

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-08

Title	Action Requested
Small Claims: Plaintiff's Claim and Information Forms	Review and submit comments by June 15, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms SC-100, SC-100-INFO and SC-100A	January 1, 2017
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Christy Simons, 415-865-7694 christy.simons@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revising two Small Claims forms to conform to the recent change in the law regarding court interpreters in civil cases and to further revise these forms and one other Small Claims form to improve their clarity, consistency with the law, and readability. These proposed revisions are based on suggestions received from judicial officers, court clerks, small claims advisors and members of the advisory committee.

Background

Both *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100) and *Information for the Plaintiff (Small Claims)* (form SC-100-INFO) include instructions regarding court interpreters for parties who need language assistance. Currently both forms indicate that a fee will be charged for the interpreter if no fee waiver has been granted in the action. (See "What if I don't speak English well" on page 4 of form SC-100 and "Interpreters" on page 2 of form SC-100-INFO.) These provisions were added to the small claims forms to reflect statutes that previously required courts to charge for court interpreters in civil matters and case law stating that courts could provide a free court interpreter for an indigent small claims party who needed one, and should do so if an interpreter was available. (See Government Code sections 26806 and 68092 and *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412.)

Evidence Code section 756, which was enacted effective January 1, 2015, now prohibits courts from charging parties for court interpreters in civil cases. Section 756 also identifies the civil case types to be given preference for receiving court interpretation services in the event that there

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

is not sufficient funding for courts to provide interpreters in all civil cases. (Evid. Code, § 756, subds. (b), (d).) Small claims cases are not among the case types receiving top priority for court interpreter services. The Small Claims Act, however, specifically contemplates interpreters and language assistance. Code of Civil Procedure section 116.550 provides (1) if an interpreter is not available at the first scheduled hearing, the court is to continue the hearing so the litigant may bring someone (not an attorney) with him or her for language assistance, and (2) the court is to make a reasonable effort to maintain and make available to parties a list of interpreters. The Information for the Defendant on *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100) reflects section 116.550, informing the defendant that he or she may have one postponement of the trial date if he or she needs more time to get an interpreter.

The Proposal

Court Interpreter Instructions

To reflect Evidence Code section 756's prohibition on courts charging for interpreter services in civil cases, the committee proposes revising forms SC-100 and SC-100-INFO to eliminate the current references to fees and fee waivers in the items regarding interpreter services. In addition, the committee proposes changing the order of the information provided so that small claims litigants are advised first to ask about the availability of a court-provided interpreter, while also being cautioned that an interpreter might not be available. Litigants are then advised of their alternative option to bring an adult who is not a witness to interpret for them and that they may ask the court for a list of interpreters for hire. (See Code of Civ. Proc., § 116.550.) This revision reflects the goals in the Judicial Council's Strategic Plan for Language Access in the California Courts, approved by the council last year.

The committee also proposes revising the language instructing litigants to ask the court clerk for an interpreter "at least five days before the court date." This deadline is not mandated by a statute or rule of court, and litigants may interpret the language as barring them from requesting an interpreter fewer than five days before their hearing. The committee, aware that without some warning, litigants may not ask for an interpreter until they arrive at court for trial, proposes revising these provisions to instruct litigants to request an interpreter "as far in advance of your court date as possible."

Other Proposed Revisions to Form SC-100¹

The committee proposes the following additional changes to form SC-100 to improve its clarity, consistency with the law, and readability:

- ***Payday Lender***

Adding a check box to item 1 on page 2 to specify whether the plaintiff is a Payday Lender under the California Deferred Deposit Transaction Law, Financial Code sections 23000 et

¹ Both forms SC-100 and SC-100-INFO also contain other minor revisions to improve clarity and readability or to correct grammar and syntax.

seq. Identification of a Payday Lender claimant will make it easier for courts to enforce Financial Code section 23036(d), which prohibits treble damages under Civil Code section 1719 based on a deferred deposit transaction.

- ***Name and Address of the Agent for Service of Process***

Revising the defendant's information, item 2 on page 2, to include space for the name and address of the person designated an agent for service where the defendant is a business or public entity. Small claims courts need the information so they know who is responsible for accepting service. By including this space on the form, plaintiffs will be more likely to obtain this information before filing the claim, saving time for court staff. The revision will enable courts to determine whether service by certified mail is valid when the proof of service comes back.²

The attachment form to be used for listing additional defendants, *Other Plaintiffs or Defendants (Small Claims)* (form SC-100A), would be similarly revised.³

- ***Demand Requirement***

Adding a sentence referring to a demand for the return of property to item 4 on page 3 to make the demand language consistent with Code of Civil Procedure section 116.320(b) which provides that the small claims form must set forth that "the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property" This proposed revision also makes form SC-100 consistent with form SC-100-INFO.

- ***Number of Small Claims Filed in a Calendar Year***

Revising the declaration that the plaintiff has not filed more than two small claims cases demanding more than \$2,500 in the calendar year (item 11 on page 3) to conform to section 116.231, subdivision (b), which only requires the plaintiff to make this declaration if the *current* claim demands more than \$2,500.

The committee also proposes moving up current item 11 to follow item 9, which is also a filing restriction, and renumbers it as item 10. This change further improves the form by making the statement regarding no right of appeal more prominent as the last numbered item above the plaintiff's signature.

² In order to make this revision to the form, and have the form remain at its current 5-page length, the space for the name and address of a second defendant has been removed from item 2. As currently proposed, this means that an attachment form will be required in all cases with more than one defendant. Specific comments are requested on whether this is a good use of the space, or whether it would be preferable to include additional room for the name and address of a second defendant and agent for service on the form, even if that makes the form longer.

³ This form too has been revised to eliminate one space for a defendant's name and address to make room for the agent for service information. This form is currently a single page form. The committee seeks specific comments on whether it would be preferable to keep space for more defendants on the form by lengthening it to two pages (i.e., using the back as well as the front of the form).

Other Plaintiffs or Defendants (Small Claims) (form SC-100A) would be similarly revised, renumbering item 4 as item 3.

- ***Description of Small Claims Court***

Revising the description of “**Small claims court,**” which is the first item on the Information for the Defendant section of the form,⁴ beginning at page 4, for clarity, accuracy, and to eliminate a misplaced modifier. The proposed revision specifies the types of plaintiffs that may claim up to \$10,000 and those that are limited to \$5,000.

- ***Time to File Notice of Appeal***

Revising the first bullet point under the heading **What if I lose the case?** to more accurately state the time for filing a notice of appeal. Under section 116.750(b), a notice of appeal must be filed not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment to the parties.

- ***Instructions Regarding Settlement and Dismissal***

Revising the item entitled **Settle your case before trial.** This item currently states that, if the parties agree to settle the case, they must both contact the court. The committee proposes revising this item to clarify that, in the event of settlement, only the plaintiff must file a request for dismissal with the clerk. There is no small claims form for dismissals, so the proposed revision also specifies that the plaintiff should file the general civil form, *Request for Dismissal* (form CIV-110).

- ***Defendant’s Claim***

Revising the item entitled **Sue the person who is suing you** to more accurately state the law regarding a defendant’s claim. Code of Civil Procedure section 116.360 provides that a defendant may file a claim against the plaintiff in the same small claims action in an amount not to exceed the jurisdictional limits. The claim need not relate to the same subject or event as the plaintiff’s claim. Section 116.390 provides that if a defendant has a claim against a plaintiff that exceeds the jurisdictional limits *and* relates to the subject of the plaintiff’s claim, the defendant may commence an action in a court of competent jurisdiction and request the small claims court to transfer the plaintiff’s small claims action to that court.

The proposed revision advises defendants regarding (1) the options to file a claim that exceeds the small claims jurisdictional limit in small claims court and waive the excess or file it in the appropriate court for the full value of the claim; (2) the option to move to transfer the plaintiff’s claim under appropriate circumstances, and (3) where on the form to find information regarding small claims jurisdictional limits. The revised language is consistent with that provided to plaintiffs on form SC-100-INFO at page 2 under the heading, “What if the defendant also has a claim?”

⁴ Note that the *Information for the Defendant* section of the form is also provided in Spanish in the same form; any revisions to the English section of the form will also be made to the Spanish section.

Other Proposed Revisions to Form SC-100-INFO, *Information for the Small Claims Plaintiff*

The committee proposes the following additional changes to form SC-100-INFO to improve its clarity, consistency with the law, and readability:

- ***Some Rules About the Defendant (including government agencies)***
Adding item 3 to this section to advise that, with very limited exceptions, the defendant must be served within the state of California. (See Code Civ. Proc., § 116.340.)
- ***How Does the Defendant Find Out About the Claim?***
Adding a sentence to advise small claims plaintiffs to read *What is “Proof of Service”?* (form SC-104B) and adding a heading number 5 to distinguish information regarding timing and proof of service from the prior section on substituted service.
- ***What If the Defendant Also Has a Claim?***
Revising this section to more accurately describe when a defendant may file a motion to transfer the plaintiff’s claim out of small claims court. The revision is consistent with the revised language on form SC-100 at page 4, in the section titled **Sue the person who is suing you.**

Alternatives Considered

No change

The alternative of not changing the forms was not pursued because the court interpreter instructions no longer complied with the law. While revising the court interpreter provisions, the advisory committee considered a number of other proposed revisions that had been received but deferred over the past several years. The committee rejected some of these proposals and decided to proceed with others, for the reasons described above.

Deleting court interpreter instructions

The original proposal regarding court interpreter instructions was to delete these provisions from the forms because different courts follow different procedures. The advisory committee concluded the instructions should be revised and not deleted because the Small Claims Act specifically addresses language assistance, the information is helpful to litigants, and the instructions do not hamper courts’ ability to devise their own procedures that conform to the law.

The advisory committee also considered whether to delete any reference to a time frame for a litigant to request an interpreter, but concluded that providing no guidance on this point could result in more litigants asking for language assistance for the first time when they arrive at court for trial.

Revising the information regarding moving to vacate the judgment

The advisory committee considered a proposal to revise the second bullet point under the heading **What if I lose the case?** on page 4 of form SC-100, which informs a defendant who was not at trial of the procedure for moving to vacate the judgment. The proposal to change the plain language description to more technically correct language was intended to better describe this process. The advisory committee concluded the current language was accurate and more helpful to small claims litigants than the proposed revisions.

Implementation Requirements, Costs, and Operational Impacts

This proposal will impose a need for training of court clerks, staff, and judicial officers regarding the new information to be found on the forms. It will also impose a cost in producing or procuring new forms. As a result of these revisions, the advisory committee expects that courts will save staff time in explaining formerly confusing provisions and clarifying small claims procedures, and in determining the identity of appropriate agents for service. At the same time, litigants will benefit from forms that are more accurate, informative, and readable.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should either or both form SC-100 or form SC-100A be made a page longer in order to allow space for an additional defendant name and address to be included on the forms? See discussion at footnotes 2 and 3.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

Proposed amended forms SC-100, SC-100-INFO, and SC-100A

*Clerk stamps date here when form is filed.***Notice to the person being sued:**

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

Aviso al Demandado:

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

*Fill in court name and street address:***Superior Court of California, County of***Court fills in case number when form is filed.***Case Number:****Case Name:****Order to Go to Court****The people in ① and ② must go to court:** *(Clerk fills out section below.)*

Trial Date	→ Date	Time	Department	Name and address of court if different from above
	1. _____	_____	_____	_____
	2. _____	_____	_____	_____
	3. _____	_____	_____	_____
	Date: _____		Clerk, by _____, Deputy	

Instructions for the person suing:

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



Plaintiff (list names):

Case Number: _____

1 The Plaintiff (the person, business, or public entity that is suing) is:

Name: _____ Phone: _____

Street address: _____

Street City State Zip

Mailing address (if different): _____

Street City State Zip

If more than one Plaintiff, list next Plaintiff here:

Name: _____ Phone: _____

Street address: _____

Street City State Zip

Mailing address (if different): _____

Street City State Zip

- Check here if more than two Plaintiffs and attach form SC-100A.
- Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.
- Check here if any Plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

2 The Defendant (the person, business, or public entity being sued) is:

Name: _____ Phone: _____

Street address: _____

Street City State Zip

Mailing address (if different): _____

Street City State Zip

If the Defendant is a business or public entity, list the person authorized for service of process:

Name: _____ Job title _____

Address: _____

Street City State Zip

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

3 The Plaintiff claims the Defendant owes \$ _____ . (Explain below):

a. Why does the Defendant owe the Plaintiff money?

When did this happen? (Date): _____

b. If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

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



Plaintiff (list names):

Case Number: _____

4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the Defendant to give you the property. Have you done this?

Yes No If no, explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. (1) Where the Defendant lives or does business. (2) Where the Plaintiff's property was damaged. (3) Where the Plaintiff was injured. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim, is about an offer or contract for personal, family, or household goods, services, or loans.
c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card).
d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale.
e. Other (specify): _____

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

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

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

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

10 Is your claim for more than \$2,500? Yes No
If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

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

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

Date: _____
Plaintiff types or prints name here

Plaintiff signs here

Date: _____
Second Plaintiff types or prints name here

Second Plaintiff signs here



Requests for Accommodations

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



“Small claims court” is a special court where claims for \$10,000 or less are decided. Individuals, including “natural persons” and sole proprietors, may claim up to \$10,000. Corporations, partnerships, public entities and other businesses are limited to claims of \$5,000. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the *Defendant*—the person being sued. The person who is suing you is the *Plaintiff*.

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

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

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don’t speak English well? Ask the civil or small claims court clerk for an interpreter as far in advance of your court date as possible. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at www.courts.ca.gov/smallclaims/forms.

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

What if I lose the case? If you lose, you *may* appeal. You’ll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge’s decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

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

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, the Plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.

- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the Plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant’s Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter or event that is the subject of the Plaintiff’s claim, you may file your claim in the appropriate court and file a motion to transfer the Plaintiff’s claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled “**Small Claims Court**”.
- **Agree with the Plaintiff’s claim and pay the money.** Or, if you can’t pay the money now, go to your trial and say you want to make payments.
- **Let the case “default.”** If you don’t settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

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

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



Need help?

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

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

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).)



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Page 4 provides the *Information for the Defendant* section of the form in Spanish. Any changes to the English version will also be made to the Spanish version.

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

WHAT IS SMALL CLAIMS COURT?

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

WHO CAN FILE A CLAIM?

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

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

4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear*, form SC-109.)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue**. Check the court's local rules if there is more than one court location in the county handling small claims cases. If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard. The right location may be any of these:

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

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

SOME RULES ABOUT THE DEFENDANT (including government agencies)

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

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

3. With very limited exceptions, the defendant must be served within the state of California.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF.** You should read form SC-104B, *What is "Proof of Service"?* Here are four ways to serve the defendant:

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

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

3. **Certified mail**—You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**

4. **Substituted service**—This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

4. **Substituted service** (*continued*) A copy of your claim must be left at the defendant's business with the person in charge; **OR** at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until **10 days** after the copy is mailed.
5. **Timing and proof of service**—No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least **15 days** before the trial date. This period is at least **20 days** if the defendant lives outside the county.
The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

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

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 or \$10,000 if the defendant is a natural person (*see exceptions on page 1**). If the value of the claim is more than this amount, the defendant may either give up the amount over \$5,000 or \$10,000 and sue in the small claims court or sue in the appropriate court for the full value of the claim. If the defendant's claim relates to the same contract, transaction, matter or event that is the subject of your claim and exceeds the value amount for small claims court, the defendant may file the claim in the appropriate court and file a motion to transfer your claim to that court to resolve both claims together.

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

WHAT HAPPENS AT THE TRIAL?

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

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

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

WHAT HAPPENS AFTER JUDGMENT?

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

HOW TO GET HELP WITH YOUR CASE

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

This form is attached to form SC-100, item 1 or 2.

1 If more than two plaintiffs (person, business, or entity suing), list their information below:

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No *If yes, attach form SC-103.*

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No *If yes, attach form SC-103.*

Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.

2 If more than one defendant (person, business, or entity being sued), list their information below:

Other defendant's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

If this defendant is a business or public entity, list the person authorized for service of process:

Name: _____ Job title: _____

Address: _____

City: _____ State: _____ Zip: _____

Check here if your case is against more than two defendants, and fill out and attach another form SC-100A.

3 Is your claim for more than \$2,500? Yes No

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

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

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

Date: _____

Type or print your name

Date: _____

Type or print your name



Sign your name



Sign your name