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Instructions and information for filing a Small Claims or Debt Claim Case
In Justice Court

(Please read carefully before completing the petition)

- 1) The amount of debt, damages or personal property for which you may sue in Justice Court may not exceed \$10,000.00, including attorney fees, excluding court costs.
- 2) In all civil suits, the defendant has the right to be sued in the county and precinct in which he resides.
- 3) In order for any potential judgment you may receive to be valid, it is necessary that you sue the defendant in his/their legal capacity as listed below:
 - a) Personally: A person who is allegedly responsible to you for damage he may have caused you as an individual. (e.g. – John Doe; re: John Doe purchased a vehicle from you, and failed to make payments. You want either payment for that vehicle or the vehicle itself on a small claims suit.
 - b) Proprietor or partnership: A business that is not incorporated, but does have on file with the County Clerk an assumed name. (e.g. – John Doe DBA Greenhouse Supplies).
 - c) Corporation: A business which has allegedly caused you damage is incorporated. You must know the individual's name that is able to accept service on behalf of the corporation. You may obtain the name of the authorized agent for service from the Secretary of State at 1-800-252-5555. (e.g. – Greenhouse, Inc; serve John Doe, owner).
- 4) If you are a corporation or in the business of loaning money, either primarily (banks, credit unions, saving & loans), or secondary (credit cards), an attorney must represent you in this court and would be filed as a Debt Collection case. If you are not included in one of the above categories, an attorney is permitted but not required.
- 5) You may have the defendant served at:
 - a) His home address
 - b) Work address – only if a home address is unattainable
 - c) PO Box number – only if a home address is unattainable (there is no guarantee of service when filed in this manner).
 - d) Through the newspaper. (Only if a home address is unattainable). The newspaper will charge you their going rate for this service.

Once you have filed suit, the court will give you a copy of your petition showing your cause (Case) number and the office telephone number so that you may call in periodically to

Determine the progress of your case. It is of utmost importance that you refer to your cause Number when calling or transacting business with the court.

- 6) When you have completed the petition stating the facts and circumstances of your suit, citation along with a copy of your petition will be served to the defendant notifying him that a suit has been filed against him in this court. The citation will order the defendant to file a written answer to the suit on or before the 14th day from the date defendant was served. If the defendant fails to comply, you then become eligible for a default judgment. If you request a default judgment, a default hearing date will be set and a default hearing notice will be mailed to you and the defendant.
- 7) If the defendant answers the suit, a trial date will be set 30 to 45 days from receiving the defendant's answer. A non-jury trial will be set unless the \$22.00 jury fee is paid. You, as the plaintiff and the defendant will be sent notice by mail of the trial date. We discourage motions for continuance; however, if it becomes necessary, any requests for a continuance must be in writing and filed within 48 hours prior to court date.
- 8) If you have witnesses to your suit who will not appear in court voluntarily, you may ask the court to subpoena those individuals prior to trial. This request should be made as soon as possible allowing at least a week for the service of the subpoena.
- 9) This court does not collect the judgment for you, nor can we force the defendant to pay the judgment. If you receive a judgment for your claim against the defendant, you may request an Abstract of Judgment and /or a Writ of Execution to help you in your collection of this judgment.
 - a) Abstract of Judgment: may be obtained after ten (10) days from the date the judgment is signed. This puts a lien on any real property (land or home only) that the defendant may own. An abstract may be filed in each county in which the defendant owns property. You must come to this court to obtain the abstract(s).
 - b) Writ of Execution: may be obtained after thirty (30) days from the date the judgment is signed. This document authorizes the constable or sheriff to seize assets belonging to the defendant that are subject to this writ. Those assets are then sold and the proceeds are applied to the judgment.
 - c) Garnishment: may be obtained if the defendant's checking account number is known.
- 10) As plaintiff, you have the burden of proof to show by the weight of the evidence that the defendant is the proximate cause of your damages in the capacity, which the defendant was sued. All damages and evidence necessary to meet your burden should be available at the time of filing. Make sure you bring copies of evidence for the court to keep.
- 11) If you, as plaintiff, are dissatisfied with the judgment rendered, either of you may post the required appeal bond, and appeal your case to County Court no later than twenty-one (21) days from the date the judgment was issued. If the twenty-first day falls on a weekend, you will be given until the following Monday to file your appeal. **Once the**

twenty-first day period has passed, there is no further recourse to appeal to a higher court.

- 12) If you have any other procedural questions, please ask the clerk, and she will try to answer them. **This court may not answer any legal questions.**
- 13) It is imperative that you provide us with your daytime telephone number and notify us immediately of any changes in that number or your address.