



## STANISLAUS COUNTY SUPERIOR COURT

Turlock Division

300 Starr Ave., Turlock, CA 95380

[www.stanct.org](http://www.stanct.org)

(209) 530-3100

Revised 6/30/17

# SMALL CLAIMS Defendant's Claim

This packet includes the necessary forms to file a Defendant's Claim in an existing Small Claims Action.

Judicial Council forms, local forms and information are available in the Clerk's Office, the Stanislaus County Law Library located at 1101 13<sup>th</sup> Street, Modesto, and on the following Websites:

- Stanislaus County Superior Court (includes local forms)
- <http://www.stanct.org>  
Judicial Council's Self-Help website and Judicial Council forms
- <http://www.courts.ca.gov>  
For more information on Libraries, Websites, or Self-Help Legal Books
- <http://www.courts.ca.gov/selfhelp/lowcost/libraries.html>  
California Superior Court's Interactive Electronic Forms Program

### **Superior Court Small Claims Division**

300 Starr Ave., Turlock, CA 95380

Hours: Monday – Friday 8:15 a.m. – 4:00 p.m.

### **Superior Court Self-Help Center/Small Claims Assistance**

800 11<sup>th</sup> Street, Room 220, Modesto

*Small Claims Advisor: (209) 530-3178 (Wednesdays only)*

- **Email: [smallclaims.advisor@stanct.org](mailto:smallclaims.advisor@stanct.org)**

### **PROVIDING ASSISTANCE TO PARTIES REPRESENTING THEMSELVES**

**Provides services on a first come, first serve basis.**

## INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

SC-100-INFO

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

### WHAT IS SMALL CLAIMS COURT?

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

### WHO CAN FILE A CLAIM?

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

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

4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear on Behalf of Party*, form SC-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;
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](http://www.ss.ca.gov/business). Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

### HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

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

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

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

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

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#### 4. **Substituted service** (*continued*)

A copy of your claim must be left

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

**OR**

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

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

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

### **WHAT IF THE DEFENDANT ALSO HAS A CLAIM?**

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

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

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

### **WHAT HAPPENS AT THE TRIAL?**

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

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

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

### **WHAT HAPPENS AFTER JUDGMENT?**

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

### **HOW TO GET HELP WITH YOUR CASE**

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, bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).
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 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 Web site ([www.courts.ca.gov/smallclaims](http://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*):

*Clerk stamps date here when form is filed.*

**Notice to the person being sued:**

- You are being sued by the person you are suing.
- You 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.

*Fill in court name and street address:*

**Superior Court of California, County of Stanislaus**  
 300 Starr Avenue  
 300 Starr Avenue  
 Turlock, CA 95380

**Aviso al demandado:**

- La persona que ha demandado lo está demandando a usted.
- Tiene que presentarse a la corte en la fecha de su juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte puede 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 case number and case name:*

**Case Number:**

**Case Name:**

**Order to Go to Court**

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

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

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**Instructions for the person suing:**

- *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.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms)
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Plaintiff a court-stamped copy of all 3 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.

Case Number: \_\_\_\_\_

Defendant (list names): \_\_\_\_\_

**1 The Plaintiff (the person, business, or public entity that sued first) is:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

**If more than one Plaintiff, list next Plaintiff here:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

Check here if more than 2 Plaintiffs and attach Form SC-120A.

Check here if any Plaintiff is on active military duty and write his or her name here: \_\_\_\_\_

**2 The Defendant (the person, business, or public entity suing now) is:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

**If more than one Defendant, list next Defendant here:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Street address: \_\_\_\_\_

Street City State Zip

Mailing address (if different): \_\_\_\_\_

Street City State Zip

Check here if more than 2 Defendants and attach Form SC-120A.

Check here if either Defendant listed above is doing business under a fictitious name. If so, attach Form SC-103.

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

a. Why does the Plaintiff owe the Defendant money? \_\_\_\_\_

\_\_\_\_\_

b. When did this happen? (Date): \_\_\_\_\_

If no specific date, give the time period; Date started: \_\_\_\_\_ Through: \_\_\_\_\_

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

\_\_\_\_\_

Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-120, Item 3" at the top.



Case Number: \_\_\_\_\_

Defendant (list names): \_\_\_\_\_

4 You may ask the Plaintiff (in person, in writing, or by phone) to pay you before you sue. Have you done this?  Yes  No

5 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:

6 Are you suing a public entity?  Yes  No  
If yes, you must file a written claim with the public 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.

7 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.

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

9 If I do not have enough money to pay for filing fees or service, I can ask the court to waive those fees.

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

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

Date: \_\_\_\_\_ Defendant types or prints name here      Defendant signs here

Date: \_\_\_\_\_ Second Defendant types or prints name here      Second Defendant 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 or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for Request for Accommodations by Persons With Disabilities and Response (form MC-410). (Civil Code, § 54.8.)



**Need help?**

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

\_\_\_\_\_  
\_\_\_\_\_

Or go to "County-Specific Court Information" at: [www.courtinfo.ca.gov/selfhelp/smallclaims](http://www.courtinfo.ca.gov/selfhelp/smallclaims)