



SMALL CLAIMS COURT CHECKLIST for Plaintiff

1. Write a Demand Letter to the defendant (person who injured you/your property)

- a. Tell the defendant why you think they owe you money, and how much money is owed. Be sure to include: a demand for the money, a brief summary of what happened, copies of your proof—receipts, pictures, etc.—, a deadline for the defendant to respond (10-14 days), and a warning about taking legal action if they don't resolve the matter.
- b. Make and keep a copy, mail the original demand letter regular mail (certified to businesses).
- c. If situation cannot be settled, you may need to file suit in the appropriate small claims court.

2. Determine Your Legal Theory

- a. Why should defendant be held liable for your damages? (For example, Defendant's negligence, verbal obligation, written contract, conversion of property (theft), etc.)
- b. What are your monetary damages/injuries? Can you substantiate your injuries with receipts, estimates, witness statements, etc.?
- c. Translate your injuries into a dollar amount. (For example: "I incurred damages in the amount of \$2,500 in car repair bills for defendant's failure to stop at a red light.")

3. Find Your Defendant

- a. Get defendant's address and phone number.
- b. If a corporation, limited partnership (LP) or Limited Liability Company (LLC), check to see that you have the correct legal name and the name and address of the "Agent for Service of Process." An agent for service of process is the person or company who is responsible for receiving legal papers within the state of California. The California Secretary of State keeps a register of corporations, limited partnerships and limited liability companies. The easiest way to access this information is through the Internet: www.ss.ca.gov . If you don't have Internet access, you can request corporate information (correct legal name and "agent for service of process") from: California Secretary of State, Attn: IRC Unit, 1500-11th Street, Sacramento, CA 95814. Be sure to enclose a check/money order for \$4.00.
- c. If a sole proprietorship/partnership, then find the name of the owner(s). Contact the city, county business license offices and/or the County Recorder's Fictitious Business Name Statement office. In Alameda County, the County Recorder is located at 1106 Madison Street in Oakland. They do not answer questions about specific businesses over the telephone. You can obtain owner information online at: www.acgov.org (click on Clerk-Recorder in the drop down menu of Department List, then click on Fictitious Business Name search).
- d. If a government agency, (City, County, State, School District) file a damages claim with that agency (usually within 6 months of the date of the incident.) If the claim is denied, you have six months from the date of the denial to file in small claims.

4. Determine Venue (proper place to sue defendant). You can sue the Defendant:

- a. Where defendant resides or where the company conducts business (If there are multiple

- defendants, you can sue where any one of the defendants reside);
- b. Where the contract was signed or wherever the contract obligation was to be performed;
 - c. Where the Plaintiff was injured or property was damaged.

5. Filing Your Claim

- a. Obtain the Plaintiff's Claim (SC-100) and fill it out. You can fill out the forms online at: www.ezlegalfile.com or obtain the forms from: www.courtinfo.ca.gov (click on Self-Help, then Small Claims, then Forms for Small Claims) or www.acgov.org/courts (click on Court Divisions, then Small Claims).
- b. File the form with the small claims clerk at any of the 7 small claims court locations, and pay a \$22.00 filing fee. (Those with very low income may qualify for a waiver of court fees. Ask the clerk for an Application for Waiver of Court Fees and Costs.)
- c. The clerk will assign a court date and write or type the court date on your court papers, and will give you 2 sets of papers back (one for you and one to be served on defendant).

6. Serve Defendant's Copy of the Plaintiff's Claim on the Defendant (this is how the defendant finds out about the case)

Pick one of these ways:

a. Personal Service on the Defendant:

- 1) You can use either a Process Server (cost is approximately \$35.00-60.00, which can be added to your court costs if you win) or anyone over the age of 18 who is not a party or witness to the suit. Make sure that the **Proof of Service** form is properly filled out by the person who serves the papers and that you file this form with the court at least 3 days before the hearing. You can find a process server in your local Yellow Pages.
- 2) Time Limit for service of process: Service must be done **15 days before hearing**, if defendants are in the county, or **20 days before hearing**, if defendants are outside of the county.

b. Certified Mail by the Court (with fee):

- 1) Verify with clerk that service is complete and valid or check on line at: www.acgov.org/courts (click on Domain Web, click on case summary, enter your case number, click on Register of Actions, to see if service was defective or not). If a return receipt was not received, use a process server, or anyone over the age of 18 who is not a party to the suit to serve your papers (see 6a above.)

c. Substituted Service (Process Server only):

- 1) If Defendant cannot be personally served, a process server may leave a copy of your lawsuit at the defendant's residence with a member of the household who is over 18 (and who is told what the papers are about), and mail copy of the same claim to the defendant by first class mail. Service is deemed complete 10 days *after mailing*, so this should be done no later than 25 days before your hearing, if an in-county defendant, and 30 days before your hearing if your defendant is outside the county. This can also be done at defendant's business.

7. Prepare Your Case

- a. Formulate the main issues of your case (for example, "The main issue is whether Defendant is liable for monetary damages in the amount of \$500 for his failure to return my security deposit without good reason")
- b. Organize your testimony and evidence to prove your case (for example, "Defendant is liable for my damages because my evidence clearly shows that he violated Civil Code Section 1950.5 and did not return my rental deposit or provide me with an accounting of how my deposit was used within 21 days.")
 - 1) Write out a short summary (1 page or less) of the facts of your case, and use supporting evidence to back up your story.
 - 2) Ask your witnesses to come to court, or to type, sign and date witness statements to present to the judge as evidence of your claim. You can use a form declaration (MC-030) for this. You can get it at www.courtinfo.ca.gov/forms, click on Forms by Number in the drop down menu.
 - 3) Arrange photographs, written documents, receipts, etc. as evidence of your claim, in a clear and understandable manner.
 - 4) Mark your most important pieces of evidence to present to the judge. For example, mark them "Exhibits A, B, C, " etc. Use a highlighter to highlight important sections of information on copies of the documents.
 - 5) Make copies of the evidence for the judge and defendant. Hold onto the originals for presentation to the judge (if necessary.)
- c. Practice your court presentation (in front of someone who is not familiar with your case). You can also go to the small claims court to see how cases are conducted.
- d. If necessary, subpoena witnesses to show up in court by serving a copy of the subpoena on your witness and filing the original subpoena with the court. (This is usually unnecessary in a small claims case - ask the advisor.) A witness may ask for witness fees (\$35/day and \$.20/mile to and from the court) or for reasonable photocopying fees.
- e. If necessary, subpoena documents from Defendants or third parties (Get the form from the clerk's office)
 - 1) Ask the clerk in the small claims office to issue you a Small Claims Subpoena and Declaration (SC-107) form. Fill it out, and make two copies. Have one copy served on the defendant/third party. Make sure that the person who serves the subpoena fills out the Proof of Service (3rd page of the form). File the original subpoena with the completed Proof of Service with the small claims clerk.
 - 2) The Subpoena requests that Defendant mail the documents to the court (remember that if you are using a subpoena, you have to allow enough time for the Defendants to gather the documents and mail them) or to show up with the documents.
 - 3) Make a request to the judge in court to examine the documents before your hearing. You will need to ask the court clerk if you can examine the documents and/or make copies of the subpoenaed documents.

8. Present your case in Small Claims Court

- a. Show up to court early! Dress appropriately for court. Be respectful to the judge, the clerks, the court attendant, and the Defendant. Address the judge as "Your Honor." Be polite.
- b. The Clerk will call your name according to your court docket. The Clerk will ask if all parties are present, to exchange any documents which will be presented to the judge, and to make an attempt to settle the case
- c. If Defendant doesn't show up, tell the judge why you think you should win your case. The judge may give you a "Default Judgment" (a decision given to the Plaintiff when the defendant fails to show up or "defaults").
- e. Order of Case. (Remember to be brief, honest and get to the point of your story.)
 - 1) Plaintiff presents side (approximately five minutes). Use your testimony and submit your evidence
 - 2) Defendant presents side (approximately five minutes) Use your testimony and submit your evidence
 - 3) Generally Plaintiff responds to what the defendant said or the judge will ask questions of both parties to clarify issues and focus the case.
- f. Remember to ask the judge to award the court costs if you paid them (filing fee, and process server fees you paid) if you win.
- g. Most Judges don't make a decision at the time of your court hearing, but instead, they will probably notify both parties by mail at a later date. Make sure that the court has your correct address.
- h. Check with the clerk's office in three weeks if you don't receive the judgment in the mail.
- i. Remember, the judge does not have to give any explanation or reasons why she decided the judgment that way!

9. Appeals or Motion to Vacate

- a. Appeal: The Plaintiff has NO RIGHT TO APPEAL in small claims court **unless** the defendant filed a defendant's claim. Only the Defendant has a right to file an appeal in Small Claims court, and the appeal must be filed within 30 days of the date the judgment was mailed out by the court.
- b. Motion to Vacate (cancel) the Judgment:
 - 1) The Plaintiff can file this if:
 - a) The Plaintiff did not show up for the small claims trial and has a very good reason why they were not there and the plaintiff cannot simply re-file (for instance the case was decided in the defendant's favor rather than being dismissed). Use form SC-135 (Notice of Motion to Vacate (cancel) Judgment).
 - b) The Plaintiff believes that the judge made a legal error (for example, she applied the wrong law to the case), or the clerk made a clerical error (for example, the clerk listed that the judgment was for \$100.00 but the judge said in court that judgment was for \$1000.00.) Use form SC-108 (Request to Correct/Vacate Judgment).

(1) Use documents to show that the judge made an error.

(2) If possible submit California statutory law or case law to support the claim of alleged legal error. Research can be done in any county/city law library.

2) **You cannot file a Motion to Vacate just because you disagree with the Judge's decision!**

c. What if the Defendant Appeals? The appeal is a brand new "trial" (trial de novo) with a different judge. What did you learn during the original hearing? Is there a better way to present your case? Do you have more evidence now? Perhaps you can use this information to make an even more convincing case the second time around. You can hire a lawyer to represent you on appeal, but you don't have to. The appeal should also be conducted informally because it is still a small claims case.

[For more information see the Small Claims Court Checklist for Defendant]

SMALL CLAIMS COURT CHECKLIST for DEFENDANT



What are your options if you've been served with a small claims suit by the Plaintiff?

1. Negotiate a settlement with the Plaintiff

a. If you do not have a good defense, it is best to settle with the plaintiff and negotiate for a lesser amount (some plaintiffs are willing to settle for a lesser amount to avoid the time and trouble of going to court.)

2. File a cross-claim against Plaintiff (Defendant's Claim, Form #SC-120)

a. If Plaintiff owes you money damages, get a Defendant's Claim Form (from the small claims clerk), fill it out and file with the Small Claims clerk. You can fill out the form online at: www.ezlegalfile.com or obtain the form from: www.courtinfo.ca.gov (click on Self-Help, then Small Claims, then Forms for Small Claims).

b. Serve Plaintiff at least five days before the date of the hearing. (See Plaintiff's checklist for information on "service of process")

c. Prepare for your cross-claim as if you were a Plaintiff presenting your claim (see Plaintiff's checklist).

3. Determine your defenses

a. Has the **Statute of Limitations** passed?

- 1) Breach of written contract = 4 years (CCP Section 337)
- 2) Breach of verbal contract = 2 years (CCP Section 339)
- 3) Injury to real or personal property = 3 years (CCP Section 338)
- 4) Libel, Slander, False Imprisonment = 1 year (CCP Section 340)
- 5) Personal Injury, Assault, Battery = 2 years (CCP Section 335.1)
- 6) Claim against Public Entity = usually 6 months (CCP Section 342)
- 7) Collection of Court Judgment = 10 years unless renewed

b. Improper Venue

- 1) If you are not being sued where you reside, conduct your business, where the contract was entered into, where the contract was to be performed, or where the property damage/personal injury occurred, challenge venue by writing to the court pursuant to CCP Section 116.370(b). You must submit the original venue challenge to the court and send a copy of the challenge to the plaintiff. Your venue challenge must state: all of the reasons why you think that venue is not proper at that court **and** that you have sent a copy to plaintiff. Check to see if the court received your venue challenge by calling the clerk or on line at: www.acgov.org/courts (click on Domain Web, click on case summary, enter your case number, and click on Register of Actions). The only issue the court will deal with on the date set for hearing is

whether or not venue is proper at that court.

- 2) If the court agrees with your venue challenge, the claim could be dismissed if it is filed in the wrong county or transferred to the appropriate court if it was filed in the right county. If the court does not agree with you (denies your venue challenge), a new date will be set for about two weeks later. You should receive notification in the mail of the outcome or you can check with the clerk or on line to find out the new date.

c. Improper Defendant

- 1) Person who was at fault and caused Plaintiff's damages was not sued.

d. Improper Service

- 1) Request a dismissal of the case (or at least a postponement until you are properly served)
- 3) Judgment can be vacated if the Defendant is improperly served. File a Motion to Vacate (cancel) Judgment (SC-135) with small claims clerk.

e. Plaintiff cannot prove you were negligent.

f. Plaintiff caused his own damages.

g. Damages done to the Defendant should be used as an offset

h. Facts establish that Defendant was not at fault

i. Plaintiff cannot substantiate his or her damages amount

4. Prepare your Defense

a. Formulate a defense and counter-arguments (i.e., I am not liable for Plaintiff's damages because....") Write a 1-page summary of what happened.

b. Organize your testimony and evidence to respond to Plaintiff's allegations

- 1) i.e. "As the landlord, I did not violate Civil Code Sect. 1950.5, because I sent the Plaintiff an itemized statement of damages within 21 days."

- 2) Correct the facts stated by the Plaintiff, and use supporting documents/evidence to back up your defenses.

- 3) Ask your witnesses to be present or to type, sign and date witness statements. They can use a generic declaration form (MC-030). You can get it from

www.courtinfo.ca.gov/forms , click on Forms by Number in the drop down

menu.

- 4) Arrange photographs, documents, receipts, etc.

- 5) Mark your most important pieces of evidence

- (a) Mark them "exhibits A, B, C, D, etc."

- (b) Make copies for the judge and the Plaintiff

- 6) If necessary, subpoena witnesses (get form from clerk's office or on line at:

www.courtinfo.ca.gov (click on self help, then small claims, then forms, the form is

Small Claims Subpoena and Declaration, SC-107). A witness may ask for witness

fees (\$35/day and \$.20/mile to and from the court) or for reasonable photocopying fees.

- 7) If necessary, subpoena documents (use form SC-107)
 - a. Ask the clerk in the small claims office to issue you a Small Claims Subpoena and Declaration (SC-107) form. Fill it out, and make two copies. Have one copy served on the plaintiff/third party. Make sure that the person who serves the subpoena fills out the Proof of Service (3rd page of the form). File the original subpoena with the completed Proof of Service with the small claims clerk.
 - b. The Subpoena requests that plaintiff/third party mail the documents to the court (remember that if you are using a subpoena, you have to allow enough time for the plaintiff/third party to gather the documents and mail them) or to show up with the documents.

5. Present your defense in Small Claims Court

- a. Show up on time at court, or Plaintiff will probably receive a default Judgment (plaintiff wins because you did not show up)
 - b. Exchange documents with Plaintiff and attempt to settle the case
 - c. Do not interrupt Plaintiff when s/he makes presentation
 - d. Respond to Plaintiff's allegations, using testimony and evidence
 - e. Ask the judge for any court costs if judge decides in your favor
- If you do not hear from the court within 3 weeks, call the clerks' office or check online for the status of your case!!

6. Appeal If you disagree with the decision in the case:

- a. File a Notice of Appeal (form # SC-140) within 30 days of the day the court clerk mails the judgment to the parties.
 - 1) File with the small claims clerk
 - 2) Pay the appeal fee (currently \$89.00)
 - 3) The Court will notify you of a court date in Superior Court (Usually within 60 days of filing)
 - 4) Serve the Plaintiff, or ask the Clerk if the Plaintiff gets notified by the court
- b. The appeal is a brand new hearing ("trial de novo") with a different judge. What did you learn during the original hearing? Is there a better way to present your case? Do you have more evidence now? Perhaps you can use this information to make a more convincing case the second time around. You can hire a lawyer to represent you on appeal, but you don't have to. The appeal should also be conducted informally because it is still a small claims case.
- c. Argue your case again in Superior Court
- d. Superior Court Awards:
 - 1) Judge may award Defendant or Plaintiff up to \$150.00 for attorney's fees and an additional \$150.00 for lost earnings and transportation costs "(f)or good cause and where necessary to achieve substantial justice..." (CCP §116.780(c))
 - 2) If your appeal is found by the court to be without merit, (intending only to harass or delay the Plaintiff), the judge may award up to \$1000.00 in attorney's fees and \$1000.00

in lost earnings and transportation costs to the Plaintiff. (CCP §116.790)
e. Defendant has no right to appeal an appeal. The superior court's judgment on the appeal is final.

1) Exception: "Extraordinary Writ" based on special circumstances-usually denied by the court. Writs are beyond the scope of the Small Claims Legal Advice Program.

7. Motion to Vacate

1) The Defendant can file this if

a) He or she did not show up for the small claims trial and has a very good reason why he or she was not there (for example, if the Defendant was not served with the Plaintiff's Claim). Use Notice of Motion to Vacate (cancel) Judgment (SC-135).

b) He or she believes that the judge made a legal error (for example, s/he applied the wrong law to the case), or the clerk made a clerical error (for example, listed that the judgment was for \$1000 and the judgment was actually for \$100.) Use Request to Correct/Vacate Judgment (SC-108).

(1) Use documents to show that the judge made an error.

(2) If possible submit California statutory law or case law to support the claim of alleged legal error. Research can be done in any county/city law library.

Frequently Asked Questions About California Law

1. Rental Deposits

- a. **Civil Code Section 1950.5(g)**: Landlord must return the security deposit within three weeks of your vacating the premises. If the landlord deducts any money, Landlord must provide an itemized statement of charges within 3 weeks, and return any remaining unused balance of the deposit. Landlord can only withhold amounts necessary to pay for (1) repairing damages caused by the tenant (exclusive or ordinary wear and tear); (2) Paying overdue rent; (3) Cleaning if necessary; and (4) Replacing personal property of the landlord (such as furniture) if the rental lease agreement allows it.
- b. **Civil Code Section 1950.5 (l)**: A judge can award up to twice the amount of the deposit in punitive damages for bad faith retention of the security deposit, in addition to what was actually withheld.

2. Bounced Checks:

- a. **Civil Code Section 1719**: The maker of a bounced check may be liable for the original amount of the check, plus triple damages (three times the amount of the check) for a punitive damages award of not less than \$100.00 or more than \$1500.00. See the Civil Code for the written notice that the plaintiff must give to defendant if s/he is intending to seek triple damages.
- b. There are two sections of Civil Code Section 1719. The first part applies to “NSF” checks (checks written on insufficient funds) and the second part applies to “stop payments.”

3. Statutes of Limitation

- a. Written Contracts - 4 years (Code of Civil Procedure [CCP] Section 337)
- b. Injury to real or personal property, Injury from fraud or Mistake, Theft - 3 Years (CCP Section 338)
- c. Verbal Contracts - 2 Years (CCP Sect. 339)
- d. Libel, Slander, False Imprisonment - 1 year (CCP Section 340)
- e. Personal Injury, Assault, Battery - 2 years (CCP Section 335.1)
- f. Claim against a public entity - 6 months (CCP Section 342; Gov. Code Section 911.2 and 945.6, file claim with agency within 6 months)

4. Neighbor Disputes

- a. Boundary Fences: Coterminous owners (adjoining property owner) are mutually bound equally to maintain boundaries between them, including fences if the property is enclosed. (Civil Code Section 841(2))
- b. Damage from Unsound Trees: tree owner is liable for damage if the owner knew or should have known that the damage was likely. The owner was negligent (unreasonably careless under the circumstances). Keenan vs. Smith, 149 Cal. App. 3d 576 (1983)
- c. Nuisance: Anything which is injurious to health, including, but not limited to...indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...is a **nuisance**. (Civil Code Section 3479)