INSTRUCTIONS FOR RESPONDING TO A SMALL CLAIM

Mark your choice and return the *Defendant's Response* form (with the required fees) to the court where the Plaintiff filed the claim. Go to *www.courts.oregon.gov* for fee information. You can mark both "Denial of Claim" and "Counterclaim," but if you pay the claim, do not mark any other choice. PRINT CLEARLY! Write all names *first, middle, last*.

EACH defendant must file a separate response (except husband-wife or registered domestic partners, who may file a joint response). Write in the Case Number at the bottom of each page. If you have questions about procedures, contact the court clerk. The clerk **cannot** give you legal advice. Courts accept credit and debit cards, cash, and check or money order made payable to the State of Oregon.

READ THE FOLLOWING CAREFULLY

Unless you complete and sign this form and file it with the clerk within **14 calendar days** after you received service, the plaintiff may request a default judgment against you for the amount claimed plus filing fees, service costs, and a prevailing party fee.

If you do not send the proper fee payment, your response may be rejected and a default judgment entered against you. A default judgment may allow the plaintiff to seize and sell your property, garnish your wages, or seize funds from your bank account to satisfy the judgment. If you are not able to pay the fees, you may file a Request for Fee Deferral or Waiver.

- **If you are in the military** – you *may* be protected from default judgments by the Servicemembers Civil Relief Act (50 U.S.C. App. § 501) *if* you are unable to respond in time because you are in active military service. The plaintiff may not get a default judgment against you unless you waive your rights under this Act, leave the military, or the judge holds a special hearing in your case. Speak to a legal advisor if you have concerns or questions, or if you believe a default judgment has been entered against you.
    - If you choose to waive your rights so that the plaintiff can get a default judgment, fill out the ***Waiver of Right to Stay of Proceedings.***
- Talk to a legal advisor or call the state bar association (page 1). The rules about whether you are covered by this law are very technical and complex. **DO NOT** rely on your enlistment status to protect you.

1. PAYMENT OF CLAIM

Send payment *directly to the plaintiff*. **You must pay within 14 days from the day you receive the claim.** Your payment must include filing fees and service fees that the plaintiff has paid. Fill out the ***Response*** and attach proof of your payment or return of property. There is no additional filing fee for this.

2. DEMAND A HEARING

To demand a hearing you must enclose the "defendant's first appearance" fee. Small claims hearings are informal. Both plaintiff and defendant may offer testimony and bring witnesses and other evidence at the trial. No lawyers may participate in the hearing without the judge's permission. You cannot appeal a decision from small claims court.

Come prepared with *factual* evidence if you have any, including contracts, receipts, photos, or other evidence to dispute the plaintiff's claim.

3. DEMAND A JURY TRIAL

If the plaintiff's claim is more than $750, you can demand a jury trial and pay the jury trial fees. If you demand a jury trial, the plaintiff will have to file a formal complaint within 20 days. If the

plaintiff does not file the complaint, the case will be dismissed and you may ask the court to refund the jury trial fee.

If the plaintiff files a formal complaint, a copy of the complaint and a summons will be mailed to you. You must respond within **10 days** of receipt. If you do not respond, the plaintiff may get a default judgment against you. If you lose at trial, you may have to pay the plaintiff's lawyer fees.

When the court receives your response to the formal complaint, the case may go to mandatory arbitration. This is an informal hearing with an arbitrator (not a judge) who will make a decision. If either you or the plaintiff do not agree with the arbitrator's decision, you may file an appeal and go to trial. However, if you do not do better with the judge, you will have to pay the trial fees for the other side. Additional fees are required for arbitration.

4. FILING COUNTERCLAIMS: If you believe that the plaintiff owes you money or property as part of the same transaction or event, you may file a counterclaim against the plaintiff. Talk to a lawyer if you are not sure whether your counterclaim is part of the same transaction or event.

If your counterclaim is for $10,000 or less, it will be decided at the same hearing as the plaintiff's claim. If your counterclaim is over $10,000, you must file a motion to transfer your case to the civil department. If you do not file this motion, your counterclaim may be dropped, and will not be heard.

- If your counterclaim requires a transfer to the civil department, the plaintiff will not be limited to the original amount of the claim. New amounts may be added if they relate to the same transaction or event. If you file a counterclaim that requires transfer to the civil department and you lose the counterclaim, you will have to pay the plaintiff's lawyer fees. Your claim may be referred for mandatory arbitration, which requires payment of additional fees.

- Describe *briefly* why the Plaintiff owes you the amount or property you have claimed
  - If you are requesting property, describe the property *specifically*, including its value and the source of the value (Blue Book, contract, purchase receipt, professional estimate).

- NOTE: YOU have to prove your counter-claims. Be prepared with *factual* evidence to support your claims. This means things like receipts, contracts, photographs, etc.

MEDIATION

Many courts have mediation programs for small claims, which may be required before a judge will hear your case. If you file a response denying the claim or making a counterclaim, the court will schedule mediation for *both* parties. Mediation is confidential. If you do not want to try mediation or cannot resolve the dispute through mediation, a trial will be set at a later date.

Mediation has many benefits for the parties:

* Mediation brings all of the parties together to discuss the dispute with a trained, neutral mediator.

*Mediation offers a final opportunity to control the outcome of the dispute before turning it over to a judge. Remember, no matter how right you think you are, you may not win the case.

*A mediated agreement is enforceable, but will not appear on a credit report unless the agreement is not followed and a judgment is entered later.

The court may be a secure building. Allow enough time to get through security. Dress appropriately.