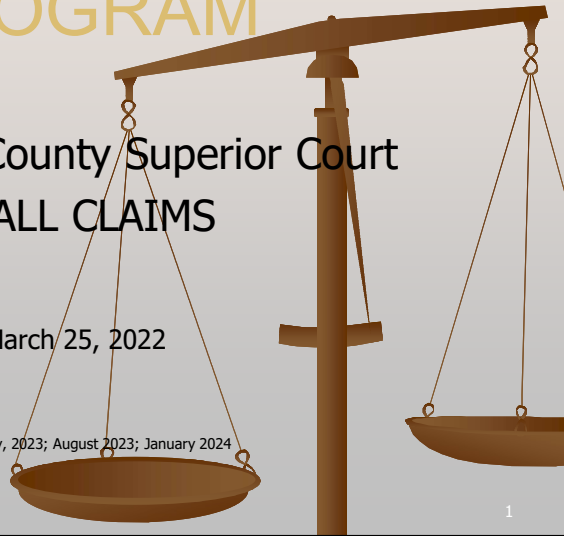


# TEMPORARY JUDGE PROGRAM

Santa Clara County Superior Court  
SMALL CLAIMS

March 25, 2022

Updated July, 2023; August 2023; January 2024



1

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## Presenters

JUDGE VANESSA ZECHER

COMMISSONER CHRISTINE COPELAND

COMMISSIONER ERIK S. JOHNSON

ADR ADMINISTRATOR LAURIE MIKKELSEN



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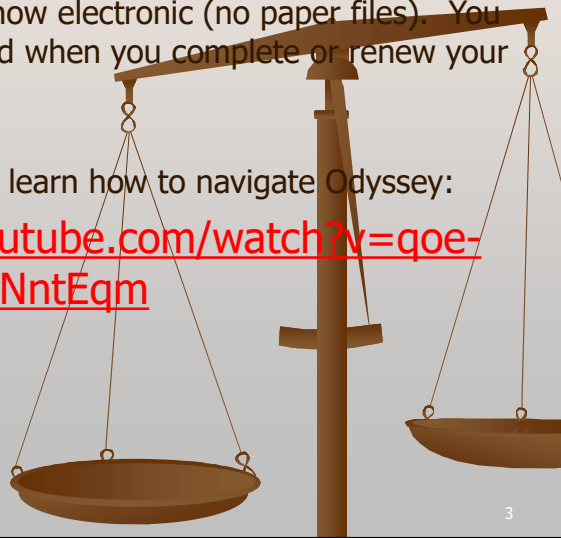
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## Make friends with Odyssey

All court case files are now electronic (no paper files). You will be given a password when you complete or renew your training.

This video will help you learn how to navigate Odyssey:

- <https://www.youtube.com/watch?v=qoe-bNntEqM/qoe-bNntEqm>



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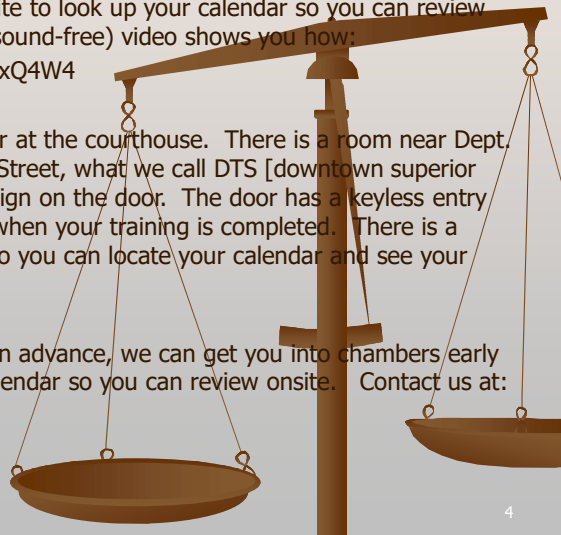
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## Review your calendar in advance

1. You can use the court's website to look up your calendar so you can review cases in advance. This short (sound-free) video shows you how: [youtube.com/watch?v=xkbAUpXQ4W4](https://www.youtube.com/watch?v=xkbAUpXQ4W4)

2. You can review your calendar at the courthouse. There is a room near Dept. 14 (5<sup>th</sup> floor at 191 North First Street, what we call DTS [downtown superior court] that has a "law library" sign on the door. The door has a keyless entry and we will give you the code when your training is completed. There is a computer there with Odyssey so you can locate your calendar and see your case files.

3. If you make arrangements in advance, we can get you into chambers early on the day of your assigned calendar so you can review onsite. Contact us at: [ccopeland@scscourt.org](mailto:ccopeland@scscourt.org)



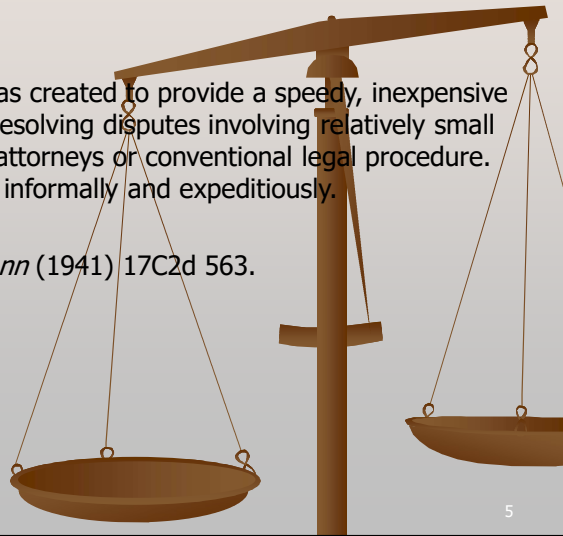
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## WHY IS THERE A SMALL CLAIMS CALENDAR?

- The small claims court was created to provide a speedy, inexpensive and informal method of resolving disputes involving relatively small sums of money, without attorneys or conventional legal procedure. It is intended to function informally and expeditiously.

*Sanderson v. Niemann* (1941) 17C2d 563.



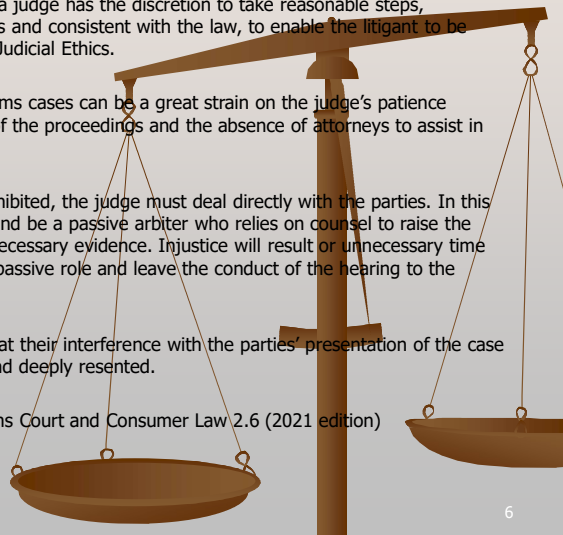
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## The Judicial Officer's Role

- When a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law, to enable the litigant to be heard. Canon 3B(8) of the Code of Judicial Ethics.
- Many judges observe that small claims cases can be a great strain on the judge's patience because of the relative informality of the proceedings and the absence of attorneys to assist in managing parties and witnesses.
- Because the use of attorneys is prohibited, the judge must deal directly with the parties. In this context, the judge cannot sit back and be a passive arbiter who relies on counsel to raise the appropriate issues and supply the necessary evidence. Injustice will result or unnecessary time will be consumed if they assume a passive role and leave the conduct of the hearing to the litigants.
  - Compare: Some judges find that their interference with the parties' presentation of the case is unnecessary, undesirable, and deeply resented.

CA Judges Benchbook- Small Claims Court and Consumer Law 2.6 (2021 edition)



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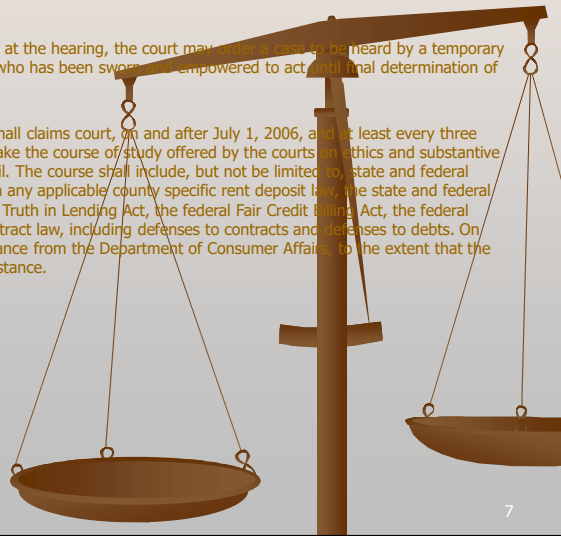
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## Temporary Judge Requirements

### CCP 116.240.

a) With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

(b) Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge shall take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course shall include, but not be limited to, state and federal consumer laws, landlord-tenant law along with any applicable county specific rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, and contract law, including defenses to contracts and defenses to debts. On substantive law, the courts may receive assistance from the Department of Consumer Affairs to the extent that the department is fiscally able to provide that assistance.



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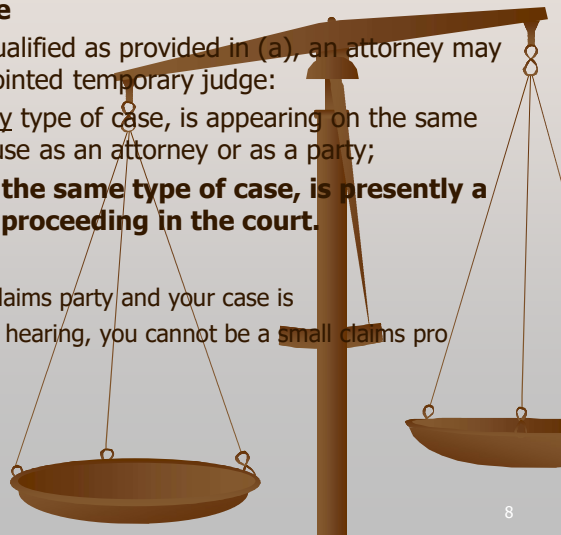
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## CA Rule of Court 2.818(b)

### (b) Limitations on service

- In addition to being disqualified as provided in (a), an attorney may not serve as a court-appointed temporary judge:
- (1) If the attorney, in any type of case, is appearing on the same day in the same courthouse as an attorney or as a party;
- (2) **If the attorney, in the same type of case, is presently a party to any action or proceeding in the court.**

→ If you are a small claims party and your case is pending for an 4/1/22 hearing, you cannot be a small claims pro tem on 3/18/22



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## Temporary Judge Stipulation form

- Do not start a hearing unless all parties present have signed a stipulation form.
- If any party does not stipulate to you hearing the case:
  - (1) if a small claims commissioner is hearing another calendar simultaneously (ask your clerk to check), have your clerk call over to see if that commissioner can accommodate another case; or
  - (2) have your clerk set a hearing with a small claims commissioner (Copeland or Johnson) and make sure the parties leave with written notice of that court date.

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## Jurisdictional Limits (excluding filing fees and court costs like service)

**\$12,500.00 for a person (up from \$10,000.00 as of 1/1/24)**

A DBA is a person, and can sue for \$10,000.00 maximum. *Providence Washington Insurance Co. v. Valley Forge Insurance Co.* (1996) 42 CA4th 1194

◆Exception: Covid-19 Rental Obligations. To be discussed starting at slide 64.

**\$6250.00 for corporations or LLCs (up from \$5,000.00 as of 1/1/24)**

◆Exception: Covid-19 Rental Obligations. To be discussed starting at slide 64.

**\$2,500.00 for any Plaintiff who has filed more than two claims in the same calendar year (government entities, i.e. City of San Jose, are exempted).**

◆Exception: Covid-19 rental obligations. To be discussed starting at slide 64.

CCP 116.221, 116.220(a)(1), 116.610(g), 116.231(b) and (d)

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## Unlawful Claim Splitting

- Plaintiff is seeking personal injury damages in the amount of \$20,000.00.

Can she file one case against Defendant for \$12,000.00 (new limit as of 1/1/24), and then another case against Defendant for \$8,000.00?

No. A Plaintiff cannot split a single cause of action and make it the basis of several suits in order to take advantage of small claims court jurisdiction. *Lekse v. Municipal Court* (1982) 138 CA3d 188.

A Judgment rendered in the first action bars the second action. *Wulfien v. Dolton* (1944) 24C2d 891.

In OTHER THAN SMALL CLAIMS COURT, if the Defendant fails to raise the defense in the subsequent/second action, it is waived. However, a small claims Defendant's failure to raise the issue of an improperly split claim is not a waiver of that affirmative defense. *Lekse (above)*.

See CA Judges Benchbook- Small Claims Court and Consumer Law (2021 edition) 3.5 and 10.26

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## Distinguishing Characteristics of Small Claims Actions

- No legal representation is allowed pre-Judgment unless a party is an attorney. CCP 116.350, 116.540(a)
- Burden of proof is preponderance of the evidence. EC 115
- Plaintiff cannot appeal. CCP 116.710(a).
- If Defendant appeals, that hearing is *de novo*.
- There is no Summons, no Answer/Response form (but Defendant can file a counter claim).
- Injunctive relief is prohibited unless allowed by statute. CCP 116.220(a)-(b)
- A Defendant cannot be served outside of California, with two exceptions: disputes involving real estate (i.e. out of state landlord) or vehicle accidents occurring in California. CCP 116.340(e)-(g)
- Declaration re: Diligence is **not** required before substitute service can be performed. CCP 116.340(a)(3)
- Assignees cannot bring a claim. CCP 116.420(a)
- A judicial officer may do independent research. CCP 116.520(c)
- There is no record or transcript.
  - Proceedings are electronically recorded, but for quality control purposes only. Litigants do not have access to the recordings.
  - The recordings are helpful if you take a matter under submission and need to re-hear a portion of the hearing because your notes are unclear or are lost.
  - If a party complains about you to the Presiding Judge, she will often listen to the recorded hearing first before contacting you and responding to the party's complaint.

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## Burden of Proof: Preponderance of the evidence EC 115

- "50% plus a feather"
- **CACI No. 200. Obligation to Prove—"More Likely True Than Not True"** After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

The general rule in California is that "[i]ssues of fact in civil cases are determined by a preponderance of testimony." *Weiner v. Fleischman* (1991) 54 Cal.3d 476

The preponderance-of-the-evidence standard "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence.'" *In re Angella P.* (1981) 28 Cal.3d 908

"Preponderance of the evidence" "means what it says, viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314

- Exception: Punitive damages (malice, fraud, oppression)- standard is clear and convincing. CC 3294

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## Interpreters

- For Spanish and Vietnamese, we can count on interpreters being available without arranging for such in advance. Same for Mandarin interpreters on Thursday afternoon calendars.
- For other languages, if an interpreter was not ordered in advance, you will need to continue the hearing and have the clerk order the interpreter.

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## Interpreters, continued

- Small claims parties used to have to bring their own interpreter.
- Effective 1/1/19, small claims parties are entitled to a certified court interpreter. SB1155 repealed CCP 116.550; GC 68560.5

Beware of:

- The interpreter not interpreting
- The interpreter saying one word for every 50 words a party says
- Whether the interpreter needs a break between cases (or in a really long case)
- A party trying to have a side conversation with the interpreter and/or interfering with the interpretation
- A party or you talking while the interpreter is still interpreting what was just said
- Speech speed – slow it down
- A party speaking partial English though requesting an interpreter: no half and half

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## Mediators

- You may have volunteer mediators from Project Sentinel on your calendar. If so, make sure you let the parties in contested cases know that you will send them out to the hallway to check in with a volunteer mediator to talk possible settlement. Mediations will take place in a room adjacent to your courtroom.
- My pitch: I don't expect you to settle, but if you do, that is fine too. You may find that talking with the other party with the mediator present helps you talk about your case and what evidence you have to support your position. It also gives you a preview of the other party's position and what evidence they have to support their position.

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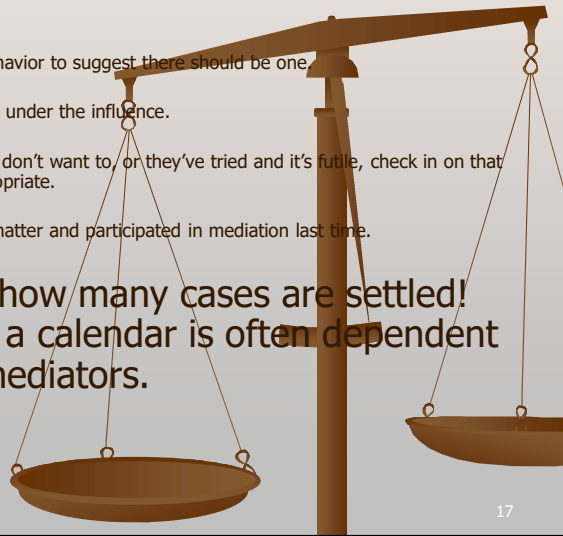


## Mediators, continued

### ■ Must all contested cases mediate? No

- If there is a restraining order, or behavior to suggest there should be one.
- If one or both parties appears to be under the influence.
- If one or both parties tells you they don't want to, or they've tried and it's futile, check in on that and excuse mediation if that's appropriate.
- If parties are back on a continued matter and participated in mediation last time.

You will not believe how many cases are settled!  
Your ability to finish a calendar is often dependent  
on the help of the mediators.

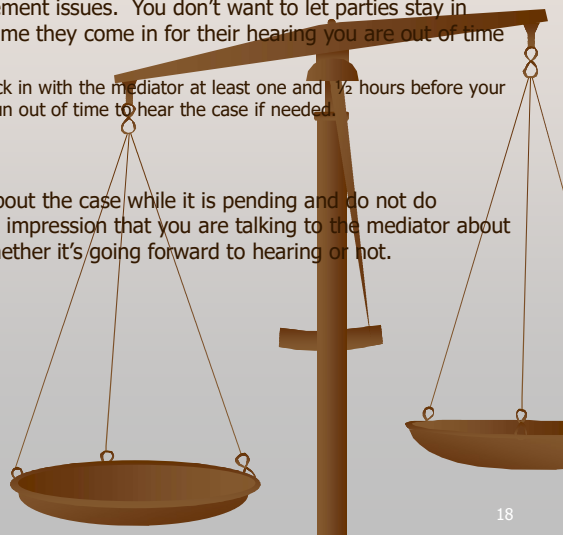


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## Mediators, continued

- Watch out for calendar management issues. You don't want to let parties stay in mediation so long that by the time they come in for their hearing you are out of time to hear the case.
  - Have your deputy or clerk check in with the mediator at least one and 1/2 hours before your calendar ends so you do not run out of time to hear the case if needed.
- Do not speak with mediators about the case while it is pending and do not do anything to give the parties the impression that you are talking to the mediator about their case other than asking whether it's going forward to hearing or not.



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## Possible Outcomes After Mediation

Unsuccessful and the case needs to be heard.

The case is dismissed **with** prejudice.

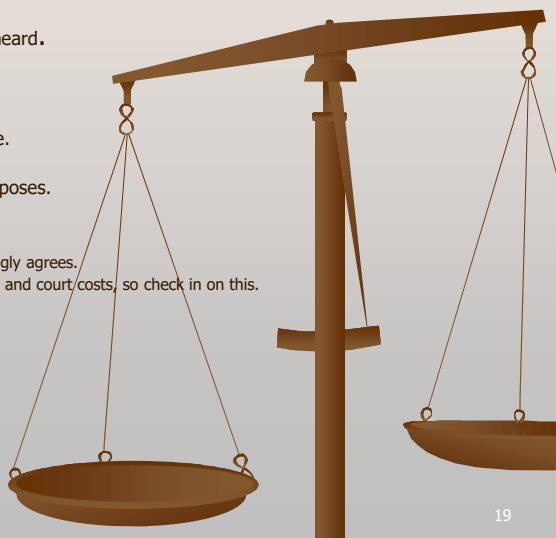
The case is dismissed **without** prejudice.

The case is continued for settlement purposes.

The parties stipulate to a Judgment.

Make sure Defendant knowingly and willingly agrees.

Parties often forget to deal with filing fees and court costs, so check in on this.



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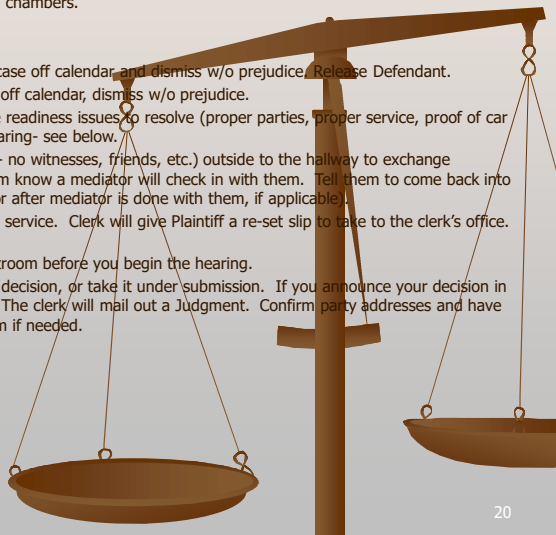
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## Managing the Calendar

Your clerk will take roll call and report to you in chambers.

Recommended calendar call:

- Defendant only cases: Call first, take the case off calendar and dismiss w/o prejudice. Release Defendant.
- Cases where no parties are present: Take off calendar, dismiss w/o prejudice.
- Contested cases: Call them up if there are readiness issues to resolve (proper parties, proper service, proof of car ownership, etc.). If they are ready for hearing- see below.
- Contested cases: Send them (parties only- no witnesses, friends, etc.) outside to the hallway to exchange evidence. If a mediator is present, let them know a mediator will check in with them. Tell them to come back into the courtroom after evidence exchange (or after mediator is done with them, if applicable).
- Plaintiff-only cases: Reset if no, or flawed, service. Clerk will give Plaintiff a re-set slip to take to the clerk's office. If the case is ready for hearing, hear it.
- Make sure witnesses are outside the courtroom before you begin the hearing.
- At the end of the hearing, announce your decision, or take it under submission. If you announce your decision in court, return the evidence to the parties. The clerk will mail out a Judgment. Confirm party addresses and have a party complete a change of address form if needed.



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## Venue

- General rule: where most convenient for Defendant, or where property is located, or where contract was made, or where accident occurred. See page three, item 5, of claim form (SC-100) for more information.
- Consumer contract clauses requiring Plaintiff to sue in another forum: Per CCP 116.225, an agreement entered into or renewed on or after 1/1/03 establishing a non-California forum when case is otherwise within small claims jurisdiction is contrary to public policy, void, and unenforceable.
  - Consumer contracts: offers or provision of goods, services, property or extensions of credit for personal/family/household/purposes.

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## Authorization to Appear

- Another person is appearing for a party (i.e. one tenant is appearing for herself and a co-tenant who is not at the hearing; a property manager is appearing for a landlord).
- A person is appearing for a corporation/LLC/government entity/trust or the like.
- Of note re: CCP 116.540:
  - (j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. [T]he declaration also shall state that the individual is not employed solely to represent the party in small claims court. [T]he declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.
  - (k) A spouse who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.
    - CCP 370: Just one spouse can be party for the community- so if only one is named, OK to proceed and there is no "missing party"
  - (l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

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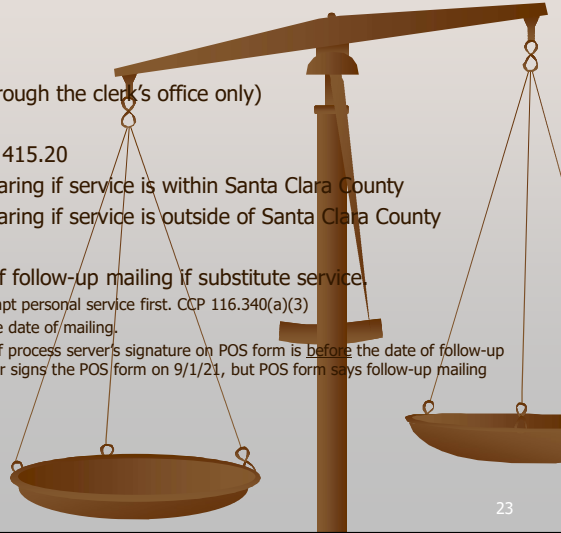
## Service requirements for Plaintiff's claim

### OPTIONS:

- (1) personal service;
- (2) substitute service; or
- (3) certified mail/return receipt (through the clerk's office only)

Personal service: CCP 116.430 and 415.20

- 15 calendar days before the hearing if service is within Santa Clara County
- 20 calendar days before the hearing if service is outside of Santa Clara County
- Add 10 calendar days to date of follow-up mailing if substitute service.
  - Remember, no prerequisite to attempt personal service first. CCP 116.340(a)(3)
  - Service is effective 10 days after the date of mailing.
  - Watch out for botched form: date of process server's signature on POS form is before the date of follow-up mailing. For example, process server signs the POS form on 9/1/21, but POS form says follow-up mailing occurred on 9/30/21.



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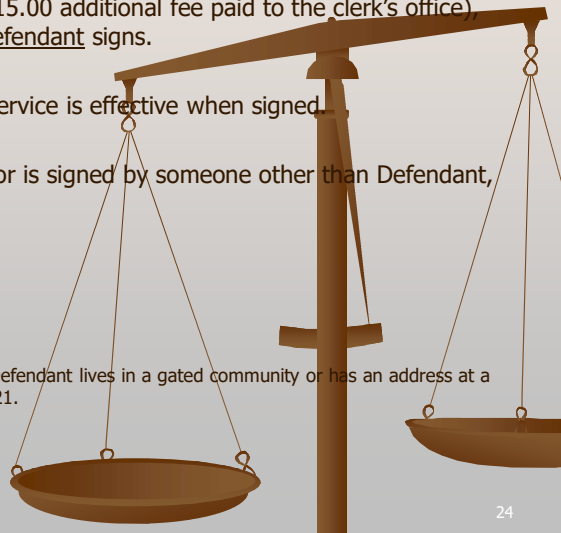
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## Service, continued

- For certified mail service (\$15.00 additional fee paid to the clerk's office), effective date is the date Defendant signs.
- CCP 1005 does not apply- service is effective when signed.
- If the signature is illegible, or is signed by someone other than Defendant, service is not valid.

CCP 116.140 and 116.340(d)

Special service rules apply when Defendant lives in a gated community or has an address at a UPS store, etc. CCP 415.20, 415.21.



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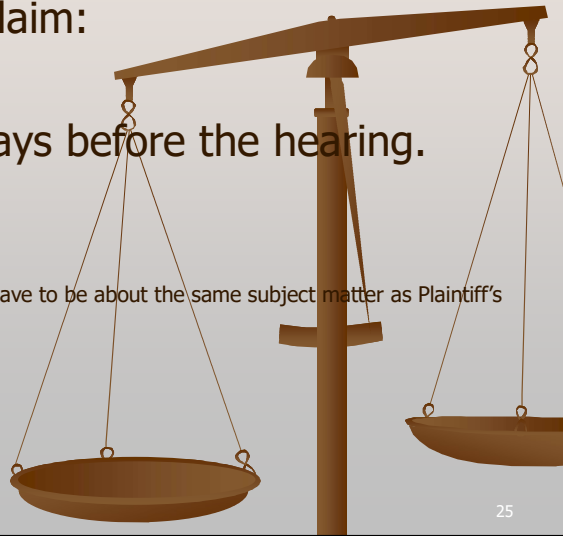
## Service, continued

For Defendant's claim:

- Five calendar days before the hearing.

CCP116.360

Note: Defendant's claim does not have to be about the same subject matter as Plaintiff's claim, but it cannot add a party.



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## Computing Deadlines for service or filing CCP 10, 12, CRC 1.10

10. Holidays within the meaning of this code are every Sunday and any other days that are specified or provided for as judicial holidays in Section 135.

12. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

12. (a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, "holiday" means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days that by terms of Section 12b are required to be considered as holidays.

(b) This section applies to Sections 659, 659a, and 921 [*calculating time for appeals*], and to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.

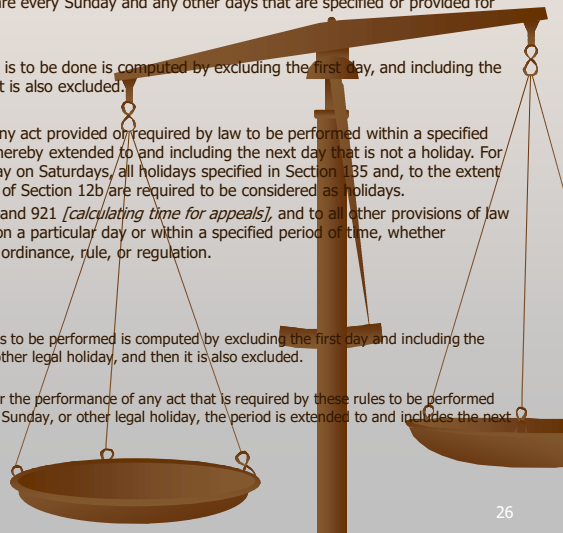
CRC Rule 1.10. Time for actions

**(a) Computation of time**

The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or other legal holiday, and then it is also excluded.

**(b) Holidays**

Unless otherwise provided by law, if the last day for the performance of any act that is required by these rules to be performed within a specific period of time falls on a Saturday, Sunday, or other legal holiday, the period is extended to and includes the next day that is not a holiday.



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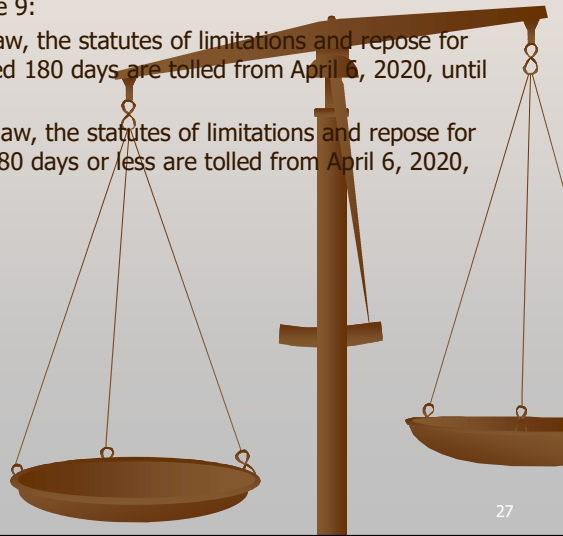
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## Covid-related tolling for filing of claim

Judicial Council Emergency Rule 9:

(a) Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.

(b) Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020.



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## Re-set or Continue? Depends on whether you have good service

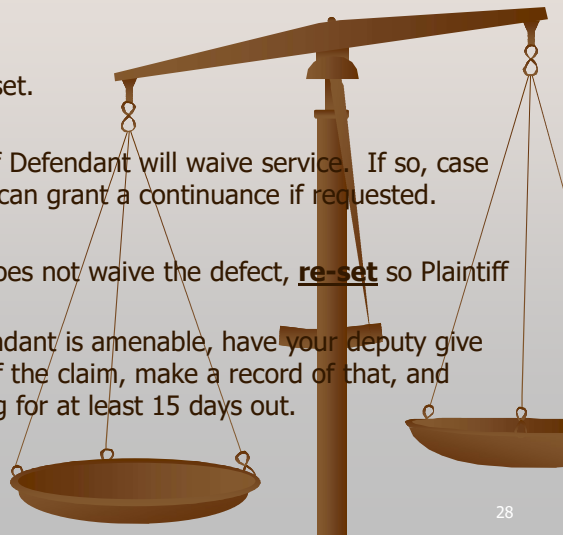
If no or bad service:

If Plaintiff only appears, re-set.

If both parties appear, see if Defendant will waive service. If so, case is ready for hearing, or you can grant a continuance if requested.

If Defendant appears and does not waive the defect, **re-set** so Plaintiff can serve Defendant.

Alternative: If Defendant is amenable, have your deputy give Defendant a copy of the claim, make a record of that, and continue the hearing for at least 15 days out.



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## Re-set or continue? continued

- Plaintiff only appears and asks for a six month continuance. Defendant does not appear. The hearing officer makes no finding as to service, does not even look to see if there is a Proof of Service form, and grants the continuance. Six months later, only Plaintiff appears and tells you that the matter did not settle and they are ready for you to hear the case. They have flown in from Florida, flew a witness in from Brazil, and have another witness who is 92 years old and needs to return home soon.

(1) You look at the file and see there is still no Proof of Service form filed. Can you proceed?

(2) You look at the file and see a Proof of Service form. You struggle to find a calendar from six months ago, which happens to be last calendar year. Once you find one, you count the days and see that Defendant was served only ten calendar days before the last hearing. Can you proceed?

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## Re-set or Continue, continued

**ALWAYS MAKE A FINDING RE: SERVICE WHETHER NO PARTIES ARE PRESENT, JUST ONE SIDE IS PRESENT, OR BOTH ARE PRESENT.**

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## Service on a Corporation or LLC

- Checking the Secretary of State's web site also helps determine if a corporation or LLC has been named properly. Also, if they are the Plaintiff, the web site allows you to determine if they have the required "ACTIVE" status to proceed with a claim.

\*Also, remember that there is a \$62500.00 recovery limit (effective 1/1/24) for corporate or LLC Plaintiffs (except if the claim is for Covid rent).

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## Service on a Corporation or LLC, continued

- To confirm proper service on a corporation, check the CA Secretary of State web site "business portal" to see who the registered agent for service is.
- Here is the link: <https://bizfileonline.sos.ca.gov/search/business>
- If the corporation is registered to do business in California, you will see this:

C2123127 REBELLO'S TOWING SERVICES, INC.  
**Registration Date:** 10/07/1998  
**Jurisdiction:** CALIFORNIA  
**Entity Type:** DOMESTIC STOCK  
**Status:** ACTIVE  
**Agent for Service of Process:**  
**BURT A DEAN**  
**Agent Address**696 KINGS ROW  
**Agent City, State, Zip**  
**SAN JOSE CA 95112**

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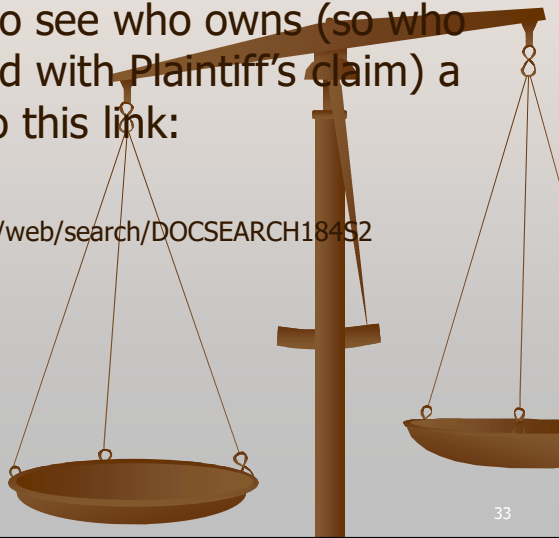
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## Service on a DBA

- You can check to see who owns (so who should be served with Plaintiff's claim) a DBA by going to this link:

<https://scccroselfservice.org/web/search/DOCSEARCH184S2>



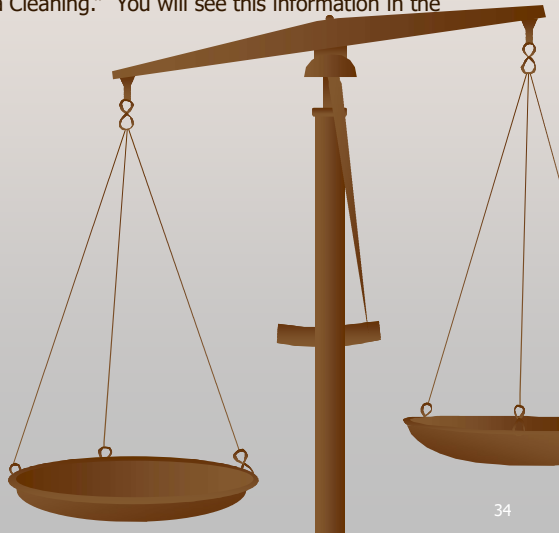
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## Serving a DBA, continued

Say that Defendant's DBA is "Garcia Cleaning." You will see this information in the clerk/recorder database:

**FBN STATEMENT • FBN614295**  
Filing Date **02/24/2016 12:00 AM**  
Business Name(s) **GARCIA CLEANING**  
Registrant(s) **GARCIA MICAELA**  
Expiration Date **02/24/2021**



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## Serving a DBA, continued

- Checking the DBA registry is also a helpful way to see if a Plaintiff needs to have a DBA (needs to have standing) to bring a claim and/or to see if they are a DBA (DBA is a person so \$12,500.00 is the recovery limit as of 1/1/24) or a corporation/LLC (\$6250.00 is the recovery limit as of 1/1/24 unless involves Covid rent, in which case there is no limit).

**Note: For a Plaintiff DBA, a current/active DBA license is NOT required if the Plaintiff's surname is in the business name.**

For example, Jessica Deen Consulting had a DBA, but it expired 1/25/18. When Jessica Deen is a Plaintiff, she can bring a claim despite expired DBA because the name "Deen" is in the business name.

B&P Code 17900(b)(1): fictitious business name means a name that does not include the surname of the individual.

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## Select Filing Deadlines CCP 307 et seq.

- Personal injury 2 years
- Property damage 3 years
- Breach of written contract 4 years
- Breach of verbal contract 2 years
- Breach of book account/ 4 years
- Balance due account/account stated 4 years
- Fraud 3 years
- Libel/slander 1 year
- Unpaid HOA dues 5 years
- Medical malpractice 3 years from injury or 1 year from discovery, whichever is first
- See slide 25 for Covid-related tolling of filing deadlines.

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### Application of deadline for filing a claim

The deadline for filing a personal injury claim is two years. Say that the date of the injury is 2/1/17. Does Plaintiff have to file the case by 1/31/19, or is the claim timely if filed on 2/1/19?

Per CCP 12 and *Wixted v. Fletcher* (1961) 192 Cal.App.2d 706, the last day to file the claim is 2/1/19 (unless that day is a weekend or holiday; and if so, deadline extends to next day that is not a weekend or holiday).

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## Deadline To File Against a Governmental Entity

- In general, Plaintiff must first make an administrative claim within six months of the injury.
  - ★ Or one year if the claim involves personal injury or breach of contract.
- If the claim is denied, then Plaintiff must file the court claim within six months of the denial.
  - ★ If the government fails to respond, Plaintiff must file within two years from the date of injury.

CCP 342, GC 911.2(a), 945.6(a)

See slide 25 for Covid-related tolling of filing deadlines.

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## ISSUES WITH BUSINESS ENTITIES

# SELECT STANDING ISSUES WHEN THE Plaintiff IS A CORPORATION, LLC OR DBA

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## Corporate, LLC or DBA as a Plaintiff

- Corporations or LLCs cannot bring a claim if they are doing business in CA but are not registered and do not have "active" status.  
CC 2100, 2203(c), 2105, 17708.07(a)
- A DBA cannot bring a claim if a DBA license is required but Plaintiff does not have one, or it is expired.
- Disposition: Claim **must** be dismissed without prejudice and Plaintiff can file a new case once status is obtained or updated.

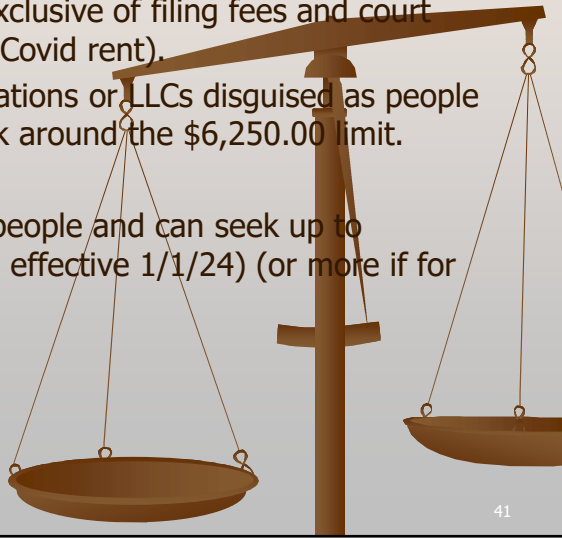
Corp. Code 2100, 2203(c), 2105, 17708(a), CCP 116.430(b)

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## Corporate or LLC Plaintiffs

- Limit is \$6,250.00 (exclusive of filing fees and court costs) (no limit if for Covid rent).
- Watch out for corporations or LLCs disguised as people in an attempt to work around the \$6,250.00 limit.
- Compare: DBAs are people and can seek up to \$12,500.00 (increase effective 1/1/24) (or more if for Covid rent).



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## CONTRACTORS

- **STANDING ISSUES WHEN THE PLAINTIFF IS A CONTRACTOR**



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## Contractors

- If a contractor's license is required for the job at issue, Plaintiff must have an active license. If a license is required and Plaintiff did not have one at the time the work was performed, Plaintiff contractor can only sue for \$500.00, *including* labor and materials, or for \$0.00 if they falsely advertised as a contractor.
- To check license requirements and status, check the CA State Licensing Board at <http://www.cslb.ca.gov/>
- Licensing classifications can be found at: [http://www.cslb.ca.gov/About\\_Us/Library/Licensing\\_Classifications/Default.aspx](http://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/Default.aspx)

For example, license classification **C-13 - Fencing Contractor**

### **California Code of Regulations Title 16, Division 8, Article 3.**

**Classifications** A fencing contractor constructs, erects, alters, or repairs all types of fences, corrals, runs, railings, cribs, game court enclosures, guard rails and barriers, playground game equipment, backstops, posts, flagpoles, and gates, excluding masonry walls.

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## Contractors, continued

Say that Plaintiff is a home contractor named Ada Wu. To look her up to see if her license is current, so to see if she can bring a claim, and how much she can ask for, you see this when you check here:

<http://www.cslb.ca.gov/OnlineServices/CheckLicense1/CheckLicense.aspx>

Personnel License List for WU, ADA	
License #	1003579 Licenses Currently Associated With
Business Name	TA TUNG CONSTRUCTION INC
City	SAN FRANCISCO
Association Date	05/13/2015
Status	EXPIRED

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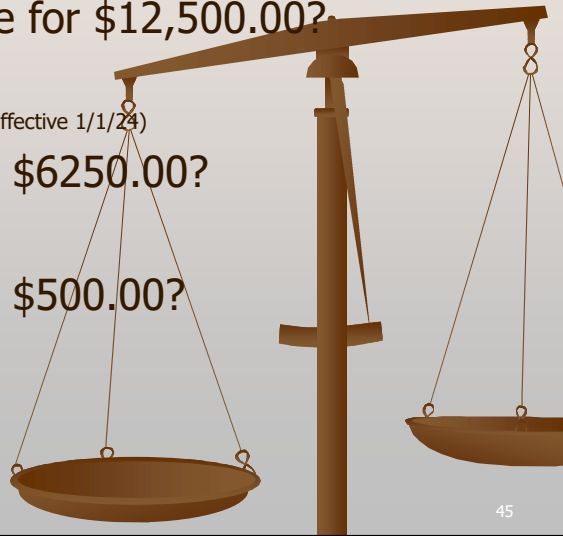
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## Contractors, continued

- Can Ada Wu sue for \$12,500.00?

(new jurisdictional limit effective 1/1/24)

- Can she sue for \$6250.00?
- Can she sue for \$500.00?



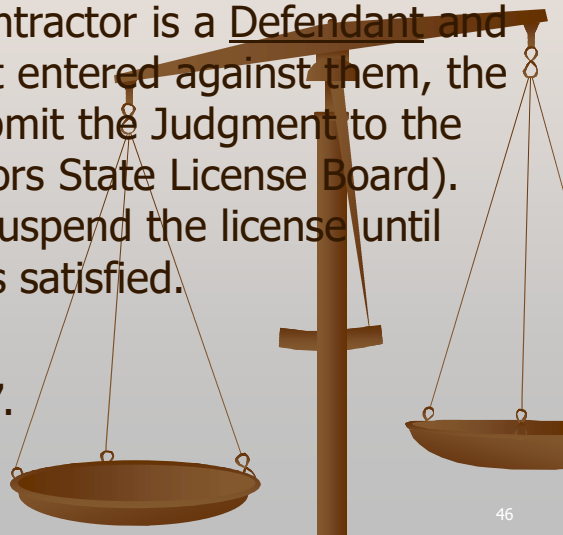
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## Contractors, continued

- If a licensed contractor is a Defendant and has a Judgment entered against them, the Plaintiff can submit the Judgment to the CSLB (Contractors State License Board). The CSLB can suspend the license until the Judgment is satisfied.

B&P 7017.17.



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## Automotive Repair Claims

Automotive Repair Act B&P 9880 et seq.

Exempts a gas station which does minor things like oil changes and tire repair.

Otherwise, a repair business **must** be registered with the Bureau of Automotive Repair (BAR). Check here: <https://bar.ca.gov/Consumer/>

If the business is not registered, and it is the Plaintiff, then it takes \$0.00 including labor and parts. If the business is not registered and is the Defendant, they should not have charged Plaintiff for repairs and costs.

A written estimate is required for labor and parts, and a customer must give verbal or written consent. If the work exceeds the estimate, the repair shop needs additional consent. An invoice is required for all work done, including parts. If parts are not new, the invoice must say so. The written estimate must include notice if the work will be subcontracted out, and if so, the customer must consent. If requested up front, the repair shop must return old parts to the customer.

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## Automotive Repair Claims, continued

- Often by the time of the court hearing, a Plaintiff/customer will have contacted the BAR (Bureau of Automotive Repair) and BAR will have done an investigation. If Plaintiff subpoenas those records, you will receive those in a sealed envelope. The clerk will give them to you before you start your calendar.
- Do not open the sealed envelope, as it is Plaintiff's evidence. Ask Plaintiff if they want the documents (they will say yes). If Plaintiff decides that they want you to have the BAR report as evidence, make sure Defendant (if present) has reviewed it during the document exchange process.
- The decision reached in the BAR report is not binding on you, of course, but it might be helpful.

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## Vehicle Accidents- Proper Party Issues

The proper Defendants are registered owner(s) and driver. VC 17150.

Exception: If the vehicle is owned by a rental company, or car is leased, no vicarious liability "Graves Amendment" 19 U.S.C.A. 30106

An insurance company is NOT a proper Defendant unless: (1) Plaintiff is suing her own insurance company for bad faith; or (2) an employee of Defendant insurance company was driving a vehicle owned by the insurance company at the time of the accident.

For similar reasons, an insurance agent is almost always not a proper witness. If insurance agents are present in court, be mindful that they do not belong out in the hallway for evidence exchange or mediation, and do not get to sit at counsel table.

If Plaintiff is asking for property damages, make sure Plaintiff has proof that she owns the vehicle.

\*About 50% of the cases fail because Plaintiff didn't bring proof of ownership, or does not own the vehicle. You may have to continue so Plaintiff can bring proof. Title or reg. that is "person a and person b" requires both owners to be Plaintiffs (unless they are married); title or reg. that is "person a or person b" means either owner acting alone can be a Plaintiff.

If Plaintiff has named just one Defendant, inquire into whether that is just the driver, or just the registered owner, or both. If a Defendant is missing, Plaintiff can proceed as is (but cannot later go against the other Defendant because that would be claim splitting), or can stop, amend the claim to name all Defendants, and then serve all parties with the amended claim.

Minor Plaintiffs: Make sure the minor is a named party, and make sure a parent has been appointed as a *guardian ad litem*.

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## Vehicle Accidents, other issues

- Ask Defendant at the beginning of their presentation if they admit liability. If so, you can then focus their presentation on disputing the damages request.
- You are not stuck finding either 0% or 100% liability. The evidence might indicate both parties are equally at fault, or some other such liability share.
- Whatever a party's insurance company decided is not binding on your decision.
- A police report re: an accident cannot be used as evidence VC 20013

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## Vehicle Accidents, other issues, continued

If Plaintiff has no vehicle insurance, they cannot ask for pain and suffering damages. CC 3333.4

Personal injury claims must be filed within two years; property damages must be filed within three years.

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## Vehicle Accidents, continued

- For property damage requests, be mindful of estimated repair costs exceeding the value of the vehicle. In such cases, the proper measure of damages is most likely the value of the vehicle as of the accident date.
- For property damage requests, you may get a claim where Defendant's insurance already paid Plaintiff for repairs, but Plaintiff wants "loss of value" or "stigma damages." These claims tend to occur with new cars and/or high priced vehicles.
  - New case: People v. Newsom (2022) 73 Cal.App.5th 749
    - A **criminal** restitution order can account for a Audi's loss of resale value based on theft history now on vehicle title and the loss is "objectively quantifiable" and an "actual economic loss" that repairs alone did not fully address.

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## Vehicle Accidents- Judgments

- If you rule in favor of Plaintiff, make sure to tell the clerk to check "box 10" of the Judgment form, which says: *"This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle."*

If the judgment remains unpaid, the judgment creditor may apply to have the judgment debtor's **license suspended** until the Judgment is paid.

- Effective if Judgment remains unpaid for 90+ days
- Applies to cases where property damages are at least \$750.00, or for any amount of PI damages
- "Highway" includes roads and streets; excludes parking lots and driveways.
- Process for license suspension: Clerk is notified by the Plaintiff, then the DMV is notified by the clerk.

VC 16251, CCP 116.880

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## Tow Truck Cases

- Vehicle Code 22650 et seq. sets out the many requirements for lawful tows, posting location for fees, storage of vehicles, etc.
- Screen for proper party status. Plaintiff may be suing the tow company and alleging an unlawful tow, but at times, it is the HOA or restaurant, for example, who called in the tow to enforce parking restrictions, etc.

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## Vehicle Sales

- Seller is responsible for ensuring a current (90 days) successful smog check for sale to be valid. VC 5751.5, VC 24007.8
  - \*Applies to dealer or private person.
- Purchase of a used vehicle priced at less than \$40,000.00 from a dealership- the buyer must accept or decline 48-hour "cooling off" insurance for the sale to be valid per VC 11713.21.

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## Vehicle Repossession Cases- missed car payments

- Lender will sue for "deficiency balance"- amount still due under the contract plus costs, minus what vehicle sold for at auction.

15 days advance notice of delinquency and intent to repossess  
Notice provides all conditions (including costs) to cure  
Borrower only liable if noticed of costs within 60 days after car repossessed

\*If there is a co-signer, nothing can be recovered against them unless they receive notice before repossession.

Caution: If there is more than one borrower but only one Defendant is named, make sure Plaintiff understands they cannot sue the other borrower separately (no claim splitting).

CC 2983.2 and .3

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## Dog Bite Cases Bite to Pet or Person

- Is Defendant the dog "owner?" If Plaintiff's pet was the victim, is Plaintiff the pet "owner?" Consider license or vaccination records, vet records, other such evidence to determine proper party status.
  - \*If Plaintiff's minor child was bitten, make sure the child is a Plaintiff and a parent has been appointed as *guardian ad litem*.
- Strict liability for the owner of the biting dog per CC 3342
  - Even if bite occurred on Defendant's property (unless Plaintiff trespassing)
  - Even if Defendant did not know that the dog was a biter (no prior propensity is required).

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## Neighbor Fence Disputes

There is a presumption of equal financial responsibility for reasonable costs to maintain, construct, repair or replace. The owner proposing repair must provide thirty days advance notice of the problem, estimated repair costs, and proposed completion time.

### Other owner can rebut:

- Financial burden outweighs benefit
- Cost would exceed improved property value
- Undue financial hardship
- Unreasonable construction (cosmetic, new fence is different and more expensive, etc.)

If burden is met, the court can order sharing other than 50-50, including no sharing at all.

CC 841

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## Bounced Checks

- Defendant is liable for the amount of the check and a service charge up to \$25.00 (or \$35.00 if more than one bounced check).
- Defendant is liable for triple damages, up to \$1,500.00, if amount remains unsatisfied for 31+ days after Plaintiff sends notice via certified mail.  
If treble damages are awarded, then Plaintiff cannot get service charges.

CC 1719

Increased damages for employee if employer bounces a wage check.  
Labor Code 203.1

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## Residential Landlord/Tenant

Look at the lease (if there is one) to determine proper party status.

- Are all tenants obligated to pay rent (who signed the lease?) named as parties? Is landlord properly named (person, trust, corporation, etc.)?
  - If a signatory is not a party, likely Plaintiff will need to amend the claim and then serve it. Otherwise, they can only recover their portion (i.e. if there are three tenants but only one tenant is the Plaintiff, Plaintiff can get up to 1/3 of the relief requested).
- Is the Defendant the actual owner/landlord, or did Plaintiff mistakenly name the property management company? In about 50% of the cases, tenants incorrectly name the property manager as Defendant. If this happens, Plaintiff must amend the claim and serve the proper Defendant.

Compare: a property manager may be a witness, and may properly authorize themselves to appear for landlord.

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## Residential Landlord/Tenant, continued

- CC 1962 and 1962.7: A landlord must provide to tenant: name, phone number, and usual street address at which personal service may be effected (authorized manager and landlord) for all notices and claims. If the lease is verbal, this information must still be provided. Landlords must also provide tenants with a copy of the lease (if the lease is in writing).

If landlord fails to comply, then a Plaintiff/tenant can serve a claim at an address where rent is paid.

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## Residential Landlord/Tenant, continued

For security deposit issues for a residential property, you must know CC 1950.5. Read it, and read it often.

- \* Deposit can be retained for unpaid rent and damages beyond normal wear and tear.
- \* Pre-move out inspection must be offered.
- \* Security deposit retention reasons must be sent no more than 21 days after move out (if lease has not yet expired, then tolled)
- \* Retention notice must include invoices or estimates.  
Exception: if retention is for repair or cleaning less than \$125.00.

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## Residential Landlord/Tenant, continued

- If landlord/Defendant fails to comply with CC 1950.5, the tenant/Plaintiff is entitled\* to reimbursement of the wrongfully withheld portion of the deposit. You have the discretion to double that up to the jurisdictional amount of \$12,500.00 (new limit as of 1/1/24). The doubling penalty is discretionary, not mandatory.

\*Many tenants believe that the failure to send the security deposit accounting in a timely manner means they AUTOMATICALLY get the entire deposit back. However, the landlord has just the summary right to deduct but may still prove reasonable damages by a preponderance of the evidence. For more information, see CA Judges Benchbook- Small Claims Court and Consumer Law (2022 edition) 7.31

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## SECURITY DEPOSIT

- Landlords who fail to comply with CC 1950.5 are NOT precluded from recovering unpaid rent, repairs and cleaning in their own action, or as an offset in tenant's action if the landlord can prove the deductions/offsets are reasonable.

*Granberry v. Islay Invs.* (1995) 9 C4th 738

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## COVID-19 RENT

- AB 832 (CCP sections 1179.08 et seq.)
  - The Tenant Relief Act
  - Expanded the State-implemented rental relief and assistance program to help tenants with qualifying incomes apply and obtain rent relief
- What rent qualifies:
  - Rental obligations as defined in CCP section 1179.02.
    - Covid-19 hardship
    - Loss of income or out of pocket medical expenses/ child care.
- Time
  - Period of time between March 1, 2020 and September 30, 2021
  - Protected and transitional time periods
- No jurisdictional limits; **repealed as of 10/1/25** (CCP 1179.01)
- No ban on number of claims (CCP section 116.231); **repealed as of 10/1/25** (CCP 1179.01)

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## Covid rent, continued

- Covid rent applies to residential leases only. No rent relief is available for commercial tenants. Commercial landlords are still subject to traditional small claims jurisdictional limits (\$12,500.00, or \$6250.00 if landlord is a corp./LLC).
- Applications for rent relief can be made until 3/31/22 (check [housing.ca.gov](https://housing.ca.gov) for updates).
- No late fees can be charged for Covid rent if tenant gave landlord the declaration described in Civil Code section 1942.9.
- Tenant payments (25% or more) shall be credited to current month, not the first month that rent became past-due.

CC 1942.9

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## Covid rent, continued

- Residential landlords suing for unpaid Covid rent MUST use new form SG-500 and CANNOT bring the claim on SC-100.

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## Covid rent, continued

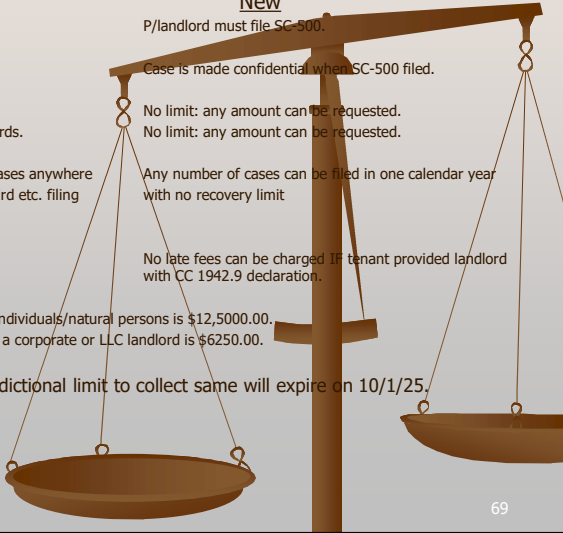
- Covid related legislation:  
AB3088 (enacted 8/31/20)  
SB91 (enacted 8/1/21)  
AB832 (enacted 6/28/21) (slides 64-68)

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Pre-Covid v. Post-Covid rent cases:  
Covid rent is that due from 3/1/20 through 9/30/21

- | <u>Old</u>  | <u>New</u>  |
|---|---|
| <ul style="list-style-type: none"> <li>• P/landlord filed SC-100.</li> <li>• No filing was automatically confidential.</li> <li>• \$10,000.00* limit for individual landlords and \$5000.00** limit for corporate/LLC landlords.</li> <li>• If a P/landlord has filed over 2 small claims cases anywhere in CA in a calendar year for over \$2500.00, third etc. filing can result in a \$2500.00 max. judgment only.</li> <li>• Landlord can collect late fees.</li> <li>• *As of 1/1/24, the new jurisdictional limit for individuals/natural persons is \$12,5000.00.</li> <li>• **As of 1/1/24, the new jurisdictional limit for a corporate or LLC landlord is \$6250.00.</li> <li>• Covid rent and the lifting of the jurisdictional limit to collect same will expire on 10/1/25.</li> </ul> | <ul style="list-style-type: none"> <li>• P/landlord must file SC-500.</li> <li>• Case is made confidential when SC-500 filed.</li> <li>• No limit: any amount can be requested.</li> <li>• No limit: any amount can be requested.</li> <li>• Any number of cases can be filed in one calendar year with no recovery limit</li> <li>• No late fees can be charged IF tenant provided landlord with CC 1942.9 declaration.</li> </ul> |

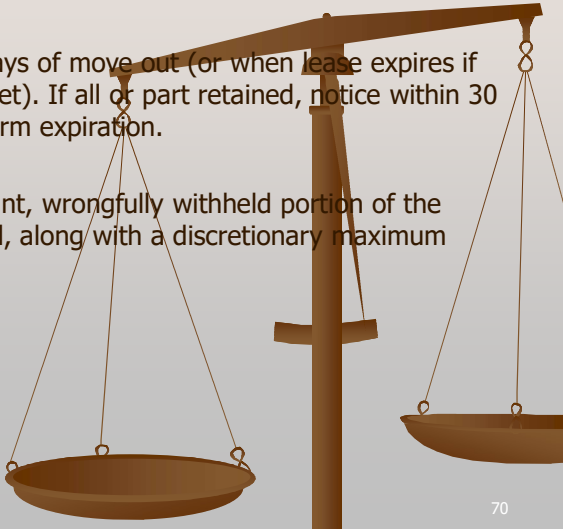


## Commercial Leases

Security deposit within 30 days of move out (or when lease expires if lease term has not expired yet). If all or part retained, notice within 30 days of move out or lease term expiration.

If landlord is noncompliant, wrongfully withheld portion of the deposit shall be returned, along with a discretionary maximum penalty of \$200.00.

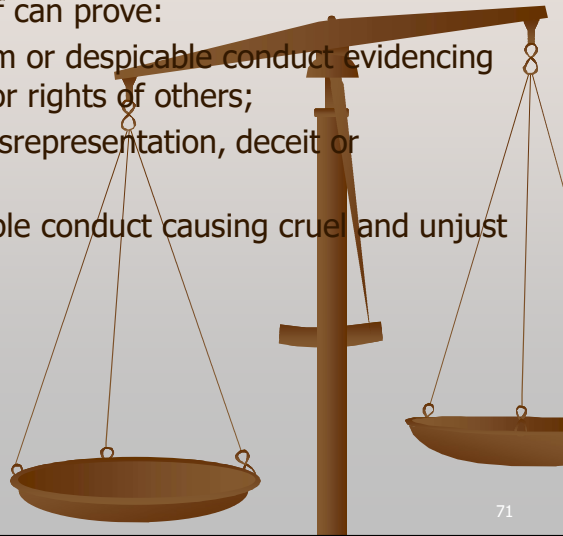
CC 1950.7



# Punitive Damages CC 3294

Available only if Plaintiff can prove:

- Malice- intent to harm or despicable conduct evidencing disregard for safety or rights of others;
- Fraud- intentional misrepresentation, deceit or concealment
- Oppression- despicable conduct causing cruel and unjust hardship

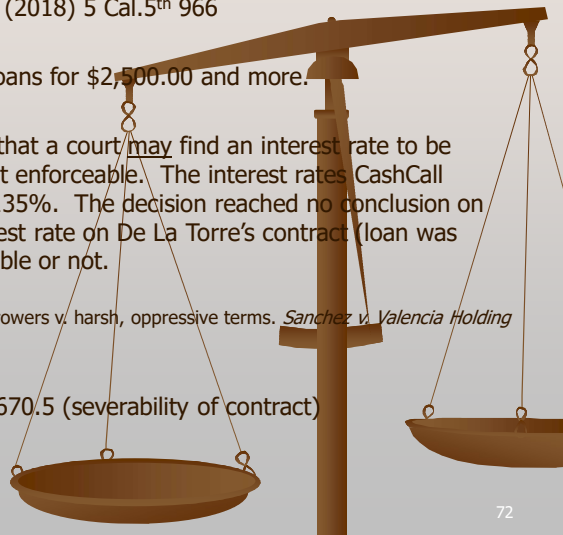


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## Excessive Interest Rates in a Consumer Loan Contract (i.e. Pay Day Loans)

- *De La Torre v. CashCall Inc.* (2018) 5 Cal.5th 966
- Case deals with consumer loans for \$2,500.00 and more.
- CA Supreme Court decided that a court may find an interest rate to be unconscionable and thus not enforceable. The interest rates CashCall charged were between 96-135%. The decision reached no conclusion on whether the particular interest rate on De La Torre's contract (loan was \$2600.00) was unconscionable or not.
  - Tension between high risk borrowers v. harsh, oppressive terms. *Sanchez v. Valencia Holding Co. LLC* (2015) 61 Cal.4th 899
- Financial Code 22302, CC 1670.5 (severability of contract)



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# Pre-Judgment Interest

Tip: It's not your responsibility to calculate.

CC 3287:

(a) A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

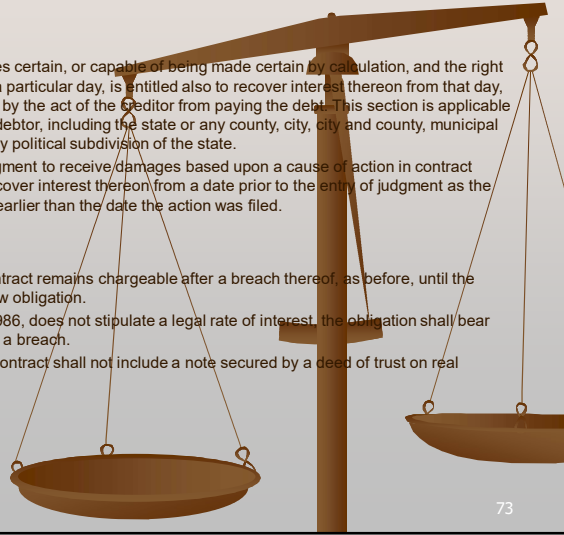
(b) Every person who is entitled under any judgment to receive damages based upon a cause of action in contract where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed.

CC 3289.

(a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

(b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach.

For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.



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# Post Judgment Interest

- Ten percent per year. CCP 685.010(a)



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## Small Claims Judgment Form SC-130

- No enforcement until 30+ days after Judgment made

Measured from time parties handed Judgment in court or from date Judgment mailed to parties.

There is a 30 day grace period so Defendant can file an appeal. Only a Defendant who appeared at the trial can appeal.



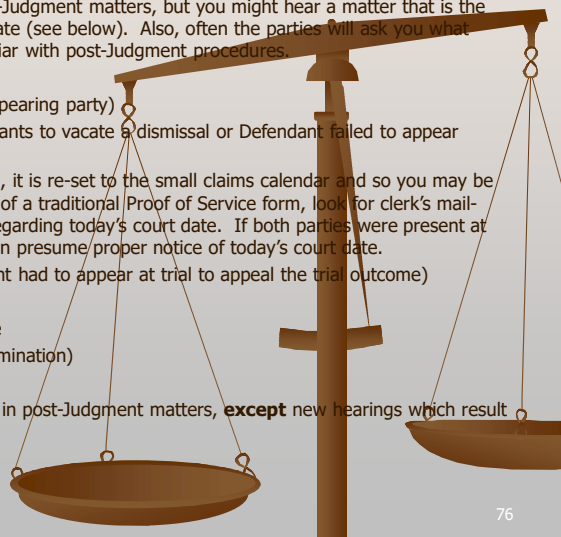
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## Post Judgment Concerns

- Temporary Judges do not hear post-Judgment matters, but you might hear a matter that is the result of a successful motion to vacate (see below). Also, often the parties will ask you what comes next so it is good to be familiar with post-Judgment procedures.
- Motion to vacate Judgment (non-appearing party)
  - Plaintiff failed to appear and wants to vacate or dismissal or Defendant failed to appear (usually alleging non-service)
    - \*If the Judgment is vacated, it is re-set to the small claims calendar and so you may be hearing the matter. Instead of a traditional Proof of Service form, look for clerk's mail-serve notice to the parties regarding today's court date. If both parties were present at the motion to vacate, you can presume proper notice of today's court date.
- Appeal (Defendants only) (Defendant had to appear at trial to appeal the trial outcome)
- Motion to Pay in Installments
- Motion to Correct Defendant's name
- Debtor's Examination (Order of Examination)

Parties can be represented by attorneys in post-Judgment matters, **except** new hearings which result from a successful motion to vacate.



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## Helpful Resources

- [www.scscourt.org/self\\_help/small\\_claims/small\\_claims\\_help.shtml](http://www.scscourt.org/self_help/small_claims/small_claims_help.shtml)
- [www.courts.ca.gov/selfhelp-smallclaims.htm](http://www.courts.ca.gov/selfhelp-smallclaims.htm)
- CA Judges Benchbook: Small Claims Court and Consumer Law (newest edition is from 2022)
- <https://www.dca.gov>
- Short, easy video to navigate Odyssey (electronic database for court files)  
<https://www.youtube.com/watch?v=qoe-bNntEqM/qoe-bNntEqM>
- Review calendars/cases off site: [youtube.com/watch?v=xkbAUpxQ4W4](https://www.youtube.com/watch?v=xkbAUpxQ4W4)

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## Ways to Review Cases in Advance

- Law library on 5<sup>th</sup> floor of DTS next to Dept. 14 (look for sign and key code entry box). Key code- contact [bhuelbig@scscourt.org](mailto:bhuelbig@scscourt.org)  
Open from 8:00 AM to 4:45 PM. Leave before the building closes or you will set off many alarms if you leave once the courthouse is locked up for the day.
- You can pull up case calendars, and then see documents filed in each particular case, on the Court's website at [scscourt.org](http://scscourt.org) For a video on how to do this, see <https://youtu.be/xkbAUpxQ4W4>
- Make advance arrangements with Comm. Copeland to arrive in chambers early the day of your calendar so you can review.  
[ccopeland@scscourt.org](mailto:ccopeland@scscourt.org)

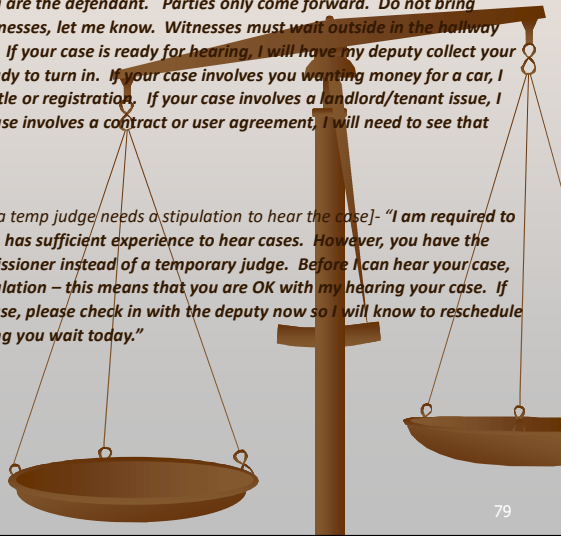
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### SAMPLE SCRIPT WHEN YOU TAKE THE BENCH

*"If you are a plaintiff or a defendant, remain standing for a moment so we can swear you in. If you are not a plaintiff or defendant, you can be seated."* [clerk does group swear in]. *"Please be seated. And now a few announcements before we get started. When I call your case, come forward to this table [1 point] if you are the plaintiff, and this table [1 point] if you are the defendant. Parties only come forward. Do not bring anyone else up with you. If you have witnesses, let me know. Witnesses must wait outside in the hallway until it's their turn to come in and testify. If your case is ready for hearing, I will have my deputy collect your exhibits, so make sure you have them ready to turn in. If your case involves you wanting money for a car, I will need to see proof you own the car- title or registration. If your case involves a landlord/tenant issue, I will need to see your lease. And if your case involves a contract or user agreement, I will need to see that document."*

• *[Suggested language to explain that a temp judge needs a stipulation to hear the case]- "I am required to tell you that I am a temporary judge who has sufficient experience to hear cases. However, you have the right to have your case heard by a commissioner instead of a temporary judge. Before I can hear your case, you will have to sign a form called a stipulation – this means that you are OK with my hearing your case. If you want a commissioner to hear your case, please check in with the deputy now so I will know to reschedule your case to another day instead of having you wait today."*

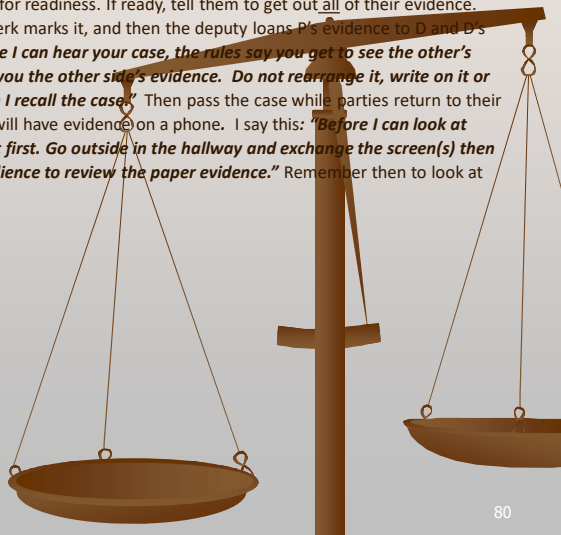


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### Suggested order in which to call the calendar

- (1) D only shows up dismiss case and let D go
- (2) Contested cases Initial call to check for readiness. If ready, tell them to get out all of their evidence. The deputy collects the evidence, the clerk marks it, and then the deputy loans P's evidence to D and D's evidence to P. Here is what I say: *"Before I can hear your case, the rules say you get to see the other's side evidence. The deputy has handed you the other side's evidence. Do not rearrange it, write on it or throw it out. I will be collecting it when I recall the case."* Then pass the case while parties return to their seat to review evidence. Often, a party will have evidence on a phone. I say this: *"Before I can look at your screen, the other side gets to see it first. Go outside in the hallway and exchange the screen(s) then come back in and take a seat in the audience to review the paper evidence."* Remember then to look at the screen when you hear the case.
- (3) P only cases
- (4) Contested cases
- (5) No show cases dismiss case



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## Courtroom Clerks' Top Ten List

1. Address service before starting the hearing.
2. Address venue before starting the hearing.
3. Ask for lease, contract, car registration, or whatever preliminary document you need given the case type to establish proper parties. Do this **before** you start hearing the case.
4. Just because you feel bad for people, doesn't mean you should rule in their favor; **Plaintiffs have to prove their case**. Be especially careful in default cases. Plaintiff still has to prove the case, including the amount of damages claimed, even if Defendant fails to appear.
5. Don't confuse **insurance agents** for parties or for witnesses in car accident cases. The insurance company may end up paying the judgment you make, but it is NOT a party or a witness. The agent can sit in the audience, but they don't get a spot at the table.
6. **Don't argue the case** for one or both sides; you have to let them present their case.
7. Do not take **cameras or phones** as exhibits under submission.
8. Be careful not to mix up Plaintiff's and Defendant's exhibits when taking a case under submission. These need to be returned to the clerk with your decision.
9. Please do not send cases to mediation mid-trial, after taking evidence, or at the end of trial. **Mediation should be completed before the trial begins.**
10. Don't let the parties **argue** with each other in court, or **interrupt** you or each other. Have them address their comments to the bench.

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## Selected Forms

- Plaintiff's Claim SC-100
- Landlord/Plaintiff's claim for Covid rent SC-500
- Defendant's Claim SC-120
- Proof of Service SC-104
- Authorization to Appear SC-109
- Judgment SC-130

Forms can be found at  
[www.courts.ca.gov/forms.htm?filter=SC](http://www.courts.ca.gov/forms.htm?filter=SC)

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