the State during any calendar year. For example, if you file an action for $4,000 in February 2015, and another action for $4,000 in March 2015, you may not file any more actions for more than $2,500 until January 1, 2016. You may file as many claims as you wish for $2,500 or less. However, this limitation does not apply to a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. They can bring more than two lawsuits over $2,500 in a calendar year.

The fee for filing in small claims court depends on the amount of the claim: $30 if the claim is for $1,500 or less, $50 if the claim is for more than $1,500 but less than or equal to $5,000, or $75 if the claim is for more than $5,000. However, if a plaintiff has filed more than 12 small claims actions in California within the previous 12 months, the filing fee for each subsequent case is $100. Multiple filers who prevail in court and are granted court costs may only recover the same amount of court costs that non-multiple filers would receive and not the $100 that was paid. For example, if a multiple filer sued for $1,400 and won a judgment for $1,400, the court will grant that filer court costs (filing fee) of $30 and not the $100 that was paid to the clerks. The filing fee is paid by the plaintiff to the clerk of the small claims court.

Small claims courts may be able to order a defendant to do something, as long as a claim for money is also part of the lawsuit. If you are suing to get back the lawn mower you loaned to a neighbor, for instance, the court can order the return of the mower, or payment for the mower if it is not returned. Otherwise, small claims courts may order a defendant to do or not to do something only when expressly authorized by statute (i.e, an order preventing an unlawful phone solicitation). The sheriff's department usually is the one who enforces those orders. It may or may not need further court orders to enforce a certain order. (For example, the court may order the defendant to return a vehicle to the plaintiff. If the defendant does not comply and parks the vehicle in his or her home garage, the sheriff may require an additional order from the court that would allow them to enter the premises to seize the vehicle). Verify with your local sheriff's department or small claims advisors as to the requirements for your particular situation.

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

- Your former landlord refuses to return the security deposit you paid.
- Someone dents your car's fender and refuses to pay for its repair.
- Your new TV will not work, and the store refuses to fix it or replace it.
- Your tenant caused damage to the apartment in an amount that exceeded the security deposit. (Note: You can't file an eviction action in small claims court.)

- You were defrauded in the purchase of a car, and desire to cancel the purchase and get back the amount of your down payment from the seller.
- You lent money to a friend, and he or she refuses to repay it.

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

Is Small Claims Court Your Best Option?

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

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

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

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

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

Have You Tried to Settle the Dispute Yourself?

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

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

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

Basic Considerations and Questions

Have You Considered Mediation?

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

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

Where Can You Obtain More Information and Advice?

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

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

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

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

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

If you are the plaintiff, reviewing the following court forms will give you some useful information:
Information for the Small Claims Plaintiff (Form SC-100 Info); and
Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100).

If you are the defendant, reviewing the following court forms will give you some useful information:
Information for the Defendant (Form SC-100 (page 4)); and
Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120).

The following websites provide access to Federal and California statutes and regulations:
Federal statutes—https://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE
California statutes—www.leginfo.ca.gov
Federal regulations—www.regulations.gov
California regulations—www.oal.ca.gov

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

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

- **Attorneys—**An attorney may be able to advise and assist you before or after filing your claim. You should consult an attorney if you feel it would be cost-effective to do so, considering the size of the claim and the kinds of issues involved. You can't have the attorney represent you in court. You do have the right to hire an attorney to represent you for trial de novos (new trials) or to help you collect your judgment. Except for trial de novo and extremely rare instances, attorneys' fees are not recoverable as court costs or damages. For a list of attorney referral services, go to the website of the State Bar of California at www.calbar.ca.gov/state/calbar/calbar_home.jsp. If you can't afford an attorney, a legal services program might be able to help. Legal services programs for low-income persons are listed at www.LawHelpCalifornia.org/CA. Some small claims advisory offices have attorneys who can assist and advise you free of charge, but they cannot represent you in court.

Who Can File or Defend a Claim?

With certain exceptions, anyone can sue or be sued in small claims court. Generally, all parties must represent themselves. An individual can sue another individual or a business. A business, in turn, can sue an individual or another business. However, an **assignee** (a person or business that sues on behalf of another, such as a collection agency) can't sue in small claims court. A federal agency may not be sued in small claims court.

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

Can Someone Else Represent You?

In most situations, parties to a small claims action must represent themselves. As a general rule, attorneys or non-attorney representatives (such as debt collection agencies or insurance companies) may not represent you in small claims court.

Basic Considerations and Questions

Self-representation is usually required. There are, however, several exceptions to this general rule:

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

- **Corporation or other legal entity—** A corporation or other legal entity (that is not a natural person) can be represented by a regular employee, an officer, or a director; a partnership can be represented by a partner or regular employee of the partnership. The representative may not be an attorney or person whose only job is to represent the party in small claims court. An attorney may appear to represent a law firms as long as that attorney is a general partner of the law firm or is an officer of the corporation. However, in both instances, all the other members of the partnership and all the other officers of the corporations have to be attorneys as well.
- **Property agent—**A property agent may represent the owner of rental property *if* the property agent was hired principally to manage the rental of that property and not principally to represent the property owner in small claims court *and* the claim relates to the rental property. At the hearing, the agent should tell the judge that he or she was hired and is employed principally to manage the property. This statement may also be in a written declaration. A common interest development also may appear and participate in a small claims action through an agent.
- **Sole proprietorship—**In a case in which a claim can be proved or disputed by evidence of an account that constitutes a business record, and there is no other issue in the case, a sole proprietorship (such as a physician) can be represented by a regular employee who is employed for purposes other than solely representing the proprietor in small claims court actions, and who is qualified to **testify** to the identity and mode of preparation of the business record. In that situation, the employee must be able to testify that (1) the evidence of the account was made in the regular course of business, (2) the evidence of the account was made at or near the time of the transaction, and (3) the sources of the information about the account and its time and method of preparation are such as to indicate their trustworthiness.

For example, this exception to the general rule of self-representation might permit a dentist's bookkeeper to represent the dentist in an action to collect a patient's account. However, if the patient alleged that the dentist's services were unnecessary or performed poorly, the case would involve another issue of fact, and the dentist would need to appear at the hearing in person. As in all actions to collect debts and accounts, the plaintiff's claim form must include an itemization of all fees and charges that have been added to the original loan amount or agreed price. In the following kinds of situations, a party need not appear in court, and may either send a representative or submit written declarations to prove his or her claim or defense. However, the representative can't be compensated, and is disqualified if he or she has appeared in small claims actions as a representative of others four or more times during the calendar year.

CAUTION: Even if the requirements to allow the employee to represent their employer are met, this does not mean that their testimony is sufficient to win the case. Some judges may require the testimony of the employee who worked on the account and who has personal knowledge of the history of the account in order to render a judgment for the company.

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

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

An individual who represents a party to a small claims court action may complete and sign an ***Authorization to Appear*** (Form SC-109)—a form provided by the clerk of the small claims court or printed from the Judicial Council's Web site. The representative must state that he or she is actually authorized to represent the party, and must describe the basis for that authorization, such as a letter from the represented party. If the represented party is a corporation or other legal entity or an owner of real property, the representative also must state that the representative isn't employed solely to represent the corporation or entity in small claims court. In the other situations listed above, the representative must state that the representative is acting without compensation, and hasn't appeared as a representative in small claims actions more than four times during the calendar year.

Can Your Spouse Represent You?

Spouses may represent each other in small claims court if they have a joint interest in the claim or defense, and the represented spouse has given his or her consent. For example, if both spouses are listed on the lawsuit, one may appear for the other as long as consent had been given. However, one spouse may not represent the other spouse if the court decides that justice would not be served—such as where their interests are not the same and may conflict. The represented spouse need not come to court if the judge allows representation. Some courts may require court approval before the trial. Please check with your local small claims court clerk office or advisors as to the need to obtain pre-trial court approval for your spouse to represent you.

If You're the Plaintiff...

Filing Your Lawsuit

Have You Asked for the Money or the Property?

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

How Much Money Does Your Dispute Involve?

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

Small claims courts have an upper limit on the amount of money that a party can claim. You can sue for up to $10,000, if you are an individual or a sole proprietor. Corporations and other entities are limited to $5,000. In addition, a party (individuals or corporations) can file no more than two claims exceeding $2,500 in any court throughout the State of California during a calendar year. If you do exceed the two cases over $2,500 per calendar year limit, the court may award you only a maximum of $2,500 in each subsequent case even if your proven damages exceed $2,500. This limit does not apply to a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. You are not permitted to divide a claim into two or more claims (called **claim splitting**) in order to fall within the monetary limits.

If your claim exceeds $2,500, you'll be asked to check the box on your claim form (Form SC-100) that states that you have *not* filed more than two actions for more than $2,500 during the calendar year. If you are a natural person (an individual), and therefore can ask for up to $7,500, you still may not file more than two small claims court actions for more than $2,500 during the calendar year.

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

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

If the case is against a **guarantor**—someone whose legal responsibility is based on the acts or omissions of another—the maximum claim is $2,500. However, there are two exceptions to the jurisdictional amount of $2,500: (1) If you are a natural person suing a guarantor that charges a fee for its guarantor or surety services, the maximum amount is $6,500. (2) If the person suing is not a natural person, and the defendant guarantor charges a fee for its services, or is the Registrar of the Contractors State License

Board because the plaintiff is suing on a contractor's bond, the maximum amount of the claims is $4,000. In that situation, be sure to name both the contractor and the guarantor as defendants, and prepare to prove a violation of the contractors licensing laws. (See Business and Professions Code beginning with section 7101, and the Web site of the Contractors State License Board at www.cslb.ca.gov.)

Where Do You File Your Case?

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

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

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

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

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

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

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

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

goods, consumer services, or consumer credit. An action also can be filed by the consumer in any of those locations if the suit is based on a purchase that results from an unsolicited telephone call made by the seller to the buyer (including a situation where a buyer responds by a telephone call or electronic transmission).

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

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

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

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

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

How Quickly Must You File Your Case?

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

Here are some examples of various statutes of limitations:

- **Personal injury—**Two years from the date of the injury. If the injury is not immediately discovered, it is two years from the date it is discovered or should have been discovered. A minor has two years from his or her 18th birthday to file a case.
- **Oral contract—**Two years from the date the contract is broken.
- **Written contract—**Four years from the date the contract is broken.

- **Government entity—**Before you can sue a government entity, you must send a written claim to the entity, called a "Government claim." The claim is legally required to contain certain pieces of information. Government Code section 910 lists what types of information are required to be in the claim. Some governmental agencies may have a fillable governmental claim form available for use. Please check with the governmental agency in question to see if a governmental claim form is available. If you do not file the government claim first, the small claims court must reject or dismiss the action. If the government claim is against the State of California, it must be sent to the Victim Compensation and Government Claims Board (VCGCB); follow the instructions on its website at www.governmentclaims.ca.gov. A government claim for personal injury or personal property damage must be sent to the government entity within six months of the incident that caused the damage. A government claim for breach of contract or injury to real property must be sent within one year of the incident that caused the damage. If the entity rejects the claim, you must file a court action within six months of the mailing or personal service of the rejection notice. If you do not file within that time frame, you may lose your right to sue. An agency has 45 days to make a decision on the government claim. If no decision is made after 45 days, the claimant should treat the non-response as a rejection, and file their suit immediately.

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

What Forms Do You Need to File?

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

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

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

In selecting a date for the hearing (or approving a date selected by the small claims court clerk), be sure to allow enough time to locate the defendant and arrange for serving the defendant with a copy of your claim. (It may be a good idea to pick a court date of at least six weeks out for service of the Form SC-100.) An adult other than you must do the service. Also, after the service is completed, make sure that the ***Proof of Service*** (Form SC-104) is completed by the person who served the papers. In addition, the proof of service must be received and filed with the court no later than five days before the hearing. This form must be completed to state the exact date, time, and place of service of process and other information. It is signed by the person who delivered a copy of your claim form (Form SC-100) to the defendant. If there is more than one defendant, each defendant must be served.

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

How Do You Name the Defendant?

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

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

Here are some examples of ways to name a defendant:

- **An individual—**Write the first name, middle initial (if known), and last name.

  Example: "John A. Smith." If an individual has more than one name, list all of them (separated by the words "also known as" or "aka").

- **A business owned by an individual—**Write the names of both the owner and the business. Example: "John A. Smith, doing business as Smith Carpeting." If you win your case, you can enforce your court judgment against assets (such as a checking account balance) in the names of either John A. Smith or Smith Carpeting. Note: Some banks may not honor a judgment unless the name on the judgment matches exactly the name on the bank account. In this situation, the plaintiff should request the court to amend the name of the defendant to reflect the name on the account. Obviously, this does not apply if the plaintiff attempts to ask the court to completely change the name of the defendant as a way to add someone else on the judgment.

- **A business owned by two or more individuals—**Write the names of both the business and the owner on each defendant line of Form SC-100. Example: If there are two owners for Suburban Dry Cleaning, the plaintiff would list each respective owner in a different defendant name slot in Form SC-100. Defendant Name slot #1: John A. Smith, Doing Business As Suburban Dry Cleaning. Defendant Name slot #2: Mary B. Smith, Doing Business As Suburban Dry Cleaning.

- **A corporation or limited liability company—** Write the exact name of the corporation or limited liability company, as you know it, on the claim form. You need not name the individual owners of the corporation or limited liability company. However, you must include either an Inc. (for corporations), LLC (for limited liability companies), LLP (limited liability partnerships), or LP (limited partnerships) at the end of the name of the business entity. Example: "Fourth Dimension Graphics, Inc." If a corporation operates through a fictitious business name or a subsidiary, you must name the name of the corporation and not necessarily the fictitious business name or subsidiary. Example: Middle Easter Quality Petrol Inc. doing business under the fictitious business name of Fast Gas would be listed simply as Middle Easter Quality Petrol Inc. However, you may have to prove at trial the relationship between the subsidiary or the fictitious business name and the listed corporation.

If you would like to delete the names of one or more defendants from your claim, you can use the dismissal form that you received with your claim or a ***Request for Dismissal*** (Form CIV-110). Be sure to indicate that you are dismissing the case only against certain named defendants, and that you are not dismissing the entire case. As a courtesy, you should inform the dismissed defendants that they need not appear in court by providing them with a copy of the filed dismissal.

- **A vehicle accident defendant—**If you're suing to recover the losses you sustain in a motor vehicle accident, you should name both the registered owner or owners, and the driver. Example: If the owner and the driver are the same person, "Joe Smith, owner and driver." If the owner and driver are not the same, "Lucy Smith, owner, and Betty Smith, driver."

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

If you would like to *delete* the names of one or more defendants from your claim, you can use the dismissal form that you received with your claim, or a ***Request for Dismissal*** (Form CIV-110). Be sure to indicate that you're dismissing the case only against certain named defendants, and that you're not dismissing the entire case. As a courtesy, you should inform the dismissed defendants that they need not appear in court.

How Do You Notify the Defendant of Your Claim?

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

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

Be sure to allow enough time for service of process. If possible, give yourself at least six weeks for the process of service (i.e., get a court date at least six weeks out). Someone must give each defendant a

true copy of the Plaintiff's Claim Form (Form SC-100) at least 15 days before the hearing date if the defendant lives in the county in which the claim is filed, or at least 20 days before the hearing date if the defendant lives outside the county in which the claim is filed. If the service was substituted service, add 10 days to each of the two time requirements listed above (substituted service will be covered later on in more detail).

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

It's important to select a capable adult person to serve your claim and complete the ***Proof of Service (Small Claims)*** (Form SC-104). If the judge is not convinced that the defendant was served, you may not be able to obtain a judgment in the event the defendant does not appear. If your server charged a fee for service and you paid it, make sure that the fee is mentioned in the Form SC-104. If there is no service fee listed in the Form SC-104, you may not receive your service costs in your judgment even though you paid a server.

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

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

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

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

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

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

  CAUTION: Service by certified mail isn't very successful. In some courts, only about 50% of the attempts are successful. One reason is that the

defendant may refuse to accept delivery or to sign a receipt for delivery. Another is that if the defendant doesn't appear at the hearing, the judge may refuse to hear the case unless the judge determines that it is actually the defendant who signed the return receipt. Frequently, the signature on the return receipt is illegible, or someone other than the defendant signed. If the return receipt is the only evidence of the defendant's signature, and there is no other evidence to show that the signature is actually the defendant's, the judge may ask that you serve another copy of your claim form. In that event, a new hearing date will need to be set.

- **Personal service—**A **process server**, or someone other than yourself who is 18 years or older and not a party to the lawsuit, may give a copy of the claim form (Form SC-100) that was issued by the court in your case to the defendant who is being served. Most plaintiffs use a professional process server, or the **sheriff** where available, to serve their claim on the defendant. However, some sheriffs will only serve for those plaintiffs who have had their filing fees waived by the court. While that is expensive (as much as $30 or more for each defendant), you are entitled to reimbursement from the defendant of the reasonable cost of service of process if you win the case. If you decide not to use a professional process server or the sheriff, and have an adult relative or friend serve the papers, make sure that the papers are properly served on the named defendant. It is important that your friend or relative properly complete the Proof of Service (SC-104). It's not enough merely to drop the papers at the doorstep or serve a member of the defendant's household. Service of process is ordinarily accomplished by delivering a copy of the claim form to the following person:

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

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

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

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

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

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

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

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

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

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

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

Locating the Other Party

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

Telephone and City Directories

The most obvious source of addresses, and one often overlooked, is the telephone directory. City directories are also excellent sources of information. For defendants living outside your area, try **www.yellowpages.com** or other Internet telephone directories (see page 20). If the only information you have concerning the other party

is a telephone number, and the number is one that is listed in the telephone directory, you may use reverse telephone directories in your public library or online. In addition, directory assistance offers a reverse directory.

U.S. Postal Service Records

The regulations of the U.S. Postal Service (at 39 C.F.R. section 265.6(d)(1),(5)) provide that the Postal Service will give you the new address of someone who has filed a change of address order (PS Form 3575). You can obtain this information if you need the new address in order to have service of process delivered on that person, and you submit a completed and signed Request for Change of Address or Boxholder Information Needed for Service of Legal Process. The request form can be obtained from your local post office or the U.S. Postal Service's Web site at **www.usps.gov**. The regulations of the U.S. Postal Service (at 39 C.F.R. section 265.6(d)(4)) also provide that the Postal Service will give you the name and *street* address given by an applicant for a Postal Services mailbox in the Service's application form (PS Form 1093). As with change of address information, you can obtain that information if you need it for the service of process on the applicant for the Postal Service mailbox, and you submit a request form—the same form used for change of address information.

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

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

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

Secretary of State Records

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

It is possible the Secretary of State may not have the information for the corporation's agent for service because either the corporation did not list an agent or did not register with the Secretary of State. If you are unable to find the agent for service of a

corporation on the Secretary of State website, you would need to go to the Secretary of State's office and ask them to do a search for you. If the Secretary of State's office is unable to find the agent after the search, they will issue a certificate of non-filing. It is necessary that you file your complaint with that certificate of non-filing with the court. In addition, you must ask the court for permission to serve the corporation through the Secretary of State. Please verify with the Secretary of State's office as to any fees charged for receiving the complaint. You should also verify with your local small claims advisors as to the required forms necessary to ask for court authorization to serve the Secretary of State.

Also, corporations with a "forfeited" status are not considered to be registered with the Secretary of State for the purpose of small claims service. However, corporations with a "suspended" status are considered to be registered with the Secretary of State for the purpose of small claims service.

Department of Motor Vehicles Records

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

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

- **To courts and other governmental entities—** However, courts will not obtain the residential addresses for litigants.
- **To law enforcement agencies—**Many law enforcement agencies will request the residential addresses of motorists or vehicle owners for use in preparing accident reports.
- **To an attorney—**The attorney must state under penalty of perjury that the residential address of a driver or registered owner is necessary to represent a client in a lawsuit involving the use of a motor vehicle.
- **To an insurance company—**An insurance company may obtain the address of a motorist or vehicle owner who was involved in an accident with the insured, or if the motorist or vehicle owner signed a waiver.
- **To a financial institution—**A financial institution must have obtained a written waiver from the individual driver or vehicle owner whose residential address is requested.
- **To a vehicle dealer—**A vehicle dealer may obtain the residential address of a motorist for the purpose of completing registration transactions or documents.
- **To a vehicle manufacturer—**A vehicle manufacturer may obtain the residential address of a motorist for the purpose of safety, warranty, emission, or product recall if the manufacturer offers to make and makes any changes at no cost to the vehicle owner.
- **To a researcher—**A person who has provided assurance that the residential address will be used only for statistical research or reporting purposes, and verifies that no person will be contacted by mail or otherwise at the residential address.
- **To a lien sale—**A person conducting a lien sale may obtain the residential addresses for the purpose of notifying the registered and legal owners and all persons who claim an interest in a vehicle of an impending lien sale or intent to dispose of the vehicle.

County Business Records

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

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

City Business Records

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

Internet Databases

The Internet can be used to locate an individual or business. The major Internet browsers have search capabilities that can be productive if you know an individual's correct name. Reverse directories also now exist online. Most regulatory agencies' websites have directories of their licensees.

While some website addresses are given in this handbook, Internet resources change constantly. Some are added and some are deleted almost every day. Therefore, it also may be helpful to identify newly available Internet resources. Following are potentially useful resources. No endorsements or recommendations should be implied. Most of the services are free.

Telephone numbers and addresses

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

Business telephone directories

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

Corporate and business information

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

Public records and reports (charges imposed)

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

If You're the Defendant...

Responding to the Lawsuit

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

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

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

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

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

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

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

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

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

- The total amount you agree to pay, including any interest and court costs.
- The amount of each installment payment.
- The total number of installment payments.
- The dates of the payments, such as "the first day of each month."
- The date on which the first payment is due.
- The duration of the "grace period" for paying an installment, and the effect of a failure to pay. For example: "If any installment is not paid within 10 days after the date on which it is due, the entire unpaid balance of the debt shall be immediately due and payable."

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

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

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

What if You Can't Resolve the Dispute Informally?

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

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

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

What if You Can't Attend the Court Hearing?

If you need to have the hearing postponed to a later date, you can prepare and file a written ***Request to Postpone Trial (Small Claims)*** (Form SC-150). You must file your request with the clerk of the small claims court, and must send a copy of your request to the other party. You must file your request no less than 10 days before the trial. Otherwise, you will need to explain why you did not ask earlier, and you may need to go the hearing and ask for the postponement in person.

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

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

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

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

You're entitled to receive at least *15 days' advance notice* of the hearing (or *20 days' advance notice* if

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

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

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

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

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

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

- Appear at the hearing and do not challenge the plaintiff's choice of court. If you feel that it would *not* be inconvenient to have the hearing held in the county (or area of court location within the county) that was selected by the plaintiff—because, for example, you live in a neighboring county only five miles from the courthouse—you could appear and waive (give up) your right to challenge the plaintiff's choice of court.
- Challenge (object to) the plaintiff's choice of court at the scheduled hearing. If the judge decides that the plaintiff's choice of court was proper, then you can proceed with the hearing. If the judge decides that the plaintiff filed the case in an improper county, the judge must dismiss the case without prejudice. If the case was filed in a proper *county*, but in the wrong court location within that county, the judge has discretion to either transfer the case to a proper court location within that county, or order the case dismissed without prejudice. However, some judges have rejected venue challenges (objections to plaintiff's choice of court) because the defendant showed up to make the objection. These rejections were based on the fact that defendants appeared personally to make the

objection without first filing a venue challenge; consequently, their personal appearance to court was considered to be a waiver of their venue challenge. It may be advisable for defendants to challenge venue or the court location in writing, or at least submit a written challenge to the court first before appearing (see next paragraph).

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

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

What If the Plaintiff Owes YOU Money?

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

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

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

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

Plaintiffs and Defendants...

Making the Best of Your Day in Court

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

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

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

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

If you don't speak English well, and may have difficulty presenting your case in court, it's okay to bring someone who can interpret for you in court—perhaps an adult relative or friend, but not a party to the action or a witness. Instead of bringing your own interpreter, ask the small claims court clerk for a list of interpreters at least five days before the hearing. Most interpreters charge a fee. If you cannot afford to pay an interpreter, ask the clerk of the court if the court can provide one for free.

Resolving Your Dispute Before the Hearing

For most people, a dispute, especially a lawsuit, is stressful. Be reasonable in your demands to the other party. Keep the lines of communication open. Always leave room for possible compromise and settlement with the other party. Even on the day of your hearing, it is not too late to settle your dispute. Keep in mind that the judge may not see things your way in spite of the strength of your evidence. The judge also may not understand fully the evidence you are presenting, especially if the case is complicated and involves many documents. Going to trial still carries a significant amount of uncertainty, and many small claims litigants have been surprised unpleasantly when they received the judgment in the mail. It may be a good idea for the parties to use the court's mediation services if they are available. Mediation is a process where both parties have an opportunity to work out an agreement on their own with the assistance of a third party, the mediator. There are no negative legal consequences if the parties cannot reach an agreement in mediation. If you do resolve your case in mediation, the mediator will draft the agreement for you. There is little to lose and much to gain when you attempt to resolve your case in mediation. Many courts have mediators available in the courtroom to assist you and the other party in resolving your dispute. (See "Have You Considered Mediation?" on page 5.)

If you resolve the problem, it's better to put your settlement agreement in writing than to rely on memory. It should also be signed and dated by each of the parties to the action. It can be

handwritten, and should be expressed in language each party can understand. It should describe the arrangements for making payments, and also any related agreements or understandings. If periodic payments will be made, the agreement should state the amount of each payment, the date when each payment is due, and the effect of any late payments. (See "What If You Owe All or Part of the Plaintiff's Claim?" on page 23.)

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

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

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

Gathering the Documents You Need

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

To protect privacy interests, you should only display the last four digits of Social Security Numbers on financial documents. You may bring the originals or copies of your evidence to trial, **but do not submit your originals for the judge to keep**. Some courts will throw away your evidence once the judge has rendered a decision in the case. Always give copies of your evidence to the judge, or if you must show the judge the originals of your evidence, make sure you ask for that piece of evidence back before you leave the courtroom. If the judge must keep your evidence and a copy cannot be made, ask the judge to instruct the clerks on how and when to return the evidence to you. In property damage cases, some courts ask the plaintiff to provide two or three written repair cost estimates to show the reasonableness of the claim. Make a map, diagram, or drawing if it will help you explain your case more easily and quickly.

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

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

Arranging for Your Witnesses

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

Sometimes, however, you'll need to present information that can be provided only by a **witness**. The witness may support your version of an event, and may be the only person who has first-hand knowledge about it. If you believe that testimony from a particular witness is essential to your claim or defense, you should make a special effort to have the witness attend the hearing.

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

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

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

Always talk to a witness before the hearing. The witness may not see or interpret the facts in the same way that you do, or may have forgotten the key points. Also, if the witness is hostile to you, he or she may do you more harm than good.

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

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

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

You can obtain a Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration (Form SC-107) from the small claims clerk or in some counties from a small claims adviser, or from the Judicial Council's Web site (www.courtinfo.ca.gov). After you have entered the requested information in the subpoena, the subpoena is issued by the clerk of the court and is a court order. Since the court may reject and refuse to issue a subpoena that asks for more than is genuinely needed or reasonable, it's important to limit your request to those documents that you know you really need and that the party who is served with the subpoena can readily obtain.

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

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

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

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

Hearing Before a Temporary Judge

Most small claims courts rely on **temporary judges** (sometimes called **pro tem judges**) to hear and decide small claims court cases. A temporary judge is an attorney who has been licensed for a minimum

of 10 years to practice law in California and who volunteers to assist the court by hearing certain kinds of cases. The temporary judge is required to complete a training program for small claims court judges before hearing cases.

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

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

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

Presenting Your Claim or Defense

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

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

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

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

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

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

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

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

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

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

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

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

Asking for Court Costs

At the hearing, if you are the one suing, you should ask the judge to award your court costs if you win. Costs are out-of-pocket fees and charges a party pays to file and present a lawsuit. If you are awarded costs, the award is included in the judgment against the losing party. In most cases, costs are awarded to the person who brought the suit and won. However, it still be may be a good idea to ask for your court costs at the end of the hearing. Defendants cannot be awarded court costs, since they do not pay a court fee to appear in court. On the other hand, if the defendant has filed a counter-claim that was heard at the hearing, the defendant could ask for their court costs for the filing of their counter-claim.

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

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

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Plaintiffs and Defendants...

The Judgment

Receiving the Judge's Decision

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

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

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

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

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

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

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

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

A judgment isn't automatically awarded against a defendant who doesn't come to the hearing. The plaintiff must still prove the plaintiff's claim by evidence. If sufficient evidence is provided, the judge

may award the plaintiff some or all of the amount claimed, and possibly also court costs and interest. If the defendant is an active duty member of the armed forces, a judgment can be awarded only if certain prerequisites are met.

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

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

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

If the *plaintiff* doesn't appear at the hearing, and a judgment is entered against the plaintiff, the plaintiff has 30 days after the date of the clerk's mailing of the Notice of Entry of Judgment (Form SC-130) to ask the small claims court to set aside the judgment and hold another hearing. To make this request, the plaintiff must file a ***Notice of Motion to Vacate Judgment and Declaration*** (Form SC-135) and explain why the plaintiff didn't appear at the hearing. A hearing to consider the request will then be held. (The word "motion" means "request," and the words "notice of motion" mean that the person giving the notice desires to make a request.) The request to vacate (set aside) the judgment may be granted, but only if the judge finds **good cause** for the plaintiff not attending the hearing. Examples of good cause may be illness, a family emergency, or lack of notification about the hearing date if it was changed. If the request is granted and all the parties are present, the court may ask them if they would like to proceed immediately with the merits of the case. All parties must consent to the court's request to hear the case on the merits immediately after the motion is granted. By law, you are not obligated to consent to the court request. If you are not ready to proceed after the motion to vacate is granted, let the court know that you would like the hearing to be rescheduled. However, it is a good idea to be prepared to present your claims or defenses in case the judge decides to proceed regardless of a request to reschedule the hearing.

If the *defendant* does not appear at the hearing, similar rules apply. A defendant who doesn't appear must first ask the small claims court to vacate (set aside) the judgment. If the defendant was properly served, the defendant must file a Notice of Motion to Vacate Judgment (Form SC-135) within 30 days after the date the court mailed the Notice of Entry of Judgment (Form SC-130). The Notice of Motion to Vacate Judgment and Declaration (Form SC-135) should be completed to show why the defendant didn't appear at the hearing. A hearing to consider the request will then be held. The request to vacate (set aside) the judgment may be granted only if the judge finds good cause for the defendant not attending the hearing. If the request is granted and all the parties are present, the judge may ask them if they would like to proceed immediately with the merits of the case. All parties must consent to the judge's request to hear the case on the merits immediately after the motion is granted. By law, you are not obligated to consent to the judge's request. If you are not ready to proceed after the motion to vacate is granted, let the judge know that you would like the hearing to be rescheduled. However, it is a good idea to be prepared to present your claims or defenses in case the judge decides to proceed regardless of a request to reschedule the hearing.

If the *defendant* was not *properly served* with the plaintiff's claim, the defendant has up to 180 days after learning that the judgment was entered to file a Notice of Motion to Vacate Judgment (Form SC-135). A hearing to consider the request will then be held. If the court determines (1) that the defendant

was not properly served, and (2) that the request to vacate the judgment was filed within 180 days after the defendant either discovered the judgment, or should have discovered the judgment, the defendant's motion will be granted. If the request is granted and all the parties are present, the judge may ask them if they would like to proceed immediately with the merits of the case. All parties must consent to the judge's request to hear the case on the merits immediately after the motion is granted. By law, you are not obligated to consent to the judge's request. If you are not ready to proceed after the motion to vacate is granted, let the judge know that you would like the hearing to be rescheduled. However, it is a good idea to be prepared to present your claims or defenses in case the judge decides to proceed regardless of a request to reschedule the hearing.

If the defendant's motion is *denied*, the defendant has 10 days from the date of the denial (or of the mailing of the notice of denial) to obtain a review of the denial by another judge (one designated to hear small claims court appeals). The defendant's request is registered by filing with the small claims court a ***Notice of Appeal*** (Form SC-140). The new judge only decides if the original judge was correct in denying the defendant's motion to vacate the judgment. If the request is granted and all the parties are present, the judge may ask them if they would like to proceed immediately with the merits of the case. All parties must consent to the judge's request to hear the case on the merits immediately after the motion is granted. You are not obligated to consent to the judge's request. If you are not ready to proceed after the motion to vacate is granted, let the judge know that you would like the hearing on the merits to be rescheduled. However, it is a good idea to be prepared to present your claims or defenses in case the judge decides to proceed regardless of a request to reschedule the hearing.

Correcting an Error or Appealing a Small Claims Court Judgment

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

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

The appeal from a judgment in small claims court is started by filing a Notice of Appeal (Form SC-140) with the small claims clerk within 30 days after the judgment is delivered or handed to the parties in court or, if the decision is mailed, within 30 days after the date the clerk mails the Notice of Entry of Judgment (Form SC-130) to the parties, whichever is earlier. The date of mailing (or in court delivery) appears on the form. The fee for filing an appeal is $75.

A plaintiff or defendant also has the right to invite but not require the small claims court to re-examine its decision. This is accomplished by filing with the small claims court a ***Request to Correct or Cancel Judgment and Answer*** (Form SC-108). While the defendant is the only party with a right to file an appeal, either party, whether plaintiff or defendant, may request the small claims court to correct "a clerical error in the judgment" or vacate a judgment

and re-hear the dispute "on the grounds of an incorrect or erroneous legal basis for the decision." The request should describe the asserted error both clearly and persuasively.

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

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

Re-Hearing Before a Different Judge on Appeal

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

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

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

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

For good cause and where necessary to achieve substantial justice between the parties, the judge who hears an appeal may award reimbursement

of the following expenses to a plaintiff who has prevailed at the hearings in both the small claims court and on appeal:

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

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

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

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

After the Judgment...

Collecting or Satisfying the Judgment

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

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

The small claims court judgment becomes final and enforceable 30 days after the small claims clerk has delivered or mailed the Notice of Entry of Judgment (Form SC-130), provided that the defendant hasn't filed a timely Notice of Appeal (Form SC-140) or a Notice of Motion to Vacate Judgment and Declaration (Form SC-135). If the defendant files an appeal and loses, the judgment becomes enforceable after transfer of the case back to the small claims court. Enforcement of the judgment is stayed automatically for 30 days from the date of mailing in order to give time for the defendant to either file an appeal or a motion to vacate. This means that the plaintiff cannot collect the judgment for 30 days from the date it is mailed out. Even if the judge gave the judgment in open court, the plaintiff must wait 30 days from the date the judgment form is mailed out to the parties before starting collection efforts. Obviously, if the defendant files an appeal within those 30 days, the plaintiff will not be able to collect the judgment unless he or she prevails at the trial de novo. If the defendant filed a motion to vacate and it is denied, the judgment is stayed for another 10 days for the defendant to appeal the denial. There is no stay period if the plaintiff wins a judgment at a trial de novo, and Plaintiff can begin collection efforts right away (i.e., getting a writ of execution).

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

Once you have fully paid the judgment debt (including any *interest* and allowable *costs* which have accrued since the hearing), the judgment creditor is required to complete, sign, and file with the small claims court an ***Acknowledgment of Satisfaction of Judgment*** (Form SC-290). It's available for printing at the Judicial Council's self-help website at **www.courtinfo.ca.gov**.

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

Options for a Judgment Debtor

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

- **Installment payments—**If a judgment debtor is willing to pay the judgment but can't pay the entire judgment debt at one time, then the judgment debtor may ask the court for authorization to pay the amount of the judgment in installments. The judgment debtor should first ask the judgment creditor if the judgment creditor is willing to accept weekly or monthly payments. (See the information on installment payments in "Have You Tried to Settle the Dispute Yourself?" on page 5.) If the judgment creditor insists on receiving the full amount of the judgment, or if both parties can't agree on an installment payment plan, the judgment debtor can file a ***Request to Make Payments*** (Form SC-220). This form must be filed with a ***Financial Statement*** (Form EJ-165). Both the request form and the financial statement form that you file are then mailed to the judgment creditor by the court. The judgment creditor can either oppose your request, or agree to it by filing a ***Response to Request to Make Payments*** (Form SC-221). A hearing may or may not be held.

- **Protecting property or income from collection—**A judgment debtor may be able to lawfully protect some or all of the judgment debtor's assets (property) and sources of income from being taken to pay the judgment. It may be possible to protect necessities of life such as one's house, furniture, clothes, car (within certain price limitations), tools of the trade, certain other personal property, and all or a portion of one's earnings. In addition, workers' compensation, unemployment, pension, Social Security, welfare, or insurance payments are protected and can't be taken to satisfy a judgment. At your request, the small claims court clerk or a small claims adviser can give you a list of assets that are protected (**exempt assets**) in California. This information is itemized in a court form entitled ***Exemptions From the Enforcement of Judgments*** (Form EJ-155).

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

How a Judgment Creditor Can Enforce a Judgment

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

- **Locate the judgment debtor—**If you do not already know how to communicate with the judgment debtor, first get the judgment debtor's address and telephone number, so that you can communicate an informal request for payment to the judgment debtor or the judgment debtor's representative. It's also helpful, and may be necessary, to determine where the judgment debtor is employed, at what bank or other place the judgment debtor has a checking or savings account, and what other real estate or personal property the judgment debtor may own. For ways to locate the other party, see "Locating the Other Party" (page 18 of this handbook).
- **Levy execution on the debtor's wages—** A wage garnishment orders the judgment debtor's employer to periodically give the sheriff, who then sends you part of the judgment debtor's wages until the debt is paid. To levy execution on (garnish) wages, you need to complete a ***Writ of Execution*** (Form EJ-130), which (when issued by the court) directs the sheriff to enforce your judgment. A Writ of Execution is issued by the small claims clerk and only becomes effective then. You'll also need to complete and pay a fee for the issuance of an ***Application for Earnings Withholding Order (Wage Garnishment)*** (Form WG-001).
- **Levy execution on the debtor's checking or other account (bank levy)—**A **bank levy** means that money will be taken from the debtor's bank, checking or savings account to pay the judgment. You'll need the name and branch address of the bank or other financial institution. Get a Writ of Execution (Form EJ-130) from the small claims clerk. There is a fee of $15 for issuing a Writ of Execution.
- **Record an Abstract of Judgment—** Recording an ***Abstract of Judgment-Civil and Small Claims*** (Form EJ-001) puts a lien on any land, house, or other building the debtor owns in the county where it is recorded. Obtain an Abstract of Judgment - Civil and Small Claims (Form EJ-001) from the small claims clerk, and record it with the county recorder in each county where the debtor owns or may own real property. If the property is sold with title insurance, the debt will be paid out of the proceeds of the sale. The clerk charges a fee of $15 for issuing an Abstract of Judgment. Fees also must be paid to a county recorder for recording it.
- **Have the sheriff do a "till tap"—**If the debtor is a business with a cash register, the sheriff can go to the address of the business and take enough money out of the cash register to pay the judgment debt and the sheriff's fee. First complete a ***Writ of Execution*** (Form EJ-130), request the small claims clerk issue it, and take it to the sheriff. Then instruct the sheriff in writing to do a "till tap." A typical sheriff's fee for a till tap is $85, paid in advance to the sheriff. You must know the name and address of the business. If there isn't enough money in the cash register to pay the judgment debt, you'll have to request subsequent till taps and be prepared to pay another fee each time the sheriff goes back.
- **Put a "keeper" in the debtor's business—** If the judgment debtor is a business, the sheriff will, for a fee, remain in the judgment debtor's business establishment and take all the funds that come in until the judgment is paid. The **keeper** can collect cash, checks, and bank credit card drafts. You'll need the name and address

of the business. Complete a Writ of Execution (Form EJ-130), have the clerk issue it, and take it to the sheriff. Instruct the sheriff in writing that you desire to put a keeper in the business. You will need to pay the sheriff substantial fees up-front. If the debtor closes the business while the sheriff is there, you'll have to pay another fee each time the sheriff goes back.

- **Conduct a judgment debtor's examination—** In an examination of a judgment debtor, the judgment debtor is ordered to appear in court to answer your questions about the existence, location, and amount or value of the judgment debtor's salary, other income sources, bank accounts, tangible property, and anything else that could be used to generate proceeds to pay the judgment. If you wish, you can also subpoena the debtor's bank books, property deeds, paycheck stubs, and similar documents and require the judgment debtor to bring them to the hearing. At the examination, you may have the judge order the judgment debtor to turn over any assets in the judgment debtor's possession. You'll need to complete and pay a fee for an ***Application and Order for Appearance and Examination*** (Form EJ-125). If you want the judgment debtor to also bring certain documents, you should also ask the small claims clerk to issue a ***Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration*** (Form SC-107). The Application and Order for Appearance and Examination (and the subpoena if you want to serve that too) must be served on the debtor by the sheriff or a registered process server, or by a private person specially appointed by court order at the judgement creditor's request. The judgment debtor must reside or have a place of business within 150 miles of the court. If you do not know where the judgment debtor currently resides, see discussion on "Locating the Other Party" on page 18.

  CAUTION: A judgment debtor's examination works well when the judgment debtor cooperates by appearing at the examination and by producing the requested documents. However, judgment creditors may find the judgment debtor's examination process to be highly frustrating for several reasons. Some judgment debtors are hard to find and serve, while others do not show up at all or show up without the requested documents. The penalty for the judgment debtor not appearing at a judgment debtor's examination is a bench warrant, assuming the judgment debtor was served properly. However, the judgment creditor has to pay the fees for the service of the bench warrant, and it is still not a guarantee that he or she will receive the necessary information to begin the collection process. As such, judgment creditors should ensure that the judgment debtor's examination process is an appropriate one for their situation.

- **Judgment collection companies—** The judgment creditor may decide to assign their judgment to a judgment collection company. Judgment collection companies usually do not charge an initial fee, and they do all of the collection work. If the judgment collection company collects the judgment, it usually takes a percentage of what it has collected. Be mindful that if you have hired a collection company and the judgment debtor decides to pay you directly, the collection company still may request that you pay them a percentage of the money you have received from the judgment debtor. Be sure you read the contract and understand all the terms.

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

Prohibited Debt Collection Practices

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

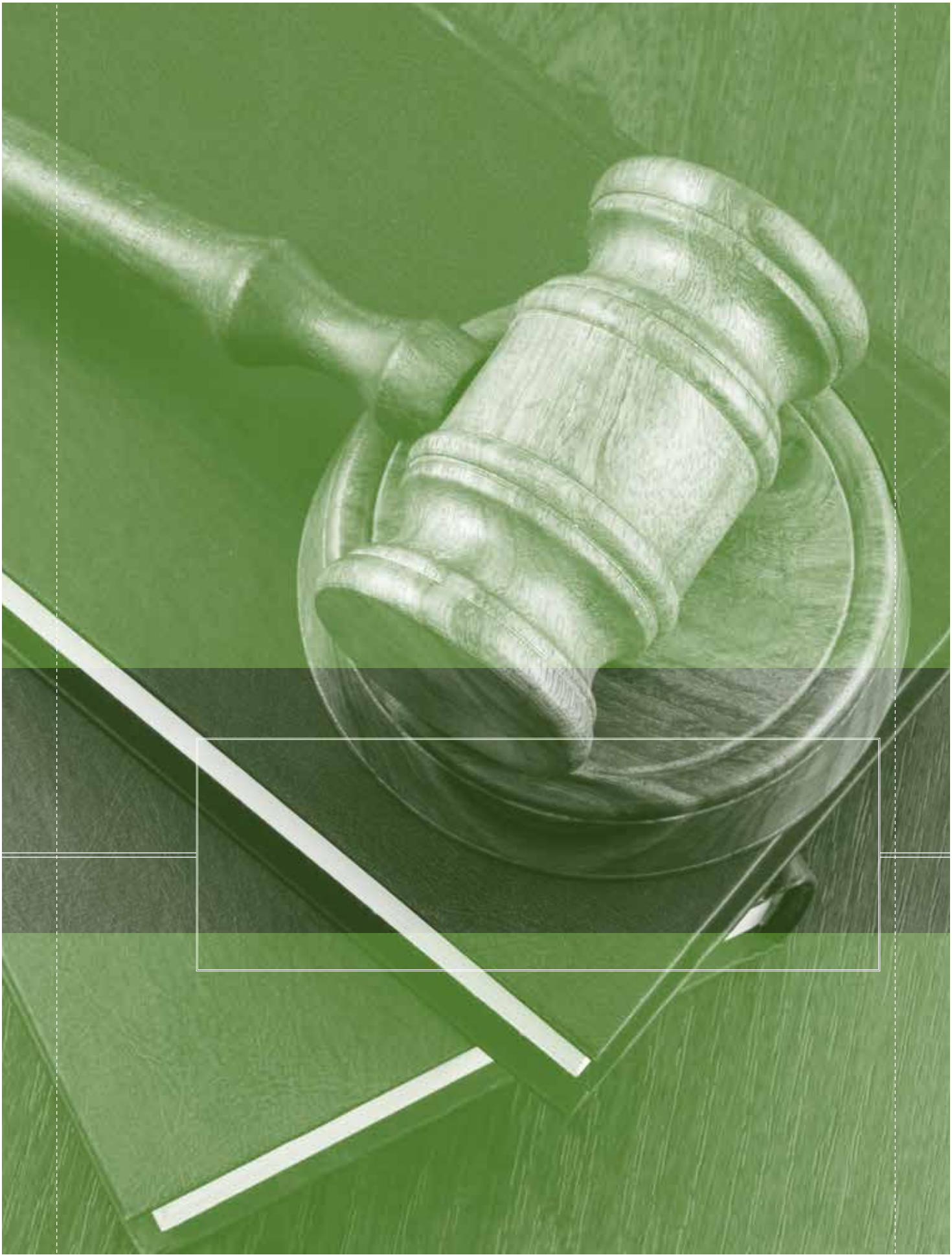
If you have questions or concerns regarding permissible debt collection activities, contact your small claims adviser, consult an attorney, or call the Federal Trade Commission (FTC) at its toll-free number, 1-877-FTC-HELP ((877) 382-4357). You may file a complaint at the FTC's Web site at www.ftc.gov,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

Once the Judgment Debt is Paid

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

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

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



Glossary of Terms

All form numbers refer to Official Judicial Council Forms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Glossary of Terms | D – N

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

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

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

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

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

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

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

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

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

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

Good cause—A sufficient reason.

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

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

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

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

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

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

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

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

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

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

Motion—A written request to the court.

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

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

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

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

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

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

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

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

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

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

Pro tem judge—See temporary judge.

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

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

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

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

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

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

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

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

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

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

Glossary of Terms | S – W

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Checklist

Before the Hearing—For the Plaintiff

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

Before the Hearing—For the Defendant

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

Checklist

Before the Hearing—For the Defendant (continued)

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

After the Hearing—Plaintiff and Defendant

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

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