SMALL CLAIMS INSTRUCTIONS FOR PLAINTIFFS

If these instructions do not answer your questions, you can call the Oregon State Bar 503.684.3763, or go to *www.oregonstatebar.org*. The website *www.courts.oregon.gov* has several useful resources including links to the Oregon Revised Statutes and Oregon Administrative Rules. The court clerk may answer questions about filing procedures, but cannot give legal advice.

Small claims are filed to resolve disputes without a lawyer. Court staff **cannot** give legal advice. You may talk to a lawyer at any time for help with your claim, but lawyers are not allowed to participate in small claims hearings without the judge's permission.

- The amount claimed (including the value of property) must be $10,000 or less.
  - If you are claiming money and property worth *more* than $10,000, you cannot file a Small Claim. Go to *www.courts.oregon.gov*, or see a lawyer for advice.
  - Claims for *more* than $750 and up to $10,000 can be filed in *either* Small Claims or general civil court. Lawyers can represent you in general civil court.
  - Claims for $750 or less *must* be filed in Small Claims court. An exception allows these claims to be filed in general civil court *if* the law you are suing under specifically allows lawyer fees to be awarded. Talk to a lawyer for more information if you think you are entitled to recover lawyer's fees and want to file a claim for $750 or less in general civil court.
- If you are filing the claim, you are the **plaintiff**; the party you are suing is the **defendant**. This does *not* change throughout the case. Ignore the (Inmate SID #).
- You **must** make a good faith effort to collect your claim from the defendant before you file. Your claim form must include a statement under oath that you tried to resolve the issue before you filed a claim.
- To start a case, fill out the ***Small Claim and Notice of Small Claim*** form.
  - If the defendant is in prison, include the defendant's SID (inmate ID) number like this: *(John Smith, SID# 12345)* so the papers can be properly directed.
  - If you are asking for money damages, you must itemize and prove your actual loss. Guesses or rough estimates are not good enough. Written professional estimates may sometimes be appropriate, such as claims for repair costs to a home or vehicle.
    - Do not request a lump sum where itemized costs are involved. For example, do not claim "damage to my house: $4,000." Instead, list the individual costs –"Drywall repair $800; Plumbing replacement $1,000; Roof repair $2,000; Repainting $200."
  - Fill in the party names on the ***Defendant's Response*** form. Fill in the Plaintiff and Defendant information on the top of page 1.
  - You **must** fill in the amount of the defendant's filing fees on the ***Notice*** page. Go to *www.courts.oregon.gov* to get the current defendant's filing fees.
  - Your claim must include **your** filing fee. Go to *www.courts.oregon.gov* to get the current plaintiff's filing fee. *(See below for information about having your fees deferred or waived)*.
  - Bring the *Claim and Notice* and *Response* forms to the court with your filing fee.

- The clerk may give you papers (including an *Answer* form) to include with the *Claim and Notice* when you serve the defendant (*see below for information about serving the defendant*)

- **PRINT CLEARLY! Write all names *first, middle, last*.**

- ALWAYS provide written updates to the court if your phone number or address changes.

WHERE DO YOU FILE?

You must file your claim in the court for the **county** where either:

- At least one defendant lives or can be found at the time you file this claim **OR**

- The damage, claim, or injury occurred **OR**

- The defendant was supposed to perform an act under the contract (if your claim is based on a contract).

When you file, the clerk will give you a case number. Put this number at the top of page 1 of each document (where the form says "Case Number"), AND at the bottom of each *page* of the document and all attachments.

WHO SHOULD YOU NAME AS A DEFENDANT?

When you file a claim, the names of all defendants ***must*** be complete and correct. Use the name the defendant used at the time your claim first arose. For example, if your contract is with "Easy Pay Way" but it is now out of business and you are suing the owners, name BOTH Easy Pay Way *and* the owners John Smith and Angela Smith.
You may name as a defendant:

- An individual person (be sure the spelling is correct and use full, formal names – use "John Smith and Angela Smith" instead of "Mr. & Mrs. Smith")

- An individual "Doing Business As" a different name (you must use both the individual's name **and** write "dba [the other name]," *see next section*)

- A corporation (you must also have the name of the Registered Agent, *see next section*). Call the Oregon Corporation Division at 503.986.2200 or go to *www.filinginoregon.com* to get this information. Be sure you have the full, proper name and any initials of the corporation (like "Inc." or "LLC")

It is up to you to get this information. The court cannot do it for you.

Filing a Small Claim FOR a Business or AGAINST a Business

If you are filing a claim against a business, check with the Oregon Corporation Division at 503.986.2200 or *www.filinginoregon.com* for both corporation and Assumed Business Name records.

- **IF THE DEFENDANT IS A COMPANY** (Inc., LLC, PC, etc.)

Use the full company name and address, and include the name and address of the Registered Agent for the company. The Registered Agent is the person who will actually be served with the copy of your claim. All companies must have a registered agent for this purpose. You must serve the proper Registered Agent or your service will not be complete.

EASY PAY WAY, INC. Serve Registered Agent: John Brown

654 6th Ave
Hillsboro, OR 97123

711 Bank Building
Portland, OR 97225

- **IF THE DEFENDANT USES AN ASSUMED BUSINESS NAME (dba) - LIKE A PARTNERSHIP**

Name all the partners that you know of "dba (doing business as) [the business name]" as defendants. You must serve each partner (also called a "party of interest" or "owner") with a copy of the claim and a ***Response*** form.

John Way & Carol Smith
dba WAY'S EASY PAY
654 6th Ave
Hillsboro, OR 97123

Be sure you clearly show where each partner is to be served

- **IF THE DEFENDANT IS A COMPANY WITH AN ASSUMED BUSINESS NAME**

The company name becomes the owner or party of interest, and you must serve the claim on the Registered Agent of the company.

EASY PAY WAY, INC
dba Way's Easy Pay
654 6th Ave
Hillsboro, OR 97123

Serve Registered Agent: John Brown
711 Bank Building
Portland, OR 97225

- **IF THE DEFENDANT IS A PUBLIC BODY**

"Public Body" is defined at Oregon Revised Statute 30.260 and means more than just government agencies. Use the defendant's full name. Do NOT use acronyms like "DOC" – spell out "Oregon Department of Corrections." Make sure you use the *current* name of the defendant. If the defendant used a different name at the time of the event that you are suing about, then include a note with the former name: "Current Agency Name (*formerly* Prior Agency Name)."

- **IF THE PLAINTIFF IS A COMPANY**

Follow the same rules about names if you are filing a claim *for* a business. If you are a company, show your full corporation name as the plaintiff. If you are a partnership or a sole proprietorship, name the owner or owners "dba [your assumed business name]."

FEES

The **filing fee** may be paid by cash, credit or debit card, or by check or money order made payable to the State of Oregon. Go to *www.courts.oregon.gov* for filing fee information.

You must pay the **service fee** separately to your process server or servers (*see below*). If you use a sheriff to serve defendants in different counties, write a separate check to the sheriff of each county where a defendant will be served.

If you cannot pay the filing fee, you can fill out a *Fee Deferral or Waiver Application and Declaration*. If your fees are waived you do not have to pay. If your fees are deferred you will have to pay according to the court's instructions.

HOW DO YOU "SERVE" THE OTHER PARTY?

The plaintiff must officially notify all defendants that a case has been filed. This is known as service. **Important Note:** If you are suing the Department of Corrections or any other state agency, you MUST serve BOTH the agency *and* the Attorney General. You must also send copies of anything you file to the Attorney General *(see below for information about service)*.

Acceptance of Service – You can ask the defendant to sign an ***Acceptance of Service*** form as an alternative to formal service. The defendant can accept the claim and other papers from you and sign the form to prevent having a sheriff or process server perform service. Signing the ***Acceptance of Service*** does *not* mean the defendant agrees with anything in your claim, only that he or she received the papers. NOTE: this is NOT required.

If the defendant does not want to sign the ***Acceptance of Service***, you must use another method. There are four ways you can serve a defendant *after* you file your claim:

NOTE: **Serving Public Bodies** – If you are suing the state, use personal service to serve the Attorney General. Or your server can leave the papers with a deputy, assistant, or clerk at the Attorney General's office. For any other public body, you can use personal service or office service on an officer, director, managing agent, or lawyer for the defendant. If you are suing any state agency, you must *also* serve all papers on the state Attorney General.

1. **Personal Service:**
   a. By Process Server: Take a copy of the claim to the sheriff's office in the county where the defendant is located and have a sheriff's officer serve the defendant. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
   b. By a Non-Party: Have a competent* person 18 years or older serve the papers. The server must be a resident of Oregon or the state where the defendant is. The server cannot be a party to the case (plaintiff or defendant), or the lawyer for a party. The server cannot be an employee or director/ officer of any defendant. If you have safety concerns, have the sheriff serve the defendant.

*competent means a person who can understand, remember, and tell others about an event.

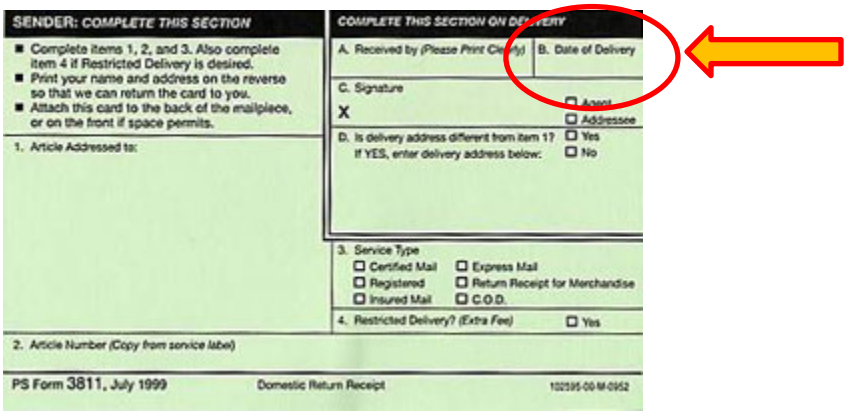
A ***Certificate of Service*** must be filed with the court by whoever serves the defendant, including the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the notice at the defendant's residence (where the defendant normally lives) with someone 14 or older who lives there. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

3. **Office Service:** The process server may leave the papers with someone *in charge* of the defendant's office or normal workplace. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

1. **By Mail:** You must do **TWO** things to serve by mail. First, send the claim to each defendant's home or business address by first class mail. Second, send a copy by certified mail, return receipt requested, Restricted Delivery (delivery only to the addressee). You **must** file proof of service with the court, including the signed green card, date of receipt and item number along with a ***Certificate of Service by Mail***. If you do not receive the green card back, or if someone other than the defendant signed for it, service by mail was not effective and you must try another type of service. The date of service is:
   a. If the defendant is an individual, the day the defendant signs the green receipt card
   b. If the defendant is *not* an individual (for example, a business or public agency), then the earlier of:

i. *(if mailed to an Oregon address)* 3 days *after* you put the first class mailing in the mail ***or***
ii. *(if mailed outside of Oregon)* 7 days *after* you put the first class mailing in the mail


SENDER: COMPLETE THIS SECTION
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.
1. Article Addressed to:
COMPLETE THIS SECTION ON DELIVERY
A. Received by (Please Print Clearly)
B. Date of Delivery
C. Signature
X
☐ Agent
☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Copy from service label)
PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

<u>Proof of Service</u>
The Certificates are your <u>proof of service</u>. An original *Certificate of Service* or *Acceptance of Service* **must** be filed with the court for your case to proceed, regardless of the method of service.

If proof of service is not filed within **63 days** of filing your *Petition*, your case may be dismissed without notice to you

THE DEFENDANT CAN …

<u>Pay the Claim</u> within 14 days of receiving service. This includes your court fees and costs. Payment should come directly to you. Defendant may provide proof to the court that the claim is paid, and you may file a notice with the court to dismiss your claim. You are free to settle with the defendant for any amount at this point. If you are suing to return property, the defendant can return the property to you.

Or

<u>Deny the Claim</u> – A defendant who does not agree with any part of your claim can file a response within 14 days of service denying the claim and requesting a hearing or jury trial. Defendants may also file claims against you called "counter-claims." Counter-claims must be related to the transaction or event that your claim is about. Jury trials are available only if the amount of *either* the claim *or* counterclaim is over $750.

If the defendant denies the claim, you will be notified by mail of the date and time to appear for a hearing. If you cannot appear at the time set, you must give a good reason *in writing* to the court at least **14** days before the hearing date.

If the defendant demands a jury trial, you must file a formal complaint within 20 days after the court sends you notice to do so. If you don't, the case will be dismissed and you may have to pay the defendant's fees plus a prevailing party fee. Be aware that additional fees will be due from you. You should see a lawyer. The court does not provide forms or samples of formal complaints.

IF THE DEFENDANT DOES NOT RESPOND

If the defendant does not file a response within 14 days of the date of service, you can ask the court to grant you a default judgment. This means that you win because the defendant did not respond. You must file a request for default judgment with the court within 35 days from the *date the proof of service was filed*, or your case may be dismissed without notice to you. You may have to re-file your claim and pay filing fees again if this happens.

For public body defendants – you must send a notice of your intent to apply for default to the defendant before filing for default. For state agencies you must also send a copy of the notice to the Attorney General. The court cannot issue a default less than 10 days from the day you serve the notice on the defendant (and the Attorney General if necessary). You must formally serve this notice according to Oregon Rule of Civil Procedure 9. You must also file a proof of service with the court.

Fill out the ***Motion for Default Judgment & Defendant Status Declaration***, and complete a ***Small Claim General Judgment***. File both with the court clerk. The prevailing party fee is listed at ORS 20.190.

If you request more than 9% post-judgment annual interest, you must provide the court with a copy of the contract at the time you request a Default Judgment.

You must provide a *Declaration of Non-Military Service* before the court can order a default judgment. This is part of the ***Motion for Default Judgment***. If the defendant is in active military service, you cannot get a default judgment unless the servicemember has waived protection under the Servicemember's Civil Relief Act. This federal law starts at 50 U.S.C. App 501. Your local law librarian can help you find it, or go to *www.law.cornell.edu*[*] (under *Legal Resources* click *U.S.Code*, then click *Appendix to Title 50*). This law has strict rules about what "active military service" means, and it covers servicemembers' spouses and children if they are affected by the defendant's service. This protection does not apply to all servicemembers at all times.

If the defendant is in the military, you should see a lawyer before trying to get a default judgment. If a default is not done properly, the defendant can re-open the case after returning from service. **Be aware** that if you knowingly make false statements about the defendant's status, you may face both federal and state penalties.

If you know the defendant is *not* in the military, you must state *facts* that explain how you know. Some things that are *not* supporting facts are: he has long hair, he has problems with authority, she does drugs, she's too old, or he is not a U.S. citizen.

If you have the defendant's Social Security Number or date of birth, you can go to the Department of Defense's website at *www.dmdc.osd.mil/appj/scra/scraHome.do* to find out if the defendant is in active service. This site can give you a free statement of service status that you can print out (called a "certificate of service" on the website). Attach this statement, or a printout of the screen, to your motion. You can also call 571.372.1100 for military verification. Put the date and the name of the person you spoke with on your motion. If you don't have the Social Security Number or date of birth, commercial websites may be able to provide information.

If you don't know whether the defendant is in the military and have checked the website, or don't have the necessary information, mark "I am unable to determine whether this person is in military service" and add any facts that you *do* know. The judge will decide whether to grant the default.

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[*] This is an outside site maintained by Cornell University. The Oregon Judicial Department is not responsible for any information on this site. Links many have moved.

YOU ARE STRONGLY ADVISED TO TALK TO A LAWYER IF DEFENDANT IS IN THE MILITARY! Contact the Oregon State Bar at the number above for help finding a lawyer.

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The court will send you a notice telling you whether your default was granted.

MEDIATION

Many courts have mediation programs for small claims. Some may require mediation before a judge will hear your case. If a defendant files a response denying the claim or making a counterclaim against you, the court may schedule mediation for *both* parties. Mediation is confidential.

Mediation has many benefits:
Mediation brings all of the parties together to discuss the dispute with a trained, neutral mediator. Mediation offers a last chance to maintain control over 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 once a judgment is entered.

If mediation is unavailable or if you are unable to resolve the dispute through mediation, a trial will be set. Be prepared to present your case at the date and time on your notice of trial.

PREPARING FOR TRIAL

Small claims trials are informal so that the parties can handle their own cases. Lawyers *cannot* appear without special permission of the court. The plaintiff first, and the defendant second, will present sworn testimony, evidence, and witnesses to the judge. The judge is only interested in *facts*. Your testimony should be brief and to the point. You may use written notes, but do not expect the judge to read a written statement.

You, as the plaintiff, must prove your case. The defendant must prove any counterclaims (counterclaims are claims the *defendant* has against *you*. They are NOT defenses to *your* claims against the *defendant*). Come prepared with factual evidence like receipts, a written contract, police reports, witnesses, etc.

<u>Bring the following to support your claim:</u>
Records, documents, bills, original contracts, photos, written repair estimates, etc. Make copies of any material that you may wish to submit to the court and bring the copies AND the originals to court. You may also want to bring copies for the defendant's reference.
On the day of your trial, be sure to allow plenty of time to get through security and find your courtroom. Be prepared to present your case at the time listed on your trial notice.

Anything you present to the court may be viewed by the other party and may become part of the public record. It may be possible to protect certain kinds of information from disclosure. Talk to a lawyer if you are concerned.

COURTROOM RULES:

**Appropriate dress is required. See UTCR 3.010 and the local court rules. The judge may ask you to leave the courtroom if you are not dressed appropriately.*
**Caps and hats must be removed upon entering the courtroom.*
**Food and drinks are not allowed in the courtroom.*
**Weapons are not allowed anywhere in the court building.*
**Pagers, cell phones, and all other electronic devices that may disrupt court proceedings must be turned off (not just silenced, because signals interfere with recordings).*
**Audio or video recording is not permitted without advance permission of the judge.*

JUDGMENT

Once your trial is over, the judge will make a decision. You could:

- Lose the case. You cannot collect money from the defendant if you lose.
- Win the full amount of your claim.
- Win some of your claim, but not all of it.
- Win either the full amount or some of the amount, and lose against a defendant's counterclaim.
  - Generally, if you and the defendant both asked for money, the amount you lost (counterclaims) will be subtracted from the amount you won.
  - If the counterclaim is for *more* than you won, then you may win your claim, but still have to pay the defendant money. For example, if you claim $100 and the counterclaim is for $150 and the judge decides that you both win, then you will have to pay the defendant $50 ($150 counterclaim - $100 claim = $50).

The judge will tell you who has to fill out the ***Judgment*** form. Then the *Judgment* form has to be given to the judge to sign. This form says how much the award is for, and who gets paid (if anyone).

The "judgment creditor" is the person who gets paid, and the "judgment debtor" is the person who has to pay.

The party who wins is the prevailing party. The prevailing party may be entitled to additional money called a 'prevailing party fee'. The judge may tell you how much the fee is, or you can look it up at ORS 20.190. Write that amount in the "prevailing party fee" box.

NOTE: There is NO APPEAL from a Small Claims judgment. The judge's decision is *final*.

HOW TO COLLECT AFTER JUDGMENT

Demand Letter

Once you receive your notice that the judgment was entered, you must send the defendant a written demand for payment. This letter must be sent by certified mail, return receipt requested.

Keep a copy of the demand letter and the receipt card showing the recipient's signature. Your demand letter should say that you are making a demand for payment and give the debtor the total balance due and a deadline (usually 10 – 30 days). The judgment will give you the total amount the court entered as due to you.

If you are still not paid after sending the demand letter, several options are available to you. Go to *www.courts.oregon.gov* for more information.

SATISFACTIONS

A "Satisfaction" is a form that tells the court that your judgment has been paid (satisfied). You MUST file a ***Satisfaction of Judgment*** when you have received full payment on the money award portion of your judgment. You may also file a *Satisfaction of Judgment* anytime you receive a payment. A "partial satisfaction" means you have received payment, but not the full amount. A "full satisfaction" means the award is paid in full. You must also send a copy of the *Satisfaction of Judgment* to the other party. *Satisfaction of Judgment* forms are available online or at the court, and there is no fee to file this form.

Satisfactions must be **notarized**. Many banks can do this. You must bring photo I.D. with you and sign the form in front of the notary public.