



Small Claims Advisor

Kern County Superior Court

Self Help Center

2019

What is Small Claims Court?

The small claims court is a special court in which disputes are resolved inexpensively and quickly. The rules are fairly simple, the hearing is informal and attorneys are not allowed.

The Good, **THE BAD** and *The Ugly*

- Quick- Cases are heard in weeks and months rather than years
- Easy- Simple paperwork
 - Simple procedure
 - Simple Trial
- Cheap- Filing fees based on amount claimed
 - Range from \$30-\$75, generally
- No Attorneys!

The Good

THE BAD

- Quick- Limited discovery, limited access to opposing evidence
- Easy- Simplified paperwork , procedure and trial may not be appropriate
- No Attorneys- Parties must prepare and present their own case

- No right to Appeal if you are the Plaintiff
- If it is not an easy case to explain in the simple paperwork, it may not present well in court.
- Generally, Defendants determine the venue

The Ugly



How BIG is Small in Small Claims?

Generally, small claims matters
are capped at

\$10,000.00 for Individuals

\$5,000.00 for Businesses

\$2,500.00 twice per year

Exceptions

Personal Injury Vehicle
accident with a duty to
defend

\$7,500.00

Guarantor Claims

\$6,500.00 (Ind.)

\$4,000.00 (Entity)

\$2,500.00 if there was no fee
for guaranty

\$10,000.00 if SCLB

Things to consider before filing

Is small claims the best option?

Is the person you are suing legally responsible?

Is the law on your side?

Is the claim worth your time and energy?

Have you tried to settle the Dispute Yourself?

You need to at least make a demand.

Is there some incentive you can give, like accepting less than the full amount?

It may be worth taking a little less (or paying a little more) to resolve rather than go to court.



Do you have a good case?

There are limited causes of action which the court can grant relief on. Each cause of action has elements.

Each element must be proven.

Do you have evidence that will show each element.?

Itemize your Damages

The court only awards damages according to proof, up to the amount listed on the complaint.

Make a chart of the damages you are claiming and what evidence you have for each item.

If you don't have evidence of the damages, the court can't award that amount. You will need to find evidence before the trial.



Common Causes of Action

Breach of Contract

- Oral or written contract
- Defendant must have breached the agreement within the Statute of Limitations (2 or 4 years)
- Plaintiff has been harmed by the breach and damages are a type reasonably anticipated by the parties.



Negligence

- ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★
- ★ DUTY ★
- ★ BREACH ★
- ★ CAUSATION ★
- ★ DAMAGES ★
- ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

- Defendant owed a legal duty to Plaintiff
- Defendant breached that duty by failing exercise reasonable care
- Plaintiff was harmed
- The harm caused was reasonably anticipated

Examples of these cases:

Your former landlord refuses to return the security deposit you paid.

Someone dents your car's fender and refuses to pay for its repair

You were defrauded in the purchase of a car, and desire to cancel the purchase and get back the amount of your down payment from the seller.

Your tenant caused damage to the apartment in an amount that exceeded the security deposit. You can't evict them through small claims.



Common Causes of Action

COMMON CAUSES OF ACTION

Open Book– Business keeps a ledger sheet for each customer and is suing for the fair market value (FMV) of the goods or services provided based on the ledger sheet.

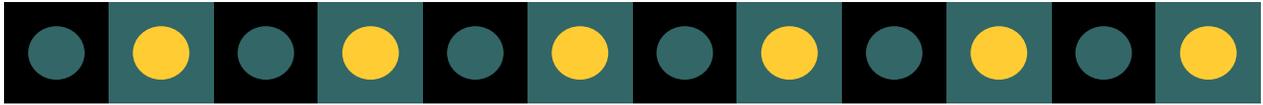


Account Stated– Defendant has an account with the Plaintiff. Plaintiff sends out regular statements and defendant does not dispute the amount on the statements. Plaintiff sues based on the theory that defendant by not disputing has agreed to the amount reflected in the statements.

Money Loaned- Plaintiff has loaned or expended money at the defendant's request which the defendant promised to pay.



Goods/Services Provided– Plaintiff provided goods or services for which Defendant promised to pay. Plaintiff is suing for the FMV or the amount promised.



Fraud is a very specific legal term, often misused in small claims.

Defendant must have:

1. Made intentionally false representation of material facts, or
2. Intentionally failed to disclose material facts, or
3. Entered into an agreement with no intention of performing the agreement.

The statements or omission of the Defendant was intended to cause Plaintiff to do or not do something.

Plaintiff reasonably relied on those statements without knowing the truth.

Plaintiff was harmed as a result.

Statute of Limitations

Nature of Substantive Claim	Limitation Period
Book account, account stated, or balance due account	4 years
Contracts, verbal (CCP 339(1))	2 years from breach
Contracts, written (CCP 337(1))	4 years from breach
Personal injury or death caused by negligence (CCP 335.1)	2 years
Personal property damage (CCP 335.1)	3 years
Theft or conversion (CCP 338(c))	3 years



Who Can Represent a Party?

The Plaintiff and the Defendant must personally appear at a small claims action without representation, with the following exceptions (CCP §§116.540 (a)-(i), 116.541):

Corporation- May appear and participate only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed or elected for purposes other than solely representing the corporation in small claims court.

Party not a corporation or a natural person- May appear and participate only through a regular employee; a duly appointed or elected officer or director; or in the case of a partnership, a partner who is engaged for purposes other than solely representing the party in small claims court.

Individual doing business as sole proprietorship- May appear and participate by a representative and without personally appearing if:

The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Evidence Code 1271, and there is not other issue of fact in the case; and

The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

Management association for a common interest development- May appear and participate in a small claims action through an agent, a management company representative, or a bookkeeper who appears on the association's behalf.

Owner of rental real property- May appear and participate in a small claims action through a property agent who is under contract with the owner to manage the rental of the property, if :

The owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and

The claim relates to the rental property.

Defendant nonresident owner of real property- May defend against a claim relating to that property without personally appearing, by:

Submitting written declarations to serve as evidence support his or her defense,

Allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims action on behalf of others no more than four times during a calendar year, or

Taking both of these steps.



Who Can Represent a Party?

Member of the military on active duty- A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claims or allow another individual to appear and participate on his or her behalf, if:

The plaintiff serving on active duty in the U.S. Armed Forces outside California,

The plaintiff was assigned to his or her duty station after his or her claim arose,

The assignment is for more than six months,

The representative is serving without compensation, and

The representative has appeared in small claims actions on behalf of others no more than four times during the calendar year.

Party incarcerated in a county jail, Department of Corrections and Rehabilitation facility, or Division of Juvenile Justice facility- May submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

Department of Corrections and Rehabilitation or Division of Juvenile Justice- May appear through a regular employee who is employed or appointed for purposes other than solely representing the department in small claims court, and who files a supporting declaration.

Spouse- If both parties are named in the complaint, one of the named spouses may appear on behalf of both.



Small Claims Process

Step One

Fill out the SC-100 form. You will need to sign and date the form and make copies of all (5) five pages. You need a copy for each of the person(s)/ entities you are suing, plus one copy for yourself



Step Two

Take your Sc-100 forms & copies to the small claims filing counter at the courthouse and pay the filing fee. You may also request a Fee Waiver, if you qualify (FW-001). The clerk will stat your case and give you a case number and hearing date. Generally, you will need to return in 3 to 5 days to pick



Step Three

Have any adult other than yourself give a copy of the court stamped SC-100 to the person(s)/entity you are suing at least 15 days before the hearing. Make sure that the person that does this for you completes form SC-104 and file it at least 5 days before the hearing.





Small Claims Process

Step Four

Go to your court hearing. Before your case is heard by the judge, you will have a chance to meet with a mediator to try and resolve your case. If you can't resolve the case you will go before the judge and present your case. The judge will either tell you his or her decision at the end of your court hearing or you will receive the judge's decision by mail within a few days.



Step Five

Once you receive the judgment, you will have to determine how to collect. It is your responsibility to file the necessary documents to obtain a wage garnishment, bank levy or lien on real property.



Getty



Collecting the Judgment

Debtor's Examination: If you don't know very much about the judgment debtor, you can have the court order them to come to court and answer your questions under oath. For example, you can find out what type of property they own, where that property is located, and whether they have a job. To do a debtor's examination, you will need to fill out an Application and Order to Produce Statement of Assets and to Appear for Examination (SC-134) and a blank Judgment Debtor's Statement of Assets (SC-133). Take these forms to the filing window to get a hearing date. There is a filing fee of \$60.00 for the debtor's examination. Bring a list of questions with you to the court hearing to ask the debtor. You should also serve the debtor with a subpoena for any documents you need to see by sending the judgment debtor a subpoena (SC-107). The notice of debtor's examination and judgment debtor's statement of assets forms MSUT be personally served on the debtor by a registered process server or Sheriff.

Wage Garnishment: If the judgment debtor works for someone else, his/her wages may be garnished to pay off the judgment. To begin the process, you will need to fill out a form called a Writ of Execution (EJ-130). Make two copies of the completed Writ form and take the copies and the original Writ to the court filing clerk to have it issued. There is a \$25.00 fee to file the Writ of Execution. After the Writ is issued by the court, you take it to the Sheriff's office with an Application for Earnings Withholding Order (WG-001). The Sheriff will charge a fee to serve the wage garnishment, current fees are \$35.00. The Sheriff's office can tell you how soon the garnishment should begin after it is served and how much of the judgment debtor's wages per pay period may be garnished.

Bank Levy: If you know the name of the bank and branch where the judgment debtor has a deposit account, you may levy the funds held in the account. To begin this procedure you must complete a Writ of Execution (EJ-130) and file it with the court clerk. After the Writ is issued by the court, you take it to the Sheriff's office and request a bank levy. Once the Sheriff serves the levy, the bank account is frozen and the account holder is notified. There is a \$40.00 fee for the bank levy, in addition to the \$60.00 fee for issuance of the Writ.



Collecting the Judgment

Lien on Real Property: If the judgment debtor owns real property (real estate), you may record a lien on the debtor that attaches to the property. Use an Abstract of Judgment (EJ-001). There is a \$25.00 fee for the court clerk to issue an Abstract of Judgment and the County Recorder's Office charges a fee to record the Abstract. The Abstract places a lien on the equity the judgment debtor has in real property located in a specific county. Before the judgment debtor can sell their real property, your judgment must be paid. You can record an Abstract of Judgment in any county in which the judgment debtor owns property. You do not need to know the address of the real property. The lien will attach to any real property held in the judgment debtor's name within the county.

Rental Income Garnishment: If the judgment debtor owns rental property, you may garnish the rents paid by the current tenants. The procedure is the same as for a wage garnishment except you instruct the Sheriff to do a rent garnishment instead of a wage garnishment.

Till Tap/Keeper's Levy: If the judgment debtor owns a business that has a cash register, you may arrange for the Sheriff to go to the business and do either a Till Tap or a Keeper's Levy. A Till Tap sends the Sheriff into the business to take all cash and checks out of the cash register. A Keeper's Levy stations the Sheriff at the business for 8 to 12 hours to collect money as it is paid to the business.

Costs After Judgment: A judgment creditor is entitled to recover certain costs incurred in enforcing a judgment. The judgment creditor is also entitled to claim 10% simple interest on the principal amount of the judgment. Costs must be added to the judgment within two years of incurring them. Interest may be added at any time. Accumulated costs and interest are added to the judgment by filing a Memorandum of Costs (MC-012) with the clerk. Complete the form and mail one copy to the judgment debtor, and file the original with the court clerk.

Note: This is not intended to be a complete list of enforcement options. For further information, you can go online to www.courtinfo.ca.gov, click on "self help," then "Collecting Your Judgment."

Guidelines For Communicating With The Judgment Debtor

Phone Calls: General Rules

- Don't call before 8:00 a.m. or after 9:00 p.m.
- Don't call the debtor directly if they have an attorney.
- Don't call the debtor at work if you know their employer prohibits the debtor from receiving personal calls at work.
- Do not make a phone call without identifying yourself.
- Do not call the debtor repeatedly.
- Do not pretend you are a different person so you can call again and again.



Harassment or Abuse: Don't engage in conduct meant to harass, oppress or abuse.

- Don't use or threaten to use violence
- Don't harm, or threaten to harm the debtor, his/her reputation or property.
- Don't use obscene or profane language
- Don't threaten to publish the debtor's name as a person who doesn't pay bills.
- Don't visit the debtor and refuse to leave when asked.



Guidelines For Communicating With The Judgment Debtor

False or Misleading Representations: Don't lie

- Don't claim to be a law enforcement officer or suggest that you are connected with federal, state or local government.
- Don't falsely represent the amount owed
- Don't claim to be an attorney or that a communication is from an attorney.
- Don't claim that you will have the debtor jailed
- Don't claim that you will have the debtor's property seized, unless you intend to have the property seized.
- Don't claim that the debtor has committed a crime.
- Don't threaten to sell the debt to a third party, unless you truly intend to hire a collection agency.
- Don't send a document that looks like it's from a court or attorney or part of a legal process unless the document really is.
- Don't use a false business name
- Don't claim to be employed by a credit bureau or collection agency.



Unfair Practices: Don't use any unfair or outrageous method to collect the debt.

- Don't add interest, fees or charges not authorized in the original agreement or by state law.
- Don't deposit a post-dated check prior to the date on the check
- Don't solicit a post-dated check by threatening criminal prosecution.



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