



# A Guide to Small Claims Court: How to Sue if a Business or Landlord Discriminates Against You Because of Your Disability

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**A Guide to Small Claims Court:  
How to Sue if a Business or Landlord Discriminates  
Against You Because of Your Disability**

## **Why Use Small Claims Court to Sue for Discrimination?**

If a private business or landlord discriminates against you because of your disability, you can sue them in federal court or state court or you can file an administrative claim with a federal or state agency. But, if your claim is for \$10,000 or less, you can sue in small claims court.

The small claims process is quick and cheap. The rules are simple and informal. And, you don't need a lawyer.

Use this booklet to learn about:

- Which laws protect you?
- How to sue in small claims court
- Court forms you'll need for your small claims case

## **Which Laws Protect Me?**

California law says if a business open to the general public, like a restaurant, hotel or medical office, discriminates against you because of your disability, you can sue them. A federal law called the American with Disabilities Act (ADA) also protects you.

## **What are the California laws?**

There are three main California laws that protect you:

- *Section 51 of the California Civil Code* (the Unruh Civil Rights Act) protects you if a business treats you worse than it treats others without disabilities.<sup>1</sup>
- *Section 54.1 of the California Civil Code* protects you if a business makes it hard for you to enter or get around a public area (like an inaccessible door or restroom). This section also protects you if a business stops you from using goods or services because of your disability. *For example:* not letting you use your service animal, or, does not give you the same service

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<sup>1</sup> Cal. Civ. Code § 51, *et seq.* ["Return to Main Document"](#)

other customers would get. This section also does not allow landlords and other housing providers to discriminate against you based on your disability.<sup>2</sup>

- The *Fair Employment and Housing Act* (FEHA), makes it unlawful for any housing owner to discriminate against or harass any person because of their race, color, religion, sex, sexual orientation, national origin, ancestry, familial status, source of income, or disability.<sup>3</sup>

You can sue a business or other organization open to the public, or a housing provider (or their employee) for breaking these laws.

### **What are the federal laws?**

The ADA, specifically Title III, does not allow businesses open to the public (such as restaurants, hotels, grocery stores, retail stores, and privately owned transportation systems) to discriminate against you based on your disability. Title III of the ADA also requires that these businesses be accessible to people with disabilities.<sup>4</sup> Title II of the ADA has similar requirement for state and local government services and facilities.<sup>5</sup>

The *Fair Housing Act* (FHA) protects against discrimination in renting and buying a house.<sup>6</sup> The FHA states that discrimination includes a refusal to make reasonable accommodation to rules, practices or procedures when necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling.<sup>7</sup> Similarly, the FHA requires landlords to permit reasonable modifications of the premises and of the rules (when needed to afford such equal opportunity to use and enjoy the dwelling).<sup>8</sup>

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<sup>2</sup> Cal. Civ. Code § 54.1 [“Return to Main Document”](#)

<sup>3</sup> Cal. Gov’t Code § 12955 [“Return to Main Document”](#)

<sup>4</sup> 42 U.S.C. §12182 [“Return to Main Document”](#)

<sup>5</sup> 42 U.S.C. §12131, *et seq.* [“Return to Main Document”](#)

<sup>6</sup> See 42 U.S.C. § 3604(f) [“Return to Main Document”](#)

<sup>7</sup> 42 U.S.C. § 3604(f)(3)(B) [“Return to Main Document”](#)

<sup>8</sup> 42 U.S.C. § 3604(f)(3)(A) [“Return to Main Document”](#)

## **What if a California business violates the Americans with Disabilities Act (ADA)?**

California law allows you to sue for an ADA violation even though ADA is a federal law.<sup>9</sup>

A business violates the ADA if it:

- does not give you equal and full use of its goods, services, facilities, and privileges; or
- makes you use separate or different facilities (unless they do this to make sure you get the same goods and services as offered to others); or
- uses contractors or employees who discriminate against you because of your disability.

For more information on the ADA, visit the U.S. Department of Justice's website dedicated to the ADA ([www.ada.gov](http://www.ada.gov)) or contact Disability Rights California.

## **What does California law consider a “disability”?**

California law protects people from discrimination due to an actual or perceived physical or mental impairment that makes achieving a major life activity difficult.<sup>10</sup> This includes physical and mental impairments, such as, but not limited to: chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease.

## **Is the business required to make an accommodation that I need because of my disability?**

Maybe. The ADA says businesses may have to give you help, provide some device or technology, remove barriers, provide qualified sign language interpreters, or make a change in the way it operates so you can have equal access to its goods and services. But the law says these aids and adjustments must not be too expensive for the business based on the assets of the business and possibly the parent company. or change the basic nature of the business.<sup>11</sup> However, such situations

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<sup>9</sup> Cal. Civil Code § 54.1 [“Return to Main Document”](#)

<sup>10</sup> Cal. Gov't Code § 12926(i) and (k). [“Return to Main Document”](#)

<sup>11</sup> 28 C.F.R. §36.104 [“Return to Main Document”](#)

are likely rare. The business also may not have to provide reasonable accommodations if the person requesting the accommodation poses a direct threat to the health or safety of others that cannot be eliminated or reduced by providing reasonable accommodations.<sup>12</sup>

## **Can I sue *any* California business?**

Yes. You can sue “any business establishment whatsoever.”<sup>13</sup> This means any business that is open to the public, including, for example:

Restaurants, stores, theaters, ATM’s, gas stations

- Hospitals, clinics, and doctors’ offices and lawyers’ offices
- Planes, trains, buses, and cruise ships (airplanes have different laws that apply)
- Private schools, adoption agencies, and businesses offering telephone, TDD and TTY connections
- Health clubs, amusement parks or resorts.
- Hotels, inn, motel, or other place of lodging (unless there are less than five rooms for rent and the owner lives there)

You cannot sue businesses like purely private clubs or religious organizations.<sup>14</sup> However, just because a club has membership requirements, does not necessarily make it a private club under the law. Generally, to be exempt from the ADA the club has to be a non-profit, open only to members and their guests and cannot host public events, such as tournaments, community affairs or political fundraisers.

## **What Reasonable Accommodations do Businesses have to Make?**

### **Auxiliary Aids or Services**

If you have a disability, private businesses must take steps necessary to communicate with you as effectively as they communicate with others. This means you are entitled to the same face-to-face communication and written correspondence as any other person.

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<sup>12</sup> 42 U.S.C. § 12182(b)(2)(A)(ii) and (iii), Cal. Civ. Code § 51, *et seq.* [“Return to Main Document”](#)

<sup>13</sup> Cal. Civil Code § 51(b). [“Return to Main Document”](#)

<sup>14</sup> 28 C.F.R. §36.104 [“Return to Main Document”](#)

If you need auxiliary aids and services to communicate effectively, the business must provide them to you, like:

- Qualified sign language interpreters,
- transcription services such as CART (Captioned audio realtime transcription),
- assistive listening devices,
- note takers,
- qualified readers,
- taped text, and
- Braille materials
- Electronic materials
- Written material in accessible formats

For example, a hospital would have to provide a sign language interpreter or real time transcription to communicate with a hearing impaired patient. (Real time transcription is when speech is displayed on a screen.) A private school would have to provide students with vision impairments with materials in alternate formats like electronic versions of written materials or of audio or video.<sup>15</sup>

### **Reasonable Modifications/Accommodations**

Private businesses opened to the public and housing providers must make changes to their policies, practices, and procedures if they are needed to allow people with disabilities to access the services and housing.<sup>16</sup> For example, a business may need to make an exception to its “No Pet” policy for a service animal or a large bank may have to provide ATM machines with accessible features, such as Braille or providing an input for audibly conveying information on the screen.

If you need to make a physical change (such as a ramp or handrails) to your apartment or house, your landlord must allow you to make the modification so long as it is done properly. However, in most cases, you will be responsible to pay for it.<sup>17</sup>

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<sup>15</sup> 28 C.F.R. § 36.303 [“Return to Main Document”](#)

<sup>16</sup> See 28 C.F.R. § 36.302; 42 U.S.C. § 3604(f)(3)(B). [“Return to Main Document”](#)

<sup>17</sup> 42 U.S.C. § 3604(f)(3)(A). [“Return to Main Document”](#)

## **Can the business charge me for the accommodation?**

No. A business open to the public cannot charge you for costs reasonable accommodations or modifications in their policies, practices, or procedures necessary because of your disability.<sup>18</sup> For example, a business cannot charge you a fee for allowing your service animal access or for admitting a personal attendant.

## **Does a business open to the public or housing provider, such as a landlord, have to make all needed accommodations/modifications?**

No, a business open to the public or housing provider, such as a landlord does not have to provide accommodations that would:

- change the basic nature of the business (a fundamental alteration), or
- create an undue burden (a significant difficulty or expense).

Even if the business or housing provider does not have to make an accommodation because of the financial burden or fundamental alteration, it must try to find or make some kind of accommodation that would be helpful to you.

A business or housing provider is not required to provide the most advanced technology as long as they provide effective communication. In deciding what aids and services are needed for effective communication, the law considers the nature of your impairment, what devices and services are available, and the length and complexity of the communication involved.<sup>19</sup>

## **Is it ever legal for a business Open to the public to deny me its goods and services because of my disability?**

Sometimes, but only in rare situations. The ADA says a private business can deny you its goods and services if you are a direct threat to the health and safety of others. This is defined as a significant risk to the

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<sup>18</sup> 28 C.F.R. § 36.301(c) [“Return to Main Document”](#)

<sup>19</sup> 28 C.F.R. §§ 36.302, 36.303, Cal. Civ. Code §54.1 [“Return to Main Document”](#)

health or safety of others.<sup>20</sup> To decide if you pose a direct threat, the business must look at your particular case and use reasonable judgment based on your individual situation. It must consider current medical knowledge or the best available objective evidence that takes into account:

- The nature, duration, and the severity of the risk;
- How likely it is for the injury to happen; and
- If reasonable modifications or providing auxiliary aids would lessen or eliminate the risk.<sup>21</sup>

### **Is it ever legal for me to be denied housing or evicted because of my disability?**

Generally, you may not be denied an available unit because of your disability.<sup>22</sup> However, similar to a business open to the public, a housing provider can deny you housing or evict you if your disability causes you to be a direct threat to the health and safety of others with or without reasonable accommodations.<sup>23</sup>

### **How to Sue in Small Claims Court**

This section will help you with:

- Small Claims Court Basics
- How to start a case
- Get ready for court
- After the hearing
- Need more help?

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<sup>20</sup> 28 C.F.R. § 36.104. [“Return to Main Document”](#)

<sup>21</sup> 28 C.F.R. § 36.208(a)-(b). [“Return to Main Document”](#)

<sup>22</sup> 42 U.S.C. § 3604(f)(1)-(2). [“Return to Main Document”](#)

<sup>23</sup> 42 U.S.C. 3604(f)(9). [“Return to Main Document”](#)

## Small Claims Court Basics

### What is small claims court?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the Plaintiff. The person who is being sued is the Defendant.<sup>24</sup>

### Can I sue for discrimination in small claims court?

Yes. You can file a claim against a business (and/or an employee of the business) for breaking federal laws, such as the ADA or the Fair Housing Act, or any of the California laws that protect you from discrimination.

*Note:* You can file separate claims against a business for violating the each California law, but you can only get one award.<sup>25</sup>

### What can I ask for in small claims court?

Money. If you sue in small claims court, you can only ask for money.

### How much money can I ask for?

You can ask for an “award” that is three (3) times your actual loss, or \$4,000, whichever is greater. So, if the court agrees that you were discriminated against, you should get at least \$4,000.<sup>26</sup>

You cannot ask for more than \$10,000 in your claim. You can file as many claims as you want for up to \$2,500 each. But you can only file two claims in a calendar year that ask for more than \$2,500.<sup>27</sup>

If you want to sue for more than \$10,000, you can file in the civil division of Superior Court or you may sue in the small claims court and give up your right to any amount over the \$10,000 limit. If you sue in Superior Court, you will probably need a lawyer to represent you. Your suit can

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<sup>24</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

<sup>25</sup> See Cal. Civil Code § 54.1 [“Return to Main Document”](#)

<sup>26</sup> Cal. Civil Code § 52(a). [“Return to Main Document”](#)

<sup>27</sup> Small Claims Court, How Much Can You Sue for In Small Claims Court?, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

ask the Court to order the business to reimburse you for your attorney's fees.

### **Can I ask for a Court Order?**

No. In small claims court, you cannot ask for a court order (injunction) to make a business do something or stop doing something, like:

- Make its premises accessible,
- Provide disability awareness training to its employees,
- Provide personal assistance to its customers with disabilities, or
- End a discriminatory practice and/or policy.

If you want an injunction, you must file your case in either California Superior Court (state court) or U.S. District Court (federal court).

### **Can anyone file a claim?**

To file a claim, you must be at least 18 years old and “competent,” meaning that you are able to understand the nature of the claim and court process and participate fully.

If you are under 18, or if a court has decided you are “incompetent,” you must ask the Court to appoint a representative to speak for you. Incompetent” is a legal term that means you cannot sue without the help of a competent adult because of some mental condition.<sup>28</sup>

This representative person is called a “guardian ad litem,” and is usually a parent, a relative, or an adult friend.

To do this, fill out the *Application and Appointment of Guardian ad litem*, form Civ-010. You may access the form here:

<http://www.courts.ca.gov/documents/civ010.pdf>

### **Is there a deadline to file?**

Yes. You must file in small claims court within two (2) years from the date you were discriminated against.

There are some exceptions, like if the discrimination happened when:

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<sup>28</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

- The defendant was out of the state;
- You were under 18;
- You were in jail; or
- You were mentally incompetent.<sup>29</sup>

### **Can I have a lawyer?**

No. You cannot have a lawyer represent you in small claims court. But you can talk to a lawyer before or after court.

### **Do I have to file my suit in small claims court?**

No. You can also file your case in California Superior Court or U.S. District Court. But, it is easier to file a claim in small claims court. The rules are easy and informal. And, you don't need a lawyer.

### **How to Start a Case**

First, decide if it is worth your time and effort to sue in small claims court. Trials in small claims court are quick and simple. But, it can take a lot of time to prepare your case, serve and file your court papers and collect a judgment.

### **How do I know if I have a good case?**

Besides discrimination, other common types of small claims cases are disputes about:

- Property damage or personal injury from a car accident;
- Landlord/tenant security deposits;
- Damage to your property by a neighbor;
- Disputes with contractors about repairs or home improvement jobs;
- Collection of money owed;
- Homeowner association disputes; and
- Many other issues.<sup>30</sup>

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<sup>29</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>30</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

Appeals: You cannot appeal if you were the person who filed the claim unless the Defendant also filed a cross-claim against you. If someone else files a claim against you and you lose, you can appeal. This means that if you are the plaintiff suing a defendant and you lose, you cannot appeal the court's decision.

When you appeal a small claims judgment, you ask the superior court to change the small claims court judge's decision. You will have another court hearing and must present your case again.<sup>31</sup>

## **How do I file a claim?**

First, talk to the person or business you are thinking about suing. Try to work things out before going to court. Working things out in advance can avoid the stress and uncertainty that comes with a court case. To discuss the case before court, you can make a telephone call or write a "demand letter" that describes your claim and what you are seeking. For help with writing a demand letter, visit:

<http://www.courts.ca.gov/11145.htm>.

Send your demand letter by certified mail so you can prove that the Defendant got it.

If the Defendant still does not pay you, fill out form SC-100, Small Claims Case Order to go to Court. The form can be located at:

<http://www.courts.ca.gov/1017.htm>.

File SC-100 with the Court Clerk. The Clerk will give you a hearing day and time. If you would prefer a hearing date on a specific day (like Saturday) or at night, ask the clerk.

In some counties, you can file by mail or online. But, if you make a mistake on your claim, you may have to correct the mistake and file [again](#).<sup>32</sup>

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<sup>31</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1016.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>32</sup> Small Claims Court, Steps to Filing a Small Claims Case, <http://www.courts.ca.gov/1008.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

## Where do I file my claim?

You must file your claim (SC-100) at the right courthouse. If you don't, the court will dismiss your case.

File at the courthouse that covers the area where:

- The Defendant lives or does business; or
- The business's branch office or principal place of business is located; or
- The discrimination took place.<sup>33</sup>

## Who is the Defendant in my case?

The Defendant is the business or employee you are suing. You must use the Defendant's exact legal name on your court forms.

If the Defendant is a business or corporation and you do not know the exact legal name, ask the Small Claims Advisor where to find this information.

**Note:** You can only collect money from a Defendant whose exact name appears on your claim. So, it is very important to list the Defendant's name correctly. Here are some tips on how to list your defendant(s):

### If your Defendant is a...<sup>34</sup>

Person: Write the person's first name, middle initial and last name.

Married couple: Write the husband's full name AND the wife's full name.

Example: James A. Jones and Sally R. Jones

If you don't know the wife's first name, write:

James A. Jones and Mrs. James A. Jones

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<sup>33</sup> Small Claims Court, Find the Right Court to File Your Claim, <http://www.courts.ca.gov/9745.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>34</sup> Small Claims Court, Figuring How to Name The Defendant, <http://www.courts.ca.gov/9736.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

Business: Find out if the business is a corporation, partnership or sole proprietorship. Then, read below:

Sole proprietorship (A business owned by one person): Write the owner's name AND the business name on your claim. After the owner's name, write "individual." If you win your case, you can collect from the business or the individual.

Example: Sue Smith, individual & Smith Products

If the owner is doing business under a fictitious name (a made up name), write "& DBA" (means "Doing Business As") before the business name.

Example: Sue Smith, individual & DBA Continental Candies

Partnership (A business owned by 2 or more people) List the partnership AND the name of each partner.

If you win your case you can collect from the individual partners or the partnership.

Example: Jim Smith, Individual, & John Jones, Individual, & DBA Smith & Jones Corporation

Write the exact name of the corporation followed by "a corporation" or "Inc."

Example: Sally's Dresses, a corporation or Sally's Dresses, Inc.

Do not name the people who own the corporation unless they were clearly acting as individuals apart from the corporation.

Subsidiary of a Corporation (A Company owned by a corporation) Write the name of the Corporation, then the letters DBA and the name of the subsidiary.

Example: Lotus Corporation, DBA The Flower Company

### **Do I have to pay to file?**

Yes. The fee is based on the amount of your claim and the number of claims you have filed in the past 12 months.

If you have filed 12 or fewer claims in the past 12 months:

<u>Amount of your Claim:</u>	<u>Filing Fee</u>
\$0 to \$1500	\$30
\$1500.01 to \$5,000	\$50
\$5000.01 to \$10,000	\$75

You can get a waiver of all or part of the filing fee if you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs *and* your court fees so you will not have to pay the full amount. Be sure to file the fee waiver with the court at the same time that you file your small claims action.

If you cannot afford to pay your court fees, fill out and file these forms:

- Request to Waive Court Fees (form FW-001)
- Order on Application to Waiver of Court Fees and costs (form FW-003)

You can fill out these forms online at:

<http://www.courts.ca.gov/9743.htm>.<sup>35</sup>

## **How does the Defendant find out about the claim?**

You must let the Defendant know you are suing them. This means someone – not you – must serve (give) each Defendant a filed copy of your completed complaint (form SC-100) in person.

## **What is "service"?**

There are strict rules for serving court papers. "Service" or "serving" is when someone — *not you or anyone else listed in this case* — gives a copy of your court papers to the person, business, or public entity you are suing. Service lets the other party know:

- What you are asking for,
- When and where the trial will be, and
- What they can do.

Do not serve fee waiver forms. These forms are only for the court.<sup>36</sup>

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<sup>35</sup> Small Claims Court, Fee Waivers, <http://www.courts.ca.gov/1090.htm>, (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>36</sup> Small Claims Court, Service of Process, <http://www.courts.ca.gov/1092.htm>, (last visited Feb. 24, 2015). ["Return to Main Document"](#)

## **When must I serve the claim?**

It depends on **how** you serve your claim. If you are the Plaintiff, serve the Plaintiff's Claim (Form SC-100, Form can be located at <http://www.courts.ca.gov/1017.htm>).

- For personal service: Serve your claim at least 15 days before the court date (or 20 days if the person, business, or public entity you're serving is outside the county).
- For substituted service: Serve your claim at least 25 days before your court date (or 30 days if the person, business, or public entity you're serving is outside the county). If the person, business, or public entity you have to serve is outside California or if you are serving a different form, ask the Small Claims Advisor for more information.

## **Who can serve?**

A friend, a process server, or the Sheriff can serve the court papers. The server must be at least 18 and not listed in the case.

- A "process server" is someone you pay to deliver court forms. Look in the Yellow Pages under "Process Serving."
- The Sheriff (or Marshal if your county has one) can also deliver court forms. Ask the court clerk how to contact the Sheriff. Or, look in the county section of your phone book under "Sheriff." You must pay the Sheriff, unless you qualify for a fee waiver.

## **Does the server have to give me Proof of Service?**

Yes. The person who serves the forms in person must fill out and sign the Proof of Service form (SC-104), then give it to you. Then, you must take it and file it at the Clerk's Office. When filing, keep a court-stamped copy for your records.

If you paid the Court Clerk to serve your forms by restricted Certified Mail, ask the Clerk's Office if they have received the Certified Mail receipt.

## **Is there a deadline to serve the Defendant?**

Yes. The Defendant must get served at least 15 days before the hearing. Or, 20 days before the hearing if the Defendant lives in another

county. If the Defendant is not served in time, the court will postpone your case.

### **Can the person I sue also sue me?**

Yes. The Defendant can file a small claim against you. This is called the Defendant's Claim (SC-120). If this happens, the court will decide both claims at the same time.

If the Defendant's Claim is for more than \$10,000, s/he can file a claim in Superior Court. Then, s/he can ask the court to transfer your claim to Superior Court.

### **Does the Defendant have to give me notice?**

Yes. If the Defendant files a claim against you, s/he must serve you (give you notice) at least five days before your trial. But, if the Defendant gets served with your papers less than 10 days before trial, s/he can serve you up to one day before the trial.<sup>37</sup>

### **Can I change (amend) my claim?**

Yes. If your Defendants have not been served yet, go to the Small Claims Clerk's Office and ask to change (amend) your claim. Bring your original claim forms with you. After you file your "amended claim," you must serve the Defendants, as described above.

If your claim already has been served on any of the Defendants, you must write a letter to the court to ask for permission to change your claim. The Small Claims Advisor can help you with this.

To remove one or more of the Defendants, fill out and file the dismissal form to let the Court know which Defendants you no longer want to sue.

(*Request to Amend Claim Before Hearing, Form SC-114*). You must serve the dismissal on the other Defendants if they have already been served with your small claims complaint. If your complaint has not been served, you do not have to notify the other Defendants about the

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<sup>37</sup> Small Claims, Being Sued, <http://www.courts.ca.gov/1010.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

dismissal.<sup>38</sup> You can dismiss the case “with prejudice” or “without prejudice.”

“With Prejudice” means you will not be able to bring the same claim against the same defendant in the future

“Without Prejudice” means you will be able to bring other suits based on the same claim, as long as the statute of limitations has not run.

## **Can I change my court date?**

Yes. Fill out and file a Request to Postpone Small Claims Hearing (form SC-150), at least 10 days before your hearing. The clerk will charge you a \$10 fee.

Or, you can write a letter to the Court explaining why you need to change your court date.

You must also mail or personally give a copy of your form SC-110 or the letter you wrote to the court to the all the Defendants and other Plaintiffs in your case.

If you have less than 10 days before your trial, take your completed form SC-110 or letter to the Clerk’s office AND mail or personally give a copy of your form SC-110 or letter to the other people named in the claim.

Or, go to your hearing and ask the judge for a new date (called “continuance.”)<sup>39</sup>

## **How to Get Ready for Court**

### **How long do I have to wait to go to court?**

If you are suing somebody, you must go to court. Your case will be heard within 20 – 70 days after you file your claim.<sup>40</sup>

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<sup>38</sup> Small Claims, Change Your Claim or Court Date, <http://www.courts.ca.gov/1387.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

<sup>39</sup> Small Claims, Change Your Claim or Court Date, <http://www.courts.ca.gov/1387.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

<sup>40</sup> Small Claims Court, Basics, <http://www.courts.ca.gov/1256.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

## **How can I make witnesses come to court?**

You can ask the witnesses to come voluntarily. Or, you can file form SC-107. The Clerk will subpoena (order) them to go. The form can be located at <http://www.courts.ca.gov/1017.htm>.

Witnesses can charge you a fee. Non-expert witnesses can charge you \$35 a day, plus 20¢ a mile for travel to and from the courthouse. Expert witnesses cost a lot. To save money, you can ask the expert witness to give you the information you need in writing. This is called a declaration.<sup>41</sup>

## **How can I get records or papers to prove my case?**

File form SC-107. The Clerk will subpoena (order) the person who has the records to bring or send a copy to Court.<sup>42</sup>

## **Can I use mediation?**

Yes. In fact, some courts require you to use mediation first. Mediation is when a trained mediator works with the Plaintiff and Defendant to try to settle the case out of court. Mediation can be faster and easier than going to court. And, about 80% of cases that go to mediation get solved out of court.

If you want to try mediation, ask the Small Claims Advisor to help you find a mediator. Ask for a mediation date that is before your small claims trial date. That way, if mediation doesn't work for you, you can still go to court on your scheduled trial date.<sup>43</sup>

## **How does mediation work?**

If you want to try mediation, ask the Small Claims Advisor to connect you with a mediator. Then, you contact the mediator and the mediator will contact the Defendant(s). If both sides agree to mediation, you will go to a neutral place to try and solve your case. The mediator will explain the

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<sup>41</sup> Small Claims Court, Subpoena a Witness, <http://www.courts.ca.gov/11162.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

<sup>42</sup> Small Claims Court, Going To Court, <http://www.courts.ca.gov/1013.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

<sup>43</sup> Small Claims Court, Mediation, <http://www.courts.ca.gov/1011.htm> (last visited Feb. 24, 2015). [“Return to Main Document”](#)

process s/he will use. What you say in mediation is private and confidential. Information learned through mediation is not admissible in court. Lawyers can participate in the mediation.

Most mediations take a couple of hours. And, if you can agree on a solution in mediation, the mediator will help put your agreement into writing. If the Defendant doesn't follow the agreement, you can ask the court to enforce it.<sup>44</sup>

### **What if the Defendant and I agree to settle the case before the hearing?**

Just file a *Request for Dismissal* form with the Clerk. Form can be found at <http://www.courts.ca.gov/1017.htm>. Or, go to the hearing and tell the judge that you settled your case.

### **What happens at the hearing?**

- Get to Court 30 minutes early.
- Bring your witnesses, receipts, and any evidence you need to prove your case.
- When the Courtroom opens, go in and tell the Clerk you are present.
- Watch the other cases so you will know what to do.
- When your name is called, go to the front of the Courtroom.
- The judge will listen to both sides. The judge may make a decision at your hearing or mail it to you later.<sup>45</sup>

## **After The Hearing**

### **How do I find out about the Court's decision?**

The Court will give or mail you a Notice of Judge's Decision, SC-130 and SC-200. This form tells you what the judge decided. It is important to read the full court's decisions, and then to read form SC-200-INFO, because it will help protect or enforce your rights, whether you won or lost the case.

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<sup>44</sup> *Id.* ["Return to Main Document"](#)

<sup>45</sup> Small Claims Court, Your Trial, <http://www.courts.ca.gov/1119.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

The judge may order one party to pay the other party. If this happens, the person who has to pay is the judgment debtor. The person who collects the money is the judgment creditor.<sup>46</sup>

### **If I win, how soon will I get my money?**

You must wait 30 days (the appeal period) before you can get paid.

### **Does the Court collect the money for me?**

No. But there are things you can do to get paid. Read SC-130 (Notice of Judge's Decision) for more information. You can find that form here: <http://www.courts.ca.gov/documents/sc130.pdf>.

### **Can the Defendant appeal the judge's decision?**

Yes. Only the Defendant can appeal. He or she will have 30 days after s/he receives the Notice of the Judge's Decision (form SC-130), to appeal.

A small claims appeal is a "*trial de novo*" or "new trial." This means that the case is decided by a new judge from the beginning so you have to present your case all over again. Because this case is in the Civil Division of the Superior Court (and NOT in small claims court), you (and the other side) are allowed to bring a lawyer to represent you in the new trial.<sup>47</sup> While the case is on appeal, the Defendant does not have to pay the judgment.

The Plaintiff cannot appeal their claim. But, the Plaintiff can appeal the Defendants Claim if s/he loses.<sup>48</sup>

## **Need More Help?**

### **Who can I ask for help?**

Talk to the Small Claims Advisor in your county. It's free!

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<sup>46</sup> Small Claims Court, Plaintiff's Post Trial Checklist, <http://www.courts.ca.gov/1120.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>47</sup> Small Claims Court, Appeals, <http://www.courts.ca.gov/1016.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>48</sup> What To Do After the Court Decides Your Small Claims Case, <http://www.courts.ca.gov/documents/sc200info.pdf> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

Find the Advisor in your county at: <http://www.courts.ca.gov/9498.htm>

You can also reference Contra Costa County's virtual self-help website here: <http://cc-courthelp.org> that walks you through each step in filing a small claims lawsuit. Go to their website and then click on the small claims tab.

Also, court clerks can sometimes help you prepare forms and answer your questions about local court procedures. But, they are not attorneys and cannot give legal advice.

Always try to maintain a positive relationship with the court clerk. S/he can help to move your case forward faster by assigning your case to a judge who hears cases quickly.<sup>49</sup>

### **What if I don't speak English well?**

Ask your court clerk at least one (1) week before your hearing to see if the court can provide an interpreter for you. In some courts, they can provide interpreters for free if you qualify for a fee waiver. If not, you have to take your own interpreter. Do not ask a child or a witness to interpret for you. You have the right to get your hearing delayed so you can get an interpreter.

Please see the brochure entitled, How to Use a Court Interpreter, available here: <http://www.courts.ca.gov/documents/Tri-CutUseInterpreter.pdf>.<sup>50</sup>

### **Where can I get the court forms I need?**

Go to any courthouse, your county law library, or download forms from: <http://www.courts.ca.gov/1017.htm>

### **What if I need an accommodation?**

California and federal law require that state courts (and government agencies) provide appropriate reasonable accommodations for persons with disabilities. If you have a disability and need assistance, fill out and

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<sup>49</sup> Small Claims, <http://www.courts.ca.gov/selfhelp-smallclaims.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

<sup>50</sup> Small Claims Court, Going To Court, <http://www.courts.ca.gov/1013.htm> (last visited Feb. 24, 2015). ["Return to Main Document"](#)

file MC-410, Request for Accommodations by Persons with Disabilities and Order (located here: <http://www.courts.ca.gov/documents/mc410.pdf>). There should be no cost to you for accommodations.

Make your request right after you file your claim, and at least a week ahead of your trial, so the court has time to meet your needs.

Examples of accommodations include:

- Sign language interpreters;
- Assistance from another person (like an advocate) if required because of a disability;
- Allowing access for a service animal;
- Receiving materials in accessible formats;
- Appearance by phone if you cannot get to court because of your mental or physical disability.<sup>51</sup>

For more information on asking for court accommodations, contact Disability Rights California and ask for the publication: [Access to the Courts: A Guide to Reasonable Accommodations for People with Disabilities](#), Publication # 5026.01

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<sup>51</sup> Services at Your Court, [www.courts.ca.gov/1077.htm](http://www.courts.ca.gov/1077.htm); <http://www.courts.ca.gov/documents/access-fairness-QandA-for-persons-with-disabilities.pdf> (last visited Feb. 24, 2015). [“Return to Main Document”](#)