

STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL

DOCKET NO

Trial Court of Massachusetts Small Claims Session



BOSTON MUNICIPAL COURT

DISTRICT COURT HOLYOKE

Division

HOUSING COURT

Divi

PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE

JOE ABUSER  
12 STATE ST  
HOLYOKE MA 01040

PLAINTIFF'S ATTORNEY (if any)

Name: NONE

Address:

PHONE NO: 413-324-5678

PHONE NO:

DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE

SALLY SMITH  
33 ELM ST.  
HOLYOKE MA 01040

ADDITIONAL DEFENDANT (if any)

Name:

Address:

PHONE NO: UNKNOWN

PHONE NO:

PLAINTIFF'S CLAIM. The defendant owes \$ 1,000 plus \$ 50.00 court costs for the following reasons. Give the date of the event that is the basis of your claim.

On July 7, 1996 Sally Smith moved half of the furniture out of our apartment at 12 State Street without warning me. The furniture is mine and I want it back.

SIGNATURE OF PLAINTIFF X

Joe Abuser

DATE 7/21/02

MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date.

The plaintiff is willing to attempt to settle this claim through court mediation.

MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the:

above defendant(s) is (are) not serving in the military and at present live(s) or work(s)

above defendant(s) is (are) serving in the military

Joe Abuser

DATE 7/21/02

NOTICE TO DEFENDANT:

You are being sued in Small Claims Court by the above named plaintiff. You are directed to appear for trial of this claim on the date and time noted to the right.

If you wish to settle this claim before the trial date, you should contact the plaintiff or the plaintiff's attorney.

SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM

NAME AND ADDRESS OF COURT  
HOLYOKE DIVISION  
DISTRICT COURT DEPARTMENT  
20 COURT PLAZA  
HOLYOKE, MA 01040-5075

DATE AND TIME OF TRIAL  
10/15/03 AT 9.30 AM  
DATE TIME

BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED

VC RTUS

Chap. 11: Appendix A

JUSTICE

CLERK-MAGISTRATE OR DESIGNEE

## INSTRUCTIONS FOR PERSONS FILING A SMALL CLAIM —Complete Parts 1-6 on front of form.

**Part 1.** You may bring your small claim only in the court for the area where either the plaintiff or the defendant lives or has a place of business or employment. A small claim against a landlord arising from the rental of an apartment may also be brought where the apartment is located. You may find it easier to enforce a decision in your favor if you bring your small claim where the defendant lives or works, but you are not required to do so. The Clerk-Magistrate's office can tell you which court serves an area and the fee you must pay to file your case.

**Part 2.** The person filing the claim is called the plaintiff.

**Part 3.** The person or corporation being sued is called the defendant. If you are suing a company which is not a corporation, you should name the owner(s) doing business as the named company as the defendant; the names of the owner(s) can be obtained from the City or Town Clerk where the company's offices are located. If you are suing a company which is a corporation, you must have the exact legal name. You can find this information from the Corporate Records Division of the Secretary of State's Office, One Ashburton Place, Room 1712, Boston, MA 02108.

**Part 4.** Fill in the amount you are suing for and briefly explain your claim. State your claim clearly so the defendant can understand why he or she is being sued. Fill in as "costs" the amount of the filing fee. Sign your name in the space provided.

**Part 5.** Indicate if you are willing to attempt to mediate this claim.

**Part 6.** If you cannot sign this affidavit because you are unsure whether the defendant(s) is (are) in the military, draw a line through it. You may then obtain a judgment if the defendant fails to appear only by a magistrate's or judge's special order.

Return the completed form, with all parts intact, together with a check or money order (made payable to "Clerk-Magistrate") for the filing fee. You may bring or mail the completed form and filing fee to the Clerk-Magistrate's office of the court where you are filing your case.

## INSTRUCTIONS TO THE PLAINTIFF AND THE DEFENDANT

### 1. WHAT IS THIS DOCUMENT?

This is your copy of the "Statement of Small Claim and Notice of Trial" which the court has issued in this case. The plaintiff named on the front of this form has sued the defendant in small claims court for the amount and reasons stated. This form notifies you when you must appear for trial at the court.

### 2. WHAT IS SMALL CLAIMS COURT?

The small claims court is not a separate court, but a special session of the District Court, the Boston Municipal Court or the Housing Court. It is designed to resolve smaller cases, making it easier and less expensive for the public to use the court.

### 3. HOW IS THE DEFENDANT NOTIFIED OF THIS CLAIM?

The defendant is sent two copies of this "Statement of Small Claim and Notice of Trial"— one by first class mail and one by certified mail. If the plaintiff inquires the court will tell the plaintiff if the Post Office is unable to notify ("serve") the defendant.

### 4. ARE ATTORNEYS NEEDED IN SMALL CLAIMS COURT?

No, but you may hire one if you wish.

### 5. WHAT ARE "COSTS"?

If the plaintiff prevails, or if both sides settle the claim, the plaintiff may recover from the defendant as "costs" the court filing fee and postage. By court order the plaintiff may sometimes recover certain other costs of bringing the claim.

### 6. IS THE DEFENDANT REQUIRED TO FILE AN ANSWER?

The defendant may send a signed letter to the court, saying clearly and simply why the plaintiff should not prevail. This "answer" should state those specific parts of the claim that are denied. However, the defendant is not required to file an answer. The defendant must send the plaintiff a copy of the answer, if one is filed. In the answer, or in a separate letter sent to the court, the defendant may set forth in writing any claim against the plaintiff within the jurisdiction of the small claims court. Both claims will be treated as one case if the defendant mails a copy of his or her claim to the plaintiff at least ten days before the scheduled trial date, or if the magistrate orders that they be so treated. Such claims are not compulsory. The plaintiff need not file a written answer to the defendant's claim.

### 7. WHAT IF THE DEFENDANT ADMITS HE OWES ALL THE MONEY?

He or she should contact the plaintiff and arrange to make payment. If payment is not made before the trial date, both the plaintiff and defendant must appear in court.

### 8. WHAT IF THE DEFENDANT ADMITS HE OWES THE MONEY BUT NEEDS TIME TO PAY?

He or she must appear in court on the trial date and give his or her reasons for requesting time to pay.

### 9. WHAT IF THE DEFENDANT BELIEVES HE OWES NOTHING, OR ONLY SOME OF THE MONEY CLAIMED?

He or she must appear in court on the trial date. He or she will be able to question how the plaintiff arrived at the amount claimed.

### 10. WHAT IF THE DEFENDANT BELIEVES THE PLAINTIFF OWES HIM MONEY?

The defendant should indicate in his or her answer, or tell the court, that the plaintiff owes him or her money. The plaintiff's original claim and the defendant's claim against the plaintiff (called a "counterclaim") may be treated as one case and tried on the date the original claim was scheduled. If the defendant files a written counterclaim, the defendant must send the plaintiff a copy.

### 11. WHEN AND WHERE DO THE PLAINTIFF AND THE DEFENDANT HAVE TO GO TO COURT?

Unless the plaintiff and defendant settle this case before the trial date, both sides must appear in court on the date the case is scheduled for trial. The date, time and the court location to which both sides must report are shown on the front of this form.

### 12. WHAT IF I CANNOT COME TO COURT ON THE TRIAL DATE?

You should call or write the person on the opposing side and ask him or her to agree to postpone ("continue") the case. Continuances should be only for a good reason, such as illness, an emergency, or the unavailability of a witness. If both sides agree, or if the opposing side does not agree, or if you are unable to reach the person on the opposing side, you must write the Clerk-Magistrate of the court to ask that the court give you a continuance. Do not wait until the last minute. If the other side makes a reasonable request for a continuance, it may save you some inconvenience if you agree to the request.

### 13. WHAT IF I DO NOT COME TO COURT ON THE TRIAL DATE?

If the plaintiff does not appear for trial, and the defendant does appear, the case will be dismissed. If both the plaintiff and the defendant do not appear for trial the claim will also be dismissed. If the defendant does not appear for trial, and the plaintiff does appear, the court can enter a default judgment and order the defendant to pay the amount claimed. The magistrate may ask the plaintiff to present some evidence of the claim, even if the defendant is not present.

### 14. HOW SHOULD I PREPARE FOR TRIAL?

It may be helpful to write down ahead of time the facts of the case in the order in which they occurred. This will help you organize your thoughts and make a clear presentation of your story. On the trial date, you must bring with you any witnesses, checks, bills, papers, photographs or letters that will help you prove your case. If you need a witness to come to court but the witness will not come, ask the clerk magistrate's office for a witness summons which you must then arrange to have a officer deliver to the witness. You may need an expert witness to prove any matter not within common experience. The laws governing small claims are the same as those for major lawsuits, except that simplified procedures are used. The plaintiff must prove that the claim is one which the law recognizes and that the defendant is liable, or the magistrate will enter a decision for the defendant.

### 15. WHAT WILL HAPPEN ON THE DAY OF THE TRIAL?

Be sure to arrive on time. If your case is not resolved by a mediator, a trial will be held before a magistrate. The plaintiff will be asked to tell his or her side of the story, then the defendant will tell his or her side. Each will have an opportunity to ask questions of the other side and the other side's witnesses. To prevail, the law requires the plaintiff to prove the validity of his or her claim.

### 16. WHAT WILL THE MAGISTRATE DO?

The magistrate will make a decision. Notice of the decision (called a "judgment") will be given or sent to each side.

### 17. CAN I APPEAL THE JUDGMENT?

By bringing his or her claim in small claims court, the plaintiff (and the defendant on any counterclaim) gives up any right (1) to have the claim decided by a jury and (2) to appeal if he or she loses. If the defendant loses the case (or the plaintiff loses on any counterclaim) before the magistrate, he or she can appeal for a new trial by a judge or a jury of any disputed questions of fact, but he or she must post a bond, unless waived.