

PLAINTIFF'S GUIDE TO SMALL CLAIMS PROCEDURES:

FILING A SMALL CLAIMS ACTION

Greenberg Glusker

Reed Smith

Bet Tzedek Legal Services

Los Angeles County Bar Association

Loyola Center for Conflict Resolution

Southwestern Law School

Disclaimer: This handout is for informational purposes only. It does not constitute legal advice and it does not create an attorney-client relationship.

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I. BASIC QUESTIONS AND CONSIDERATIONS

A. Who Can Sue? ("Plaintiff")

- Person, at least 18 years old or legally emancipated.
- Business (Sole Proprietorship, Partnership, Corporation, LLP, LLC or other entity)
- Must be the person/entity whose rights were injured and will benefit from a successful Court action.

B. Who Can Be Sued? ("Defendant")

- **Person or business** in California
 - **Out-of-state person or business** if dispute stems from actions or incident in CA.
- **Public entity** if:
 - You filed a written claim with the entity first.

C. What Can You Sue For?

- Your claim must be for **money**. The maximum amounts are:
 - If you are an individual → \$10,000
 - If you are a business → \$5,000
 - ❖ **TIP:** In connection with a claim for money, you can also ask for rescission, reformation, restitution, or specific performance. (See Glossary of Terms.)
- You may file only two cases of over \$2,500 per calendar year. In other words, you can file more than two cases, but only for amounts less than \$2,500.

D. Have You Tried Settling the Dispute Yourself?

Options:

- Talk to other party, yourself or through neutral person / community leader
- Complain to appropriate organization (such as H.O.A. or union)
- Use Center for Civic Mediation or Court's Small Claims Mediation Program
- Exercise contractual right to arbitration/mediation
- Write complaint to government entity or Dept. of Consumer Affairs.
- See Referrals List.

II. FILING YOUR LAWSUIT

- You Will Need:
SC-100 Plaintiff's Claim and ORDER to Go to Small Claim Court
SC-104 Proof of Service
 - Unless you serve by certified mail (clerk will file it for you)
 - ❖ But see "Serving the Complaint" handout for drawbacks to service by certified mail
- You May Need:
SC-100A Other Plaintiffs or Defendants
 - Only if you have more than two plaintiffs or one defendant.**SC-103 Fictitious Business Name**
 - Only if your claim relates to your business which has a name that suggests other owners. Must have filed a Fictitious Business Name Statement in county of principal place of business.**FW-001 Request to Waive Court Fees**
 - Only if you are low income (see below).
- Sample filled-out forms and blank forms are attached to this packet for your use.
- You can also get forms at the Clerk's Office or online at <https://www.courts.ca.gov/forms.htm?filter=SC>

A. Completing the Plaintiff's Claim (SC-100)

- Important to name the defendant correctly. Examples of ways to name defendant:
 - **An individual** -- write the first, middle initial (if known) and last name.
Example: "Joseph J. Jones"
 - **A business owned by an individual** -- write names of both the owner and the business.
Example: "Joseph J. Jones, individually, and doing business as Jones Dry Cleaning, and Jones Dry Cleaning, a proprietorship"
 - **A business owned by two or more individuals** -- write the names of both the business and all of the owners that you can identify.
Example: "Joseph J. Jones and Sue S. Jones, individually, and doing business as Jones Dry Cleaning, and Jones Dry Cleaning, a partnership"
 - **A corporation or LLC** -- write the exact name of the corporation or LLC. Do not name the individual owners of the corporation or LLC.
Example: "Jones Dry Cleaning, Inc., a corporation"

❖ **TIP:** It is very important to make sure that you sue the correct party. For example, if you have a contract with a corporation, you need to name the corporation, not the person you know who works at the corporation. If you do not name the correct parties, you will not be able to substitute parties after the fact and will have to bring a new claim.

- **Describing your claim for money damages.**

Examples:

- “The defendant owes me \$2,500 for construction work I did.”
- “As a result of the accident, I had to repair my car. The repairs cost \$5,000.”
- “I missed work because of the accident and lost \$2,000 in wages.”
- “I have suffered pain and emotional distress for which I’m seeking \$6,000.”

B. How to File

Three Step Process:

1. Complete *Plaintiff’s Claim, SC-100* and any attachments.
 2. Make copies of all pages of each form: one for you and one for each defendant.
 3. Take originals and copies to small claims clerk at the correct courthouse (see pages 4-5 if you are unsure which courthouse), and pay fee (\$30 for claims for \$1,500 or less; \$50 for claims for \$1,501-\$5,000; \$75 for claims for \$5,001-\$10,000).
 - You can file online in some counties for an extra fee.
- When you file, the clerk will ask you to select a hearing date that is 30-45 days later and whether you want a morning or afternoon hearing. The date will be inserted on the *Plaintiff’s Claim (SC-100)* form that you will have to serve on Defendant.

C. Applying for a Fee Waiver (if you cannot afford fees).

- How to Apply for a Fee Waiver
 - Read *Information Sheet on Waiver of Superior Court Fees and Costs (Form FW-001-INFO)*
 - Fill out *Request to Waive Court Fees (Form FW-001)*. Use the sample included in the handout packet as a guide.
 - Fill out Items 1-3 and caption on the back ONLY on *Order on Court Fee Waiver (FW-003)*

- Make 2 copies of your completed forms.
 - File original and copies of the forms with the clerk when you file **SC-100**. The clerk will tell you how long it will take to process your application for fee waiver.
 - You do not serve these forms on the opposing party.
- Court Issues ***Order on Court Fee Waiver (Superior Court) (FW-003)***
 - If Your Fee Waiver Request is Denied
 - You have 10 days from the date in the Clerk’s Certificate of Service (at the bottom of page 2 of Form **FW-003**) to either 1) pay your fees; 2) file a new request; or 3) ask for a hearing to show the court more information. If you do not do one of these 3 things, the court will cancel the papers you filed and you will have to start over.
 - To request a hearing, fill out ***Request for Hearing About Court Fee Waiver Order (FW-006)*** and the top of ***Notice of Hearing About Court Fees (FW-007)***. Make 2 copies of each and submit to the clerk. The court will send you **Form FW-007** completed, telling you when the court date is for your fee waiver hearing.

D. Where Do You File Your Case?

- **General Rule:** must file in county where any one defendant lives or does business at the time of filing.

Additional filing information:

Personal injury/property damage (i.e. car accident)	County where accident occurred
Security Deposit	County where rental property is located.
Contract	County where: i) D signed or entered into contract, ii) D lived at time contract was entered into, iii) contract was to be performed, iv) P is entitled to receive payment, or if D is a business, v) where contract was breached.
Unpaid debt (seller of consumer goods, includes retail installment contracts)	County where: i) buyer signed contract, ii) buyer resided at time of signing contract, or iii) goods or vehicle purchased by installment are permanently kept.
Contract for personal, family, or household goods	County where: i) P signed the contract, ii) P lived at the time of entering into contract, or iii) P will live at the time action begins.

- **Specific Courthouse:** Once you have determined the right County, there may be multiple courthouses to choose from. Most counties have a website for their court system. That website will have information on which specific courthouse you should choose for your case. Generally, it will be the courthouse that hears small claims cases closest to the defendant.

For a list of Los Angeles Superior Court courthouses accepting small claims cases, see <http://www.lacourt.org/courthouse/mode/division/smallclaims>.

To determine where to file a new small claims case in LA County, you should go to the LA Superior Court's Filing Court Locator website at <http://www.lacourt.org/filinglocator/ui/filingsearch.aspx?CT=PR>.