## Small Claims Court Legal Resources: a Guide for Public Libraries

An Infopeople Webinar

Thursday, April 18, 2013 12 Noon Pacific

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# Agenda

- Receive a general overview of the Small Claims process including going to court and collecting money
- Become familiar with key terminology and court procedures used in Small Claims
- Tour the California Court's self-help center's sections on small claims

# Agenda

- Have a basic understanding of the online resources to assist parties in completing Small Claims forms
- Learn about the Small Claims advisory services available at local superior courts
- Learn about additional print and online resources for locating small claims information and forms

# **Small Claims Overview**

- People represent themselves
- Attorneys cannot represent litigants
  - Except on Appeal

# Parties Involved in Small Claims

- Person who sues is the Plaintiff
  - Any person, at least 18 years, or business
- Person who is sued is the Defendant
  - Any person or entity (business, corporate or government)
  - Exceptions

# Is Small Claims the Best Option

- Does the claim justify the cost?
- Is the person or business able to pay the money owed?
- No more than two cases for over \$2500 filed in the same calendar year
- Must sue in right court and location
  - Called Venue

# **Time Limits to File in Small Claims**

- Personal Injury Two years from date of injury. If the injury isn't immediately discovered, two years from the date it is discovered.
- Oral Contract Two years from the date the contract was broken
- Property Damage Three years from the date the property was damaged.
- Written contract Four years from the date the contract was broken
- Malpractice One year from the date of malpractice
- Fraud Three years from the date or of the date of discovery
- Government Entity Must file written claim with agency before filing lawsuit in court

# How Much and How Often Can a Person Sue?

- Claim must be for money
  - \$10,000 for "natural persons"
  - \$5,000 for corporations
- Claims for \$2,500 or more limited to two per year
- Claims for less than \$2,500 are unlimited

# Examples of Cases Heard in Small Claims Court

- Landlord/tenant issues
- Car accidents
- Claims against businesses and corporations
- Bad checks
- Breach of contract
- Equitable relief in the form of
  - Rescission
  - Restitution
  - Reformation
  - Specific performance

# How do I Sue in Small Claims Court?

- Plaintiff's Claim (Form SC-100) filed with the court
- Clerk will select hearing date within 20 to 70 days from date claim filed
- Copy of Plaintiff's Claim served to the defendant
  - Called service of process
- Proof of Service (Form SC-104) must be filed with the clerk's office at least 5 days before court date
- Forms available at California Courts

website: www.courts.ca.gov/1017.htm

# Plaintiff's Claim (Form SC-100)

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Date:		Clerk, by		, Deputy
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	a copy for yourse	df.) Take or mail t	the original and these	m. (Make 1 copy for each party named in copies to the court clerk's office and pay
• You must have some copy of all 5 pages of	eone at least 18— of this form and a	not you or anyon ny pages this form	e else listed in this ca a tells you to attach. T	se—give each Defendant a court-stamped "here are special rules for "serving," or se 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.

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Plaintiff's Claim and ORDER to Go to Small Claims Court (Small Claims)

3C-100, Page 1 of 5

# I've Been Sued... Now What?

- Defendant can sue the Plaintiff back
- Called countersuing
- To countersue, defendant files the Defendant's Claim (Form SC-120)
  - Available at California Courts website: <u>www.courts.ca.gov/1017.htm</u>
- May not be for more than \$5,000 or \$10,000 if the defendant is a natural person

# Defendant's Claim (Form SC-120)

SC-120 Defendant's Claim and ORDER	Clerk stamps date here when form is filed.
to Go to Small Claims Court 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	To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.
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 eddress: Superior Court of California, County of
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.	Fill in case number and case name Case Number:
Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.	Case Name:
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#### 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.gow/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.

Judicial Council of California, www.counts.co.gov Reviews January 1, 2011, Mandatory Form Code of Chill Procedure, § 116, 115 et and	Defendant's Claim and ORDER to Go to Small Claims Court (Small Claims)	8C-120, Page 1 of 3 →
Code of Chill Procedure, § 115, 115 at any		7

# Filing Fees

- A plaintiff (or a countersuing defendant) is charged a filing fee of:
- \$30 for a claim up to \$1,500
- \$50 for a claim between \$1,500-\$5,000
- \$75 for a claim over \$5,000

\*Frequent filers (> 13 within a calendar year) pay \$100 per claim

Plaintiff may apply for a fee waiver (FW-001)

# Naming an Individual

- Must sue using the defendant's exact legal name
- An individual
  - First name, middle initial and last name
  - Example: "Betty M. Hart"
- A husband and wife
  - Listed separately
- Other Plaintiffs or Defendants (Form SC-100A) if case involves three or more Plaintiffs or Defendants

# Naming a Business

- Owner of a sole proprietorship doing business under a fictitious business name:
  - "John P. Jones d.b.a John's Shoe Store"
- Partners on behalf of a partnership:
  - "Betty M. Hart, individually and as a partner in Hart and Simons, a partnership"
  - "Joan J. Simons, individually and as a partner in Hart and Simons, a partnership"
- Obtaining a fictitious business name statement (d.b.a.)
  - County Clerk's office
  - City Hall, Business License Division

# Naming a Corporation

- A corporation:
  - "Beacham & Beacham, Inc."
  - Or "Abacast Corporation d.b.a. Maritime Company"
- More information about a corporation
  - <u>www.ocsmallclaims.com</u>
  - Secretary of States's Website: www.kepler.sos.ca.gov/ list.html

# Describing Claim for Money Damages

- Money Judgments (provide dates and the basis for the amount of the claim)
- "On 11/2/01 Maria Cortez stopped paying on a contract dated 7/9/01. The remaining balance to be paid is \$438.22."

# Describing Claim for Money Damages

### Conditional Judgments

"Return of 1988 Toyota Corolla Vin# or \$5,000"

### Rescission

- "The phone service I ordered with Pacific Bell never worked. I would like to have this contract rescinded."
- TIP: It is still a good idea to indicate a dollar amount on the claim. The judge may find that a monetary judgment is appropriate.

## Where do I File my Case?

- Sue where:
  - The defendant resides or does business
  - The defendant entered into the contract
  - The contract was to be performed
  - The real property is located
  - The accident/injury occurred
- If there is more than one proper venue, plaintiff may choose the one that is most convenient

# How do I File my Papers with the Court?

- Three ways to file:
  - File in Person
  - Mail
    - Send self-addressed envelope so that the court may send the documents back – include original and a copy
  - Some courts permit online filing of the initial claim
    - <u>www.icandocs.org</u> (Orange County)
    - <u>www.lasuperiorcourt.org</u> (Los Angeles County)
    - <u>www.saccourt.ca.gov/efiling/small-claims.aspx</u> (Sacramento County)

# How do I Tell the Defendant they are being Sued?

- Called "Service of Process"
- Gives the date, time and place of the hearing
- Who can serve the court papers?
- How are the court papers served?
  - Certified Mail through the clerk
  - Sheriff
  - Personal service
  - Substituted service
- When must the court papers be served?
  - Personal service must be done at least 15 days before the court date. If the defendant lives outside the county, service must be done at least 20 days before the court date.
  - Substituted service adds 10 days prior to court case.

# Who must be served?

- An individual claim served to that person
- A business claim served to the owner or a person in charge
- Corporation, Limited Liability Company, Limited Partnership
  - Secretary of State's Office has the name of the party (referred to as the Agent for Service or Process) who can be served
  - Available online at www.kepler.sos.ca.gov/list.html



# Can a Claim be Served Outside California?

- A claim must be served in California, except:
  - When an auto accident happened in California, and the registered owner or driver lives out-of-state.
  - A dispute involving real property in California, when the owner of that property lives out of state

# Getting People, Papers and Things to Trial

## Evidence

- Parties have the right to offer evidence through witnesses
  - Voluntarily
  - Serve witness with court order to appear "subpoena" (Form SC-107)
- Special rules apply for "consumer records"
  - Party may subpoen records and papers using Form SC-107)

# What Happens at the Hearing?

- Hearing is informal
- Who will hear the case?
- Parties may settle before the trial
- If the defendant was properly served but fails to appear, the plaintiff may be entitled to a default judgment
- Plaintiff presents case first, then defendant
- Judge will ask questions
- Judge can render decision at the hearing or send it by mail

### I Won my Case! How do I Collect the Money?

- The money the court awards is the judgment
- Judge can render judgment at the hearing or send it by mail
- Party who wins the case and collects the money is called the judgment creditor
- Party who loses the case and owes the money is called the judgment debtor
- Judgment creditor must take steps to collect. The court will not do it.
- Judgment creditor must wait 30 days from the date of mailing on the Notice of Entry of Judgment to begin collecting
- Judge can make the judgment conditional

# Can the Case be Appealed?

- Only a losing defendant (or plaintiff who has lost a countersuit) may appeal
- Must be filed no later than 30 days after the date of mailing on the Notice of Entry of Judgment
- Appeal results in a new hearing or trial de novo
- Filing fee is \$75
- Attorneys may represent the parties

## **Collection Methods**

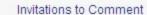
- Three ways Sheriff can help:
  - Garnish wages
  - Levy bank account
  - Till Tap/Keeper
- Other collection methods
  - Suspend Driver's License
  - Place a lien on property
  - Third party

# California Courts – Online Self-Help Center



Learn all about jury basics or find links to your local court. For

employers, learn about how you can support jury service.



## California Courts – Online Self-Help Center

http://www.courts.ca.gov/selfhelp.htm

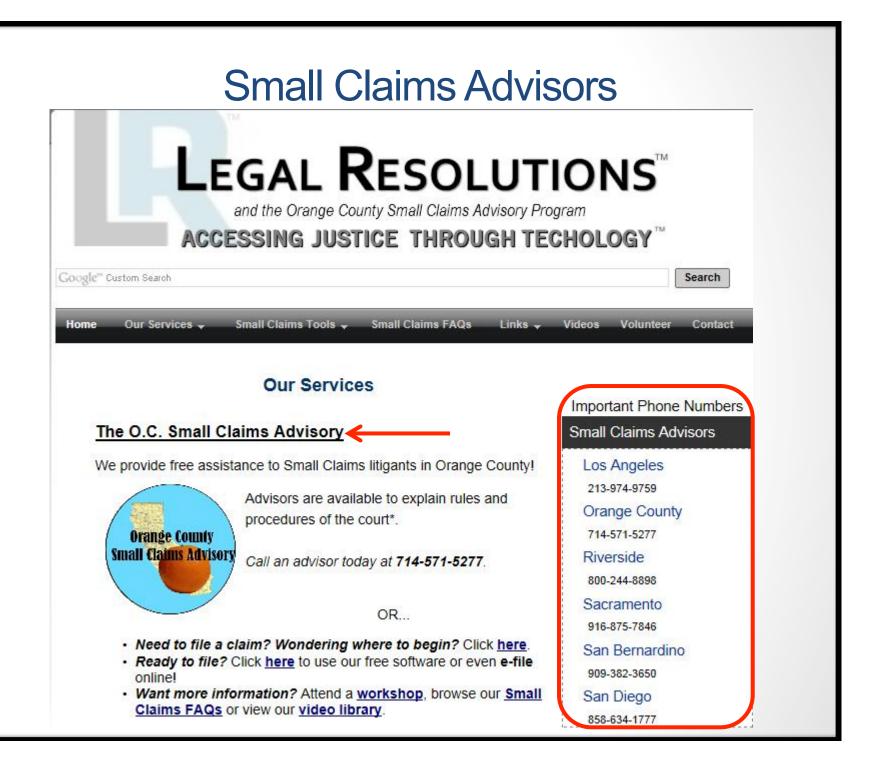


- For each case type, provides basic information about applicable law
- Outlines steps in court process
- Forms presented within informational context
- Instructions for completing each form

## "Small Claims" California Courts Online Self-Help Center

### http://www.courts.ca.gov/1002.htm

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Abuse & Hara	ssment	Ask to Chang	je the Name of a D	efendant (Before Yo	our Trial)	
Eviction & Hou	ising	Ask to Dismi	ss Your Case			



### http://www.dca.ca.gov/publications/small\_claims/index.shtml

California Department of Consumer Affairs						
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Acknowledgements	The Sma	ll Claims Cou	irt A Guide to Its Prac	tical Use		
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Have You Tried to	Settle the Dispute Yours	elf?				
Have You Considered Mediation?						
Where Can You Obtain More Information and Advice?						
Who Can File or Defend a Claim?						
O Can Someone Else Represent You?						
O Can Your Spouse	Represent You?					
<ul> <li>If You're the Plaintiff Filin</li> <li>Have You Asked f</li> </ul>	<b>g Your Lawsuit</b> or the Money or the Prop	erty?				
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How Do You Name	e the Defendant?			· v		
How Do You Notif	y the Defendant of Your (	Claim?				
<ul> <li>Locating the Other</li> </ul>	r Party					

# Online Resources – California State Bar

http://www.calbar.ca.gov/Public/LegalInformation/SmallClaims.aspx

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<ul> <li>Attorney Complaints</li> </ul>	Home > P	ublic > Pamphle	ts > Small Claims				
Consumer Information	HOW	DO I USE	THE SMALL CLAIN	S THE STATE BAR OF CALIFO			
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Client Security Fund		1. What kinds of disputes can I take to small claims court?					
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<ul> <li>Lawyer Referral Services (LRS)</li> </ul>		<ol> <li>What can I do if I am owed more than the small claims limit?</li> <li>Should we settle out of court?</li> </ol>					
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	8. What should I do before going to court?						
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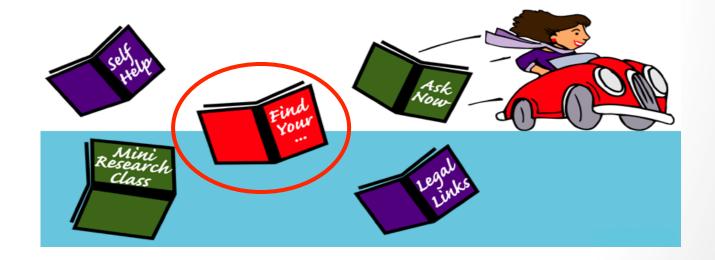
### LawHelpCA.org – Consumer & Small Claims www.lawhelpca.org



## Locating Law Libraries in CA Council of California County Law Librarians http://www.publiclawlibrary.org



The Council of California County Law Librarians welcomes you to Your Public Law Library

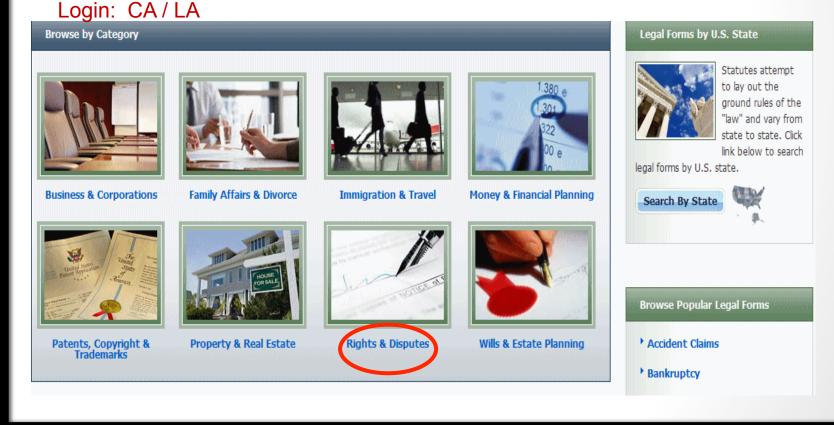


# Nolo Books – Legal Information Reference Center (EBS<u>CO Host)</u>

California consortium hosts full access (remotely) by county

Example: LA Law Library
 <u>http://www.lalawlibrary.org/research/onsite/</u>
 <u>default.aspx</u>

### 



#### New Search | Publications | Legal Forms by U.S. State | Indexes



### Searching: Legal Information Reference Center Search Other Databases

Search Clear

Basic Search Advanced Search Visual Search Search History

#### Browse by Category

#### Business & Corporations

Family Affairs & Divorce

**Immigration & Travel** 

Money & Financial Planning

Patents, Copyright & Trademarks

Property & Real Estate

**Rights & Disputes** 

Wills & Estate Planning

### Small Claims Court

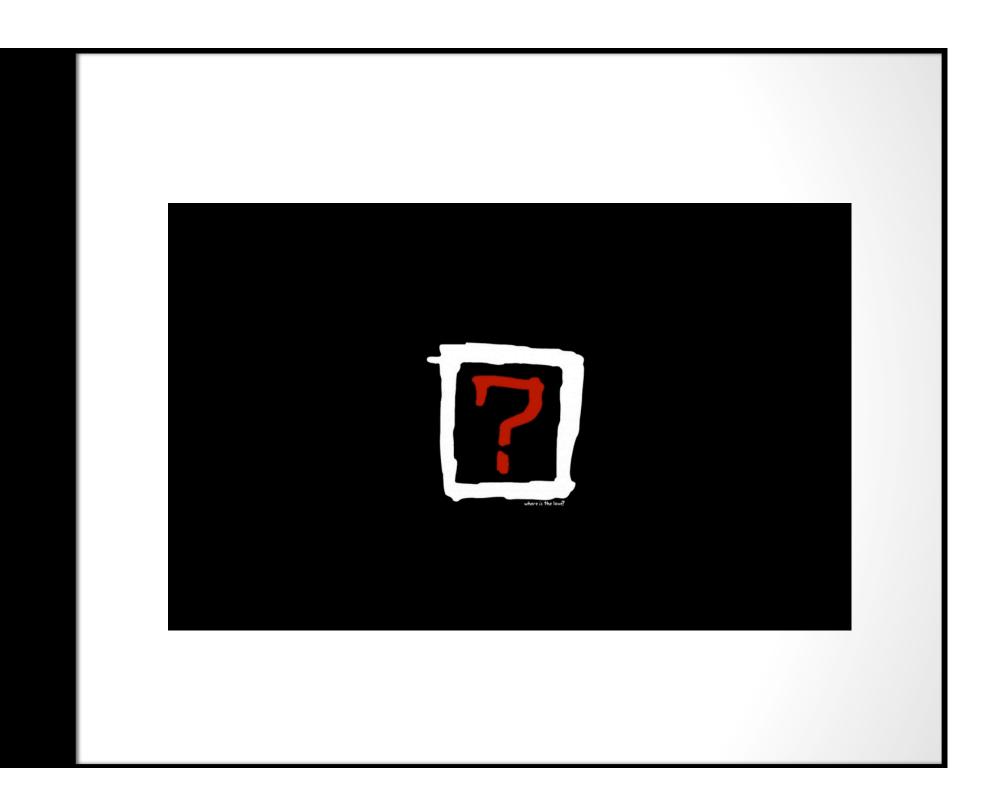
Everybody's Guide to Small Claims Court

Everybody's Guide to Small Claims Court in California

Legal Research

**Neighbor Law** 

Your Little Legal Companion



# Thank You!



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