

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA SMALL CLAIMS INSTRUCTION PACKET

Plaintiff – The party/person who sues

Defendant – The party/person being sued

Plaintiff's Claim: If you wish to sue someone in Small Claims, you must file a Plaintiff's Claim (SC100).

Defendant's Claim: If you are **being sued** and wish to counter-sue, you **must** file a Defendant's Claim (SC 120). Please be advised that if you file a Defendant's Claim, you are still listed as the Defendant on your claim as well as on the Plaintiff's Claim.

General Information: The limit on a claim by a natural person is \$7,500. The limit on a claim by a business is \$5,000. Your forms may be hand-printed only if you use dark blue or black ink; NO CURSIVE. **If your printed document is not legible to the clerk, it may be rejected.** It is your responsibility to have the spelling and addresses correct. If you file your claim in the wrong court, the court may dismiss the claim. Upon receipt of the above paperwork and fees, the court will assign a case number and set a hearing date and time to appear.

If the defendant lives **in** Santa Barbara County, the court date will be set approximately, but no more than, 40 days from the date of filing. (CCP 116.330)

If the defendant lives **out of** Santa Barbara County, the court date will be set approximately, but no more than, 70 days from the date of filing. (CCP 116.330)

Filing Fees: Filing a claim for \$1,500 or less is \$30. Filing a claim for more than \$1,500 but less than or equal to \$5,000 is \$50. Filing a claim for more than \$5,000 but less than or equal to \$7,500 (by natural persons only) is \$75. Filing a claim by person who has filed more than 12 small claims in California within the previous 12 months is \$100. If you are paying by check or money order, please make it payable to "Clerk of the Superior Court." **Please include a separate check for each filing.**

Manner of Service: After you have filed your claim with the court, you **must** have the party that you are suing served with a copy of the claim. **Service is not valid if you perform it yourself;** you must have a disinterested party serve the claim. Decide how you want the other party(s) served **from the options below** and inform the clerk at the time of filing.

- 1) **Sheriff's Service:** You are responsible for contacting the Sheriff's Office for service and paying their service fee.
- 2) **Disinterested Party (over 18 years):** You may have a **process server** or someone you know serve the claim on the party(s). You are responsible for giving a copy of the claim to the person conducting the service and you must return the **original** proof of service to the court **at least three court days prior to the hearing date.**
- 3) **Certified mail (\$10.00 per defendant):** The court will mail a copy of the claim to the other party(s) by certified mail, restricted delivery, and return receipt requested. However, if a person other than the party named signs for the letter, it will be up to the judge to decide if proper service was obtained.
 - ◆ **Certified mail is often less successful than other methods of service and may delay the hearing.**
 - ◆ If the signature on the receipt is not legible and the party does not appear at the hearing, the judge may not accept the signature as proof that the party was properly served.
 - ◆ **If the Post Office has not returned proof of service to the court by the time of the hearing,** the court has no way to determine if your party has been served. You will need to appear at the court hearing to ask for a continuance. In the event that the party does not appear, the court may continue the hearing so that valid service may be obtained.
 - ◆ *If service by certified mail is not effective, you will need to use another method of service.*

Warning - Without the proof of service, the case may be dismissed.

1) WHAT IF I NEED A CONTINUANCE BECAUSE THE PARTY HAS NOT BEEN SERVED?

- (a) Appear at the hearing and request a new hearing date so that you can continue your efforts to have your party served; OR
- (b) **Three court days** before the hearing date, you may go to the clerk's office with all your copies of your claim to request that the hearing be reset. Then you can continue your efforts to have your party served and submit proof of service to the court.

2) WHAT IF I DO NOT APPEAR IN COURT ON THE HEARING DATE?

WARNING: If you do not appear at the hearing, nor request a new hearing date by going to the clerk's office at least three days prior to the court date, **your claim could be dismissed without prejudice.** To pursue the matter further, you will have to re-file your claim and pay filing fees again.

3) IF YOU NEED TO CHANGE THE DATE AFTER THE DEFENDANT HAS RECEIVED A COPY OF THE CLAIM:

- (a) You must make a written request to the court, send a copy of your request to the defendant and pay a \$10.00 fee.
- (b) Your written request must state the reason why you are requesting to change the court date.
- (c) **Your request must be submitted at least 10 days before the hearing date.** If it is not submitted in a timely manner, your request must state a reason for the delay.
- (d) You may request a date and time when you can appear; however, the setting of the court date will be at the discretion of the court.

BE ADVISED THAT THE OFFICE PERSONNEL CANNOT GIVE YOU LEGAL ADVICE. HOWEVER, YOU MAY CONTACT THE SMALL CLAIMS ADVISOR AS FOLLOWS:

SANTA BARBARA 568-3303 SANTA MARIA 349-1289
LOMPOC 349-1289 or 737-7775 Ext. 3303
SANTA YNEZ VALLEY 349-1289 or 686-5011 Ext. 3303

4) SMALL CLAIMS FORMS AND ADDITIONAL INFORMATION ABOUT SMALL CLAIMS MAY BE OBTAINED FROM THESE FOLLOWING WEB SITES:

FORMS:

- http://www.sbcourts.org/general_info/formslist.htm – Local Court Forms
- <http://www.sbcourts.org/jcf/> – Judicial Council "fill-in and print" forms
- <http://www.accesslaw.com/> – Judicial Council "fill-in and print" forms

Other helpful Websites: (Partial List)

- www.dca.ca.gov/smallclaims
- <http://www.courtinfo.ca.gov/reference/guide-smallclaims.htm>
- www.courtinfo.ca.gov/smallclaims/
- www.sucorte.ca.gov - (Spanish website)
- www.ss.ca.gov – California Secretary of the State

GUIDELINES ON NAMING THE PARTIES

It is important to name the party(s) properly in order to enforce any judgment you obtain.

INDIVIDUALS, ETC.

1. **Individual Persons:** Individual persons should be named by their first name, middle initial (if possible), and last name. If the name is a common name, it is desirable to include the full middle name, if known.
For example: "John L. Doe" or "John Lawrence Doe"
2. **Husband and Wife Defendants:** Both the husband and wife should be named.
For example: "John A. Smith and Mary B. Smith."
3. **Auto Damage Claim:** You should name **both** the driver and the registered owner(s) as well as any unregistered owner(s).
4. **If you are under the age of 18 and wish to file a claim:**
You must list your Guardian or Guardian ad Litem; this is usually a parent or relative.
*For Example: "James Doe, a minor" or "James Doe, a minor
by John Doe, his guardian ad Litem" by John Doe, his guardian"*
 - (a) The Guardian **must** sign the claim.
 - (b) If you are suing a minor, you **must** serve the parent or guardian of the minor you are suing.

BUSINESSES, CORPORATIONS, ETC.

5. **Person Doing Business Under Their Own Names:** A person doing business under a fictitious name should be sued under both the individual name of the owner and the fictitious name.
For example: "John A. Smith, individually and doing business as Smith Trucking."
6. **Partners Doing Business Under Their Own Names:** Both the partnership and the partners should be named. *For example: "John A. Smith and Mary B. Roe, a partnership."*
7. **Partners Doing Business Under a Fictitious Name:** Both the partnership and the partners as individuals should be named. *For example: "John A. Smith and Mary B. Roe, individually and doing business as Smith Trucking."*
8. **Unincorporated Association:** An unincorporated association should be sued under the common name of the association with an individual member joined in the action.
For example: "R.J.R. Society, an unincorporated association consisting of John Smith and Jim Roe; and John Smith and Jim Roe, individually."
9. **Corporation:** A corporation should be sued by its correct corporate name.
For example: "XYZ Enterprises, a corporation." If the corporation is engaged in business under a fictitious name, that name should be included. *For example: "XYZ Enterprises, a corporation, individually and doing business as Smith trucking."* Your claim **must** list the corporation's "agent for service of process" or "an officer of the corporation".

If you know the name of the business, but not the name of the owner, or if the business is owned by an individual, a partnership, or a corporation, you may check the county's Fictitious Name Statement list. It contains all fictitious name businesses including the owners and is available at your local County Clerk's Office.

If you know that a corporation owns the business but don't know the corporation's agent for service of process, you may contact the Secretary of State and request the most recent Statement of Officers. You should write to the Corporate Filing and Services Division, Office of the Secretary of State, 1500 11th Street, Sacramento, CA 95814. Call (916) 653-6814 to obtain the fee amount and include your check with your request. www.ss.ca.gov

SUGGESTIONS FOR LOCATING THE PARTIES

INDIVIDUALS, ETC.

1. Check with the **Postal Service** for a forwarding address.
2. The **Treasurer-Tax Collector's Office** can assist you in obtaining tax information from their tax debts:

105 East Anapamu St. Santa Barbara CA 93101 (805) 568-2920	511 E. Lakeside Parkway Santa Maria, CA 93455 (805) 346-8330	401 E. Cypress Lompoc, CA 93436 (805) 737-7705
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3. Check with the **Santa Barbara County Superior Court** for any ongoing litigation.

BUSINESSES, CORPORATIONS, ETC.

4. The **County Clerk-Recorder's Office** may be able to assist you with information concerning fictitious business names:

Hall of Records 1100 Anacapa St. Santa Barbara, CA 93101 (805) 568-2270	Hall of Records 511 E. Lakeside Parkway, Ste 115 Santa Maria, CA 93455-1341 (805) 346-8370	Hall of Records 401 E. Cypress Lompoc, CA 93436 (805) 737-7705
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5. The **State Board of Equalization** can provide information if the defendant obtained a permit for his/her business:

4820 McGrath, Suite 260
Ventura, CA 93003
(888) 225-5263
6. **City Hall** can provide information if the defendant has a City license:

Santa Barbara City Hall 735 Anacapa St. Santa Barbara, CA 93101 (805) 963-0611	Santa Maria City Hall 110 E. Cook St. Santa Maria, CA 93454 (805) 925-0951 ex 422	Lompoc City Hall 100 Civic Center Plaza Lompoc, CA 93436 (805) 736-1261
Solvang Municipal Center 1644 Oak Solvang, CA 93463 (805) 688-5575	Buellton City Hall 107 W. Hwy 246 Buellton, CA 93427 (805) 686-0137	Guadalupe City Hall 918 Obispo Guadalupe, CA 93434 (805) 343-1340
Goleta City Hall 6500 Hollister Avenue Goleta, CA 93117 (805) 961-7500		
7. The **Alcohol Beverage Control Department** can provide information if the business possesses a liquor license:

411 E. Canon Perdido St.
Santa Barbara, CA 93101
(805) 564-7717
8. The **Secretary of State** can give you the name of the person who can accept service of process for a corporation and the information regarding the corporation of a partnership. Call to obtain the fee amount and include your check with your request.

Mail your request to: 1500 11th St.
Sacramento, CA 95814
(916) 653-6814
www.ss.ca.gov