SMALL CLAIMS COURT

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Who Can File A Claim?

You must be at least 18 years old to file a claim. If you are not yet 18, you may ask the court to appoint a guardian ad litem. The guardian ad litem is usually a parent, relative or an adult friend.

Only the actual party to the claim may file. If you assign your claim to someone, they cannot file a small claims action on that claim. You must represent yourself at the small claims hearing. Attorneys or others are not permitted to represent a party in small claims court.

If you are a business required to file a fictitious business name statement, you must include your statement number and date of expiration on the claim form. You cannot file a case in small claims court without a valid fictitious business name statement.

A corporation or other entity that is not a natural person must be represented by a regular employee or representative. The employee cannot be hired solely to represent the corporation or other entity in small claims court. The employee or representative is required to file a declaration with the court stating the basis of their authority to represent an entity.

Where Can You File Your Claim?

You must file your claim in the proper judicial district. If you file your claim in the wrong judicial district, the Court will dismiss your claim unless all parties personally appear at the hearing and agree to have the case heard. The hearing judge must also approve the agreement.

The right judicial district may be any of the following:

- Where the defendant lives or the defendant corporation or other entity has its principal place of business.
- Where the person or personal property was injured or damaged.
- Where the defendant signed the contract or where the contract was breached.
- Where the buyer resided at the time of entering into a retail installment account, or contract on a motor vehicle finance sale.

Locations for Filing:

Northern Solano Judicial District
600 Union Avenue
Fairfield, CA 94533

Vallejo-Benicia Judicial District
321 Tuolumne Street
Vallejo, CA 94590

Rules about the Defendant

You must be careful to properly designate the defendant using his/her exact legal name. If the defendant is a corporation, check with the California Secretary of State for the exact name and the agent authorized to receive service of process for the corporation. For other types of businesses, check the city business license or the county fictitious business name statement. If you do not designate the defendant's exact legal name, you may not be able to enforce the judgment.

If the claim is against a government agency, you must first file a formal claim with the agency and have your claim denied before you file a claim in court. Generally, you have six months after the incident or dispute to file a complaint with the agency.

Serving the Defendant the Claim

You must ensure the defendant receives a copy of the claim you filed. This is called "service of process." Service of process has strict rules that must be followed exactly or your case will be delayed or dismissed. The plaintiff cannot complete service of process himself/herself.

If you arrange for personal service or certified mail, an in-county defendant must be served at least ten (10) days prior to the hearing. If the defendant is out of

Solano County, service must be completed at least fifteen (15) days prior to the hearing. If service is by "substituted service," an additional ten (10) days is required for proper service of process.

The person who serves the defendant must complete a "proof of service" form verifying the defendant was properly served with a copy of the claim. A signed mail receipt is sufficient if service was completed by certified mail. The proof of service form must be returned to the court clerk at least five days prior to the hearing.

Anyone over the age of 18, who is not a party to the case, may serve a copy of the claim. There are three methods to serve process on the defendant.

1. **Personal Service**
   A copy of the claims is delivered personally to the defendant by someone over the age of 18 whom is not a party to the case.

   The **Solano County Sheriff** will serve process for a fee.

2. **Certified Mail**
   The clerk of the court where you file your claim will send a copy of the claim to the defendant by certified mail.
   - The clerk must do the mailing
   - There is a fee for the service.

   IMPORTANT NOTE: If the defendant does not sign the receipt for certified mail, the service of process is invalid.

3. **Substitute Service**
   This is a two step process where someone other than the defendant personally receives a copy of the claim.
   - The first copy must be delivered to someone over the age of 18 at the defendant's residence or place of business with the person in charge or at the defendant's usual place of mailing other than an U.S. Postal Service Box.
   - A second copy must be mailed to the defendant at the same place where the first copy was delivered. The mailing must be completed at least 20 days before the hearing. If the defendant is located out of Solano County, the mailing must be at least 25 days before the hearing. The mailing must be by regular, *not certified* mail.

Post Judgment Proceedings

Automatic Stay

- The prevailing party must wait 30 days from the date of the mailing of the entry of judgment before beginning enforcement proceedings. During this 30-day period, the opposing party has a right to appeal. If the opposing party was not present at the small claims hearing, he or she has no right to appeal, but may file a motion to vacate.

Appeal

- Only the defendant, or the plaintiff on a defendant's claim, has a right to appeal. The appeal must be filed within 30 days from the date of the mailing of entry of judgment. An appeal is a new hearing that includes the claims of all parties to the case. To file an appeal, request a Notice of Appeal from the Small Claims Division. Fill out the form and pay the correct fee. The appeal will be scheduled and all parties will be notified by mail of the appeal hearing date.
- A small claims appeal is called a Trial De Novo. A de novo hearing means the appeal court will hear the case without regard to what happened at the first hearing. An attorney may represent any party at the appeal hearing. Judgment on appeal is **final.**

Motion to Vacate

- If you did not appear at the first hearing and judgment was entered against you, you may file a Motion to Vacate. If you were served with the notice of the claim, the motion to vacate must be filed within 30 days of the mailing of entry of judgment. If you did not receive any notice of the claim, you must file the motion to vacate within 180 days of discovery that judgment was entered against you. There is a fee to file a motion to vacate.
- At the motion to vacate hearing, you must explain to the court why you were not at the first hearing. You cannot argue the facts of the underlying case unless your motion is granted and all parties are present and agree to have the case heard at that time. If the motion to vacate is granted and all parties are not present, the case will be continued.
- If the motion to vacate is denied, you have 10 days to appeal the denial. This appeal is not an appeal of the underlying case, it is only an appeal of the denial of the motion to vacate. A plaintiff bringing a motion to vacate has no right to appeal if the motion is denied.

Enforcement of Judgment

- The key to enforcing a judgment is knowing where the judgment debtor's money is. Typical cash flow sources are bank accounts, employment, rental income, and business receipts. If you have no

information regarding the debtor's assets, you may file an Application and Order for Appearance and Examination. The Order of Examination is a hearing where you ask the debtor questions about his or her assets. You may ask where the debtor banks and where he or she works, among other questions. There is a fee to file an Order of Examination.

- If you file an Order of Examination, you may want to have a Subpoena Duces Tecum issued at the same time. A Subpoena Duces Tecum is used to order the debtor to bring certain documents to the examination hearing. Documents that are generally subpoenaed include pay stubs, bank statements, accounts receivable and any other documents that tend to show where assets are.
- Both the Order of Examination and Subpoena Duces Tecum must be personally served by a Sheriff or Registered Process Server.

Specific Enforcement Procedures

Wage Garnishment

- If the judgment debtor works for someone else, his or her wages may be garnished to pay off the judgment. To begin the process, you must complete a Writ of Execution form. There is a fee to have the Writ of Execution issued. Once the Writ of Execution has been issued, take it to the Sheriff's Office and request an Application for Earnings Withholding Order. Fill out the forms completely with the employer's name and address and the judgment debtor's full name.
- The Sheriff will charge a fee to serve the wage garnishment. 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 may be garnished per pay period.

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 the wage garnishment except you instruct the Sheriff to do a rent garnishment instead of a wage garnishment. The Sheriff will charge a fee to serve the rent garnishment.

Bank Levy***

- If you know the bank and branch the judgment debtor has a deposit account, you may levy on the funds in the account. To begin this procedure you must obtain a Writ of Execution from the clerk. Take the Writ to the Sheriff 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 fee for the Writ and a Sheriff's fee.

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. To begin this procedure you must obtain a Writ of Execution from the clerk. Take the Writ to the Sheriff and request a Till Tap/Keeper's Levy. There is a fee for the Writ and a Sheriff's fee.

  NOTE: The judgment debtor may close his or her business for the day and the Sheriff will be unable to collect any money.

*****Certain money is exempt from levy, such as child support payments. If the judgment debtor files an exemption to the levy you will be notified and will have an opportunity to oppose any claim of exemption.**

Judgment Lien on Real Property

- If the judgment debtor owns real property, you may record a lien on the debtor that attaches the property. Go to the clerk and ask for an Abstract of Judgment form. There is a fee to have the Abstract of Judgment issued. Record the Abstract of Judgment at the County Recorder's Office, 701 Texas Street, Fairfield, California.
- The Abstract places a lien on the equity the judgment debtor has in real property located in Solano County. Before the judgment debtor's real property can be sold, the lien must be satisfied.

  NOTE: You may record an Abstract of Judgment in any county in which the judgment debtor owns property.

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% 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 with the clerk. Ask the clerk for a Memorandum of Costs form for small claims. Complete the form and mail one copy to the judgment debtor, and file the original with the clerk. The Memorandum of Costs must be mailed by someone other than the creditor.

Acknowledgment of Satisfaction of Judgment

- After the judgment debtor pays the judgment, the judgment creditor is required to immediately sign the short Acknowledgment of Satisfaction of Judgment portion of the Notice of Entry of Judgment form and file it with the small claims court.
- If the judgment creditor has recorded an Abstract of Judgment in any county where the judgment debtor owns real property, a different acknowledgment form must be used. Also, the judgment creditor must sign the form in front of a notary public and record it with the county recorder in any county where he or she has recorded an Abstract of Judgment.

Legal Advisory

- The Superior Court of California provides a Small Claims Legal Advisor at no cost. The advisor is a paralegal and is available to assist with small claims issues and procedures from filing through enforcement. Advisory phone hours are as following:

Monday	8:00 a.m to 12:00 p.m./1:00 p.m. to 4:00 p.m.
Tues/Wed/Thur	8:30 a.m. to 12:30 p.m.

The Legal Advisor is available for phone consultation, only. The advisor may be reached at (707) 207-7336.

Mediation Program

As an alternative to the Small Claims Court, Solano County Courts, in conjunction with the Solano County Bar Association, offer “mediation services” free of charge to litigants in Small Claims Court. **If you are considering filing a small claims lawsuit, consider calling the Dispute Resolution Service first.** They will advise you whether your conflict is amenable to mediation, and if you agree, will attempt to contact the other party and invite them to also participate in mediation.

What is Mediation?

- Mediation is a means of Alternative Dispute Resolution (ADR). It is an alternative to the sometimes expensive and time consuming process of a court trial. It is an informal way of resolving disputes.

Role of the Mediator

- Mediators are trained, impartial third parties who volunteer their services because they believe in the power of mediation and collaborative negotiation as effective conflict resolution tools. They may or may not be attorneys. Mediators do not serve as judge or jury, do not seek to determine right and wrong or place blame. Mediators do not impose a decision on either party. Their only interest is in helping you resolve differences and reach a mutually agreeable solution.
- Mediators do not give legal or professional advice. Rather, mediators facilitate communications by helping disputants describe their feelings, clarify issues, determine their true interests, identify underlying concerns, and where applicable, reach agreement.

The Mediation Process

- The mediation process begins by welcoming and introducing all participants in the mediation session. Initially, each disputant will be given an uninterrupted opportunity to define the conflict/problem as they see it and express their feelings about it to the mediator(s). Each person will be given as much time as necessary to describe the conflict from their perspective. The mediator(s) may ask clarifying questions along the way.
- Once the mediators(s) have a clear understanding of the problem, they will ask questions which help each person understand how the other disputant experiences the conflict. In this way, a great deal of important information comes to light which may not have been known or understood by the other party.
- At this point in the process, the mediator(s) will help the parties understand that to solve a conflict, each must be willing to acknowledge any new understanding they have about the dispute and the other person's situation.
- Sometimes, the mediator(s) may ask for a private meeting or "caucus" with one disputant at a time in order to get a clear idea of their goals and needs. The mediator(s) may also ask for a "mediators caucus" without the parties present

The Agreement

- In the final part of the mediation, potential resolutions are explored. If the parties reach a resolution, the mediator(s) may help them write an "agreement" which sets out the terms of their resolution. The parties can decide whether their agreement is legally binding or non-binding. The parties will be advised to consult with an attorney if they desire to have their agreement put into a legally binding form.

Confidentiality

- Mediations are confidential. For mediation to be successful, the parties must feel free to discuss the issues openly. In order to promote

this communication and to facilitate settlement of the dispute, you will be asked to read and sign a confidentiality statement before the mediation session begins.

- All participants in the mediation including the mediator(s) and any observers will be required to sign the confidentiality statement. By signing the confidentiality statement you are making the mediation confidential and preventing information given or discussed in the session from being used in any future legal case

Length of the Mediation

- Mediation sessions usually taken between 1.5 and 3 hours. Please allow adequate time for your mediation session. If necessary, a second mediation may be scheduled with the agreement of the disputants. Please bring your calendar so your availability for a subsequent session can be determined.

Are Attorneys Allowed in the Mediation Session

- You may bring an attorney to the hearing but they will generally not be allowed to participate directly in the mediation session. If you need a break in the mediation to speak to your attorney, that will be arranged. If you plan to bring an attorney, you must notify the Dispute Resolution Service before the mediation so that we may obtain the consent of the other party. In addition, the attorney must agree to honor the terms of mediation and sign a confidentiality statement.

Commitment

- If you decide to use the mediation services, your decision is a commitment that affects many people. Since the mediators volunteer their time to help you resolve your dispute, it is extremely important that you attend the mediation session scheduled for you and that you cancel only in the case of an emergency.

If you are interested in pursuing mediation, you may contact:

The Solano County Bar Association
Dispute Resolution Service
744 Empire Street, Suite 201
Fairfield, CA 94533
(707) 422-5087

or the Small Claims Division for further information.