

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Jurisdictional Limits of Small Claims Cases and Limited Civil Cases

December 2002

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **March 31, 2003.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the jurisdictional limit for a small claims case be increased from \$5,000 to \$10,000, to adjust for inflation and improve access to justice. The filing fee for a small claims case seeking over \$5,000 should be higher than the filing fee for a small claims case seeking \$5,000 or less. Revenue attributable to the fee differential should be used for the small claims advisory service, to improve the quality of justice in small claims cases.

The proposed \$10,000 jurisdictional limit should apply to a claim against a defendant guarantor, as well as to other types of claims. The special limits for a small claims case against a defendant guarantor (\$4,000 if the guarantor charged a fee and \$2,500 otherwise) should be eliminated to simplify civil procedure.

The Commission does not propose to eliminate the provision that permits a party to file only two small claims cases per year in which the demand exceeds \$2,500. Rather, the provision should be amended to account for inflation and increases in the cost of litigation; a party should be permitted to file only two small claims cases per year in which the demand exceeds \$5,000.

The Commission also recommends nonsubstantive clarification of the provision that permits a court to deny recovery of costs to a party who could have brought suit in the small claims division but elected not to do so. To codify case law and encourage use of small claims procedures, the provision should be amended to state that attorney's fees are among the costs that the court has discretion to deny.

The effects of these proposed changes relating to small claims cases should be studied by the Department of Consumer Affairs, which should report to the Legislature on this matter. This will facilitate evaluation of the reforms and assessment of whether additional reforms are necessary.

The Commission further recommends that the maximum amount in controversy for a limited civil case be increased from \$25,000 to \$50,000. Such an increase would account for inflation and improve access to justice in cases that are too small to be litigated effectively using standard court procedures, as opposed to the simplified procedures (economic litigation procedures) that apply to a limited civil case. Aside from the proposed jurisdictional increase, no changes in those procedures appear necessary at this time.

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

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JURISDICTIONAL LIMITS OF SMALL CLAIMS CASES AND LIMITED CIVIL CASES

1 Civil cases in California are currently separated into three main procedural
2 tracks: small claims cases, limited civil cases, and unlimited civil cases. With
3 exceptions and qualifications, the jurisdictional limit is \$5,000 for a small claims
4 case¹ and \$25,000 for a limited civil case.² At the direction of the Legislature, the
5 Law Revision Commission and the Judicial Council are jointly reexamining the
6 three track system for civil cases, particularly the jurisdictional limits.³

7 This study has involved empirical research as well as other work. Based on the
8 data gathered and other information available, the Commission recommends that
9 the jurisdictional limits for small claims cases and limited civil cases be raised to
10 \$10,000 and \$50,000, respectively, and that certain other changes be made to
11 improve the functioning of the small claims system. These proposed reforms will
12 account for inflation in the cost of goods and services generally and in the cost of
13 litigation in particular, and improve access to justice in cases involving relatively
14 small amounts of money.

15 THE THREE TRACK SYSTEM

16 Understanding the current three track system and its evolution requires an
17 explanation of trial court unification and its impact on civil procedure.

18 **Trial Court Unification**

19 In the early 1990's, California had three types of trial courts: superior,
20 municipal, and justice courts. Although the term "small claims court" was
21 frequently used, both in statutes and in common usage, each small claims court
22 was actually a division of a municipal or justice court.⁴

23 In 1994, the voters approved a constitutional amendment eliminating the justice
24 courts.⁵ Four years later, the voters approved a constitutional amendment
25 authorizing trial court unification on a county-by-county basis: The municipal and

1. Code Civ. Proc. § 116.220. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. Section 85.

3. See Gov't Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-83 (1998).

4. See 1990 Cal. Stat. ch. 1305, § 3. The Commission considered cleaning up this terminology in implementing trial court unification, but decided that the terminology was entrenched and trying to change it might jeopardize legislation needed to implement unification.

5. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

1 superior courts in each county could unify on a vote of a majority of the municipal
2 court judges and a majority of the superior court judges in that county.⁶

3 The codes were promptly revised to accommodate county-by-county
4 unification,⁷ and the trial courts in many counties soon unified. By early 2001,
5 municipal courts were eliminated; the trial courts in all counties had unified their
6 operations in the superior court. In 2002, the Legislature enacted a major bill
7 revising the codes to reflect that development.⁸ The voters also approved a
8 constitutional amendment eliminating obsolete references to the municipal courts.⁹

9 **Impact of Trial Court Unification on Civil Procedure**

10 Before unification of the municipal and superior courts, a plaintiff could file a
11 case for \$5,000 or less in the small claims division of the municipal court (subject
12 to certain exceptions and qualifications) and the case would be subject to informal
13 small claims procedures.¹⁰ Most other civil cases within the jurisdiction of the
14 municipal court were subject to simplified procedures known as economic
15 litigation procedures.¹¹ The jurisdictional limit of the municipal court was
16 \$25,000.¹² Civil cases in which the amount in controversy exceeded that limit, and
17 certain other civil cases, were within the jurisdiction of the superior court.¹³ Those
18 cases were subject to standard civil procedures, including extensive discovery.¹⁴

19 When the codes were revised to accommodate county-by-county unification, the
20 legislation was narrowly limited to preserve the existing procedures but make
21 them workable in the context of unification.¹⁵ The term “limited civil case” was
22 introduced to refer to civil cases traditionally within the jurisdiction of the
23 municipal court,¹⁶ and the term “unlimited civil case” was introduced to refer to

6. 1996 Cal. Stat. res. ch. 36 (SCA 4) (Prop. 220, approved June 2, 1998). The constitutional revisions largely tracked recommendations made by the Commission in 1994, pursuant to a legislative directive to study constitutional revisions that would be necessary to implement trial court unification on a statewide basis. 1993 Cal. Stat. res. ch. 96; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1 (1994).

7. 1998 Cal. Stat. ch. 931; *Revision of Codes, supra* note 3. The codes were also revised to eliminate obsolete references to the justice courts. 1998 Cal. Stat. ch. 931; *Revision of Codes, supra* note 3, at 61.

8. 2002 Cal. Stat. ch. 784; *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002). The Commission is in the process of preparing further legislation along these lines.

9. 2002 Cal. Stat. res. ch. 88 (ACA 15) (Prop. 48, approved Nov. 5, 2002).

10. Section 116.220.

11. 1985 Cal. Stat. ch. 1383, § 2.

12. 1997 Cal. Stat. ch. 527, § 2.

13. Former Cal. Const. art. VI, § 10 (“Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.”).

14. Sections 2016-2036.

15. *Revision of Codes, supra* note 3, at 60-61, 64-65, 82.

16. Section 85 & Comment.

1 civil cases traditionally within the jurisdiction of the superior court.¹⁷ Provisions
2 prescribing municipal court procedures were revised to apply to limited civil cases,
3 and provisions prescribing superior court procedures were revised to apply to
4 unlimited civil cases.¹⁸ A provision was added to make clear that a small claims
5 case is a special type of limited civil case, which is subject to small claims
6 procedures in the small claims division of the superior court.¹⁹

7 Accordingly, the current three track system mirrors the pre-unification system,
8 and consists of:

9 (1) *Small claims cases*. Subject to certain exceptions and qualifications, a
10 plaintiff seeking \$5,000 or less may pursue recovery in the small claims division
11 of the superior court.²⁰

12 (2) *Limited civil cases (former municipal court cases)*. The amount in
13 controversy in a limited civil case may not exceed \$25,000.²¹ Most limited civil
14 cases are subject to economic litigation procedures.²² A case for \$5,000 or less
15 may, at the plaintiff's option, be pursued as a limited civil case subject to
16 economic litigation procedures, even if the case would also qualify for treatment
17 as a small claims case.²³

18 (3) *Unlimited civil cases (traditional superior court cases)*. All other civil cases
19 are unlimited civil cases, which are subject to traditional superior court
20 procedures.²⁴

21 HISTORY OF THIS STUDY

22 Although the Commission refrained from recommending revision of the three
23 track system in the course of implementing trial court unification, it strongly
24 recommended that the Legislature direct a study reexamining the system and its
25 underlying policies in light of unification.²⁵ The Commission advised that such a
26 study might “entail elimination of unnecessary procedural distinctions,
27 reassessment of the jurisdictional limits for small claims procedures and economic
28 litigation procedures, and reevaluation of which procedures apply to which type of

17. Section 88 & Comment; *see also Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443, 448 (2000).

18. Sections 85 & 88 & Comments.

19. Section 87 & Comment.

20. Section 116.220.

21. Section 85.

22. Section 91.

23. See Section 85.

24. See *supra* note 17.

25. *Revision of Codes*, *supra* note 3, at 82.

1 case.”²⁶ As recommended, the Legislature directed the Commission and the
2 Judicial Council to jointly undertake this work.²⁷

3 The Commission and the Judicial Council began working on the study of the
4 three track system in 1999. A group of experts was assembled for a brainstorming
5 session to identify key issues.²⁸ Much effort was devoted to developing a
6 procedure for the study, because the Commission and the Judicial Council had not
7 conducted a joint study before. To test that procedure, the Commission and the
8 Judicial Council studied some procedural differences between limited and
9 unlimited civil cases, and jointly developed a legislative proposal.²⁹ The proposal
10 was enacted with only minor revisions.³⁰

11 Staff from the Commission and the Administrative Office of the Courts
12 (“AOC”) also sought to gather information that would be helpful in reassessing the
13 three track system. Under the supervision of Professor David Jung, the Public Law
14 Research Institute (Hastings College of Law) provided much useful material.³¹ In
15 2001, the Judicial Council hired Policy Studies Inc. (“PSI”), a Colorado consulting
16 firm with extensive experience in evaluating civil justice systems, to conduct
17 empirical research for this study.³² PSI completed its report in July 2002.³³

18 Since then, the Commission and the Judicial Council have followed their usual
19 procedures, supplemented by communication between their staffs, in conducting
20 this study. The views expressed in this proposal are those of the Commission.
21 They do not necessarily reflect the views of the Judicial Council, its staff, or the
22 working group that the Judicial Council has assembled for this joint study.³⁴

23 EMPIRICAL METHODOLOGY

24 To evaluate the effectiveness of small claims procedures and economic litigation
25 procedures in California, and the desirability of changing the jurisdictional limits

26. *Id.* at 82-83 (footnotes omitted).

27. Gov’t Code § 70219. This statute was mistakenly repealed as obsolete in 2001, but reenacted without change in 2002. See 2001 Cal. Stat. ch. 745, § 113; 2002 Cal. Stat. ch. 784, § 340.

28. For a list of the experts, see *Unnecessary Procedural Differences*, *supra* note 17, at 449 n.14.

29. See *Unnecessary Procedural Differences*, *supra* note 17.

30. 2001 Cal. Stat. ch. 812.

31. See, e.g., M. Borcharding, G. Quan & D. Jung, *Trial Court Unification and Procedural Reform* (PLRI Working Papers Series, Spring 1999); C. Jacobs & A. Mori, *Where Do We Go from Here? California Procedure after Trial Court Unification* (PLRI Working Papers Series, Fall 1999, D. Jung, ed.).

32. Among the PSI researchers assigned to this study were Steven Weller, Ph.D., J.D., and John Martin, Ph.D., who are nationally known for their work on court programs, including such topics as small claims courts and simplified litigation. Drs. Weller and Martin participated in evaluating California’s Economic Litigation Pilot Program in the late 1970’s and early 1980’s, before economic litigation procedures were adopted on a statewide basis.

33. Weller, et al., *Report on the California Three Track Civil Litigation Study* (July 31, 2002) (hereafter “PSI Report”). This report is available on the Commission’s website at <<http://www.clrc.ca.gov>>.

34. The Three Track Study Working Group is chaired by Judge Mary Thornton House of Los Angeles County Superior Court.

1 or other aspects of those procedures, PSI conducted a statewide web-based survey
2 of attorneys.³⁵ A total of 160 attorneys representing all 58 California counties and
3 a variety of types of practice responded to the survey.

4 PSI also selected three counties for more thorough study: San Diego, San
5 Francisco, and Fresno. Criteria for selection of these counties included geography,
6 case processing times, jury verdicts in personal injury cases, and manageability of
7 the data collection.³⁶ The intent was to obtain (as much as possible with only three
8 counties) solid data from a representative sampling of the state.

9 In each of the three counties, PSI staff spent one week interviewing judges,
10 commissioners, and court administrative staff, and one week interviewing
11 attorneys. About 15-20 judges and court staff, and 15-20 attorneys were
12 interviewed in each county. PSI staff also interviewed 10-15 small claims litigants
13 in both Fresno and San Diego.³⁷ In addition, PSI collected case descriptive data
14 from automated court records in Fresno and San Francisco, and from the AOC's
15 ongoing evaluation of the Early Mediation Pilot Program in San Diego County.³⁸

16 The results of PSI's research are discussed in the analyses of small claims cases
17 and limited civil cases below.

18 SMALL CLAIMS CASES

19 The Legislature created the small claims division to provide an accessible forum
20 for resolution of minor civil disputes.³⁹ The theory underlying the small claims
21 division is that only by escaping the complexity and delay of normal litigation is it
22 possible to obtain a reasonable recovery in a case for a small sum.⁴⁰ Consequently,
23 the small claims division functions informally and expeditiously.⁴¹ The court
24 decides cases in accordance with substantive law, but the awards are often based

35. PSI Report, *supra* note 33, Appendix A.

36. *Id.* at 7.

37. *Id.* at 11, Appendices B-D (interview protocols).

38. *Id.* at 11.

39. Section 116.120 sets forth the key reasons for having a small claims court:

116.120. The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

40. *Sanderson v. Niemann*, 17 Cal. 2d 563, 573, 110 P.2d 1025 (1941).

41. *Id.*

1 on common sense, and the proceedings are characterized by a spirit of
2 compromise.⁴²

3 A basic understanding of small claims procedures and their history is necessary
4 before discussing PSI's data on small claims procedures, analyzing the results and
5 other relevant information, and explaining the Commission's recommendation.

6 **Existing Law**

7 The small claims division of the superior court has jurisdiction of the following
8 cases:

9 (1) An action for money damages not exceeding \$5,000, other than an action on
10 a guaranty.⁴³

11 (2) An action to enforce payment of unsecured personal property taxes not
12 exceeding \$5,000, if the legality of the tax is not contested.⁴⁴

13 (3) An action to issue a writ of possession pursuant to Civil Code Sections
14 1861.5 and 1861.10, if the amount of the demand does not exceed \$5,000.⁴⁵

15 (4) An action involving a fee dispute between an attorney and client, if the
16 amount at stake does not exceed \$5,000, and certain other conditions are
17 satisfied.⁴⁶

18 (5) An action on a guaranty, if the amount of the demand does not exceed
19 \$2,500 (\$4,000 if the guarantor charged a fee for its guarantee).⁴⁷

20 A plaintiff whose claim falls within the jurisdiction of the small claims division
21 has a choice of whether to pursue the claim as a small claims case. If the plaintiff
22 prefers, the claim may be pursued as a normal limited civil case.⁴⁸

23 If the claim exceeds the monetary limit of the small claims division but would
24 otherwise be within its jurisdiction, the plaintiff may waive the excess and file the
25 claim as a small claims case.⁴⁹ The waiver does not become operative until the
26 small claims division enters judgment.⁵⁰

27 A person may file only two actions for more than \$2,500 in the small claims
28 division each year.⁵¹ This limit does not apply to a local public entity.⁵²

42. *Id.*

43. Section 116.220(a)(1).

44. Section 116.220(a)(2).

45. Section 116.220(a)(3).

46. Section 116.220(a)(4).

47. Section 116.220(c). The \$4,000 limit also applies if the guarantor is the Registrar of the Contractors' State License Board. *Id.*

48. See Section 85.

49. Section 116.220(d).

50. *Id.*

51. Section 116.231.

52. *Id.*

1 With limited exceptions, an assignee may not bring suit in the small claims
2 division.⁵³ This rule is intended to prevent collection agencies from monopolizing
3 the small claims division, preserving it as a “People’s Court” for resolution of
4 disputes between individuals.⁵⁴

5 The following procedural rules apply to a small claims case:

6 *No formal pleading requirements.* Only a simple claim form is necessary to
7 initiate a small claims case.⁵⁵

8 *No pretrial discovery.* No discovery is permitted in a small claims case.⁵⁶

9 *No representation by counsel, except on appeal.* Subject to very limited
10 exceptions, no attorney may participate in a small claims action.⁵⁷

11 *Small claims advisors.* Each county is required to have a small claims advisory
12 service, which provides free advice to small claims litigants.⁵⁸

13 *Interpreters permitted but not provided.* If a party does not speak English well,
14 the small claims court may permit an interpreter to assist the party. The court does
15 not provide an interpreter; the party must arrange for one. The court is, however,
16 required to maintain a list of interpreters who will assist small claims litigants free
17 of charge or for a reasonable fee.⁵⁹

18 *No reclassification if plaintiff’s damages exceed \$5,000.* If the defendant in a
19 small claims case has a counterclaim that exceeds the jurisdictional limit of the
20 small claims division, the defendant may file that claim as a limited civil case or
21 an unlimited civil case, as appropriate, and request that the small claims case be
22 “transferred.”⁶⁰ In contrast, if a plaintiff files a claim as a small claims case and
23 later discovers that the damages exceed \$5,000, the plaintiff can pursue the full
24 amount only by dismissing the small claims case and filing a new action.⁶¹

25 *Sessions on evenings and weekends.* All courts are permitted, and some courts
26 are required, to hold sessions of the small claims division during non-business
27 hours.⁶²

28 *No right to jury trial.* A small claims case is tried to a judicial officer or, on
29 stipulation of the parties, to a temporary judge.⁶³ Under specified circumstances, a
30 party may be deemed to have stipulated to a temporary judge despite the lack of a
31 formal written stipulation.⁶⁴

53. Section 116.420.

54. Pagter, et al., *The California Small Claims Court*, 52 Cal. L. Rev. 876, 890 (1964).

55. Section 116.310(a).

56. Section 116.310(b).

57. Section 116.530; *Prudential Ins. Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 383-84, 173 P.2d 38 (1946).

58. Sections 116.260, 116.940; see also Cal. R. Ct. 1725 (training and qualifications of small claims advisors).

59. Section 116.550.

60. Section 116.390.

61. *Jellinek v. Superior Court*, 228 Cal. App. 3d 652, 279 Cal. Rptr. 6 (1991); R. Brown & I. Weil, Jr., *California Practice Guide: Civil Procedure Before Trial, Jurisdiction and Venue* § 3:54.2, at 3-16 (2002).

62. Section 116.250.

63. Sections 116.510, 116.520.

64. Cal. R. Ct. 1727.

1 *Few formal evidentiary requirements.* The rules of privilege apply in a small
2 claims case, but most formal evidentiary requirements do not.⁶⁵

3 *Prompt, short hearings.* A small claims case is usually heard soon after it is
4 filed.⁶⁶ The hearing is generally quite short.⁶⁷

5 *Equitable relief.* With limitations, a small claims division may grant equitable
6 relief instead of, or in addition, to money damages. The court may also issue a
7 conditional judgment.⁶⁸

8 *No appeal by plaintiff.* Having chosen the small claims forum, the plaintiff has
9 no right of appeal.⁶⁹

10 *Appeal is trial de novo.* The defendant may appeal but the appeal consists of a
11 retrial in the superior court, before a judicial officer other than the judicial officer
12 who heard the original case.⁷⁰ There is no right to a jury trial even on retrial.⁷¹
13 The parties may, however, be represented by counsel at the trial de novo.⁷²

14 *No collateral estoppel.* Because small claims procedures are informal, a
15 judgment in a small claims case is not collateral estoppel on the issues litigated.⁷³

16 There are few published decisions relating to small claims cases.⁷⁴ In those cases
17 that do receive appellate attention, the current trend is to defer to the Legislature's
18 intent to create an informal and flexible forum in which disputes over modest sums
19 of money can be resolved without incurring disproportionate expenses or
20 consuming undue amounts of time.⁷⁵

21 **History of Small Claims Procedures**

22 The small claims movement began in England in 1605, and was intended to
23 provide for quick, inexpensive, and informal resolution of small disputes through
24 simple proceedings conducted so as to promote compromise.⁷⁶ In the United

65. *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 21 Cal. Rptr. 2d 855 (1993). "If the small claims court is to be the 'People's Court,' it must not be encumbered with rules and restrictions which can only frustrate and hinder the litigant who resorts to that court in response to its promise of speedy and economical justice." *Id.* at 1136; *see also Sanderson*, 17 Cal. 2d at 574.

66. Section 116.330.

67. Section 116.510.

68. Section 116.220(b); *see also* Commission Staff Memorandum 2001-43 (May 4, 2001), pp. 2-5.

69. Section 116.710(a); *Superior Wheeler Cake Corp. v. Superior Court*, 203 Cal. 384, 387, 264 P. 488 (1928).

70. Sections 116.710(b), 116.770.

71. Section 116.770(b); *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988).

72. Section 116.770(c).

73. *Vandenberg v. Superior Court*, 21 Cal. 4th 815, 829, 982 P.2d 229, 88 Cal. Rptr. 2d 366 (1999); *Sanderson*, 17 Cal. 2d at 573-75.

74. *Houghtaling*, 17 Cal. App. 4th at 1132, 1138.

75. *Id.* at 1133.

76. Pagter, et al., *supra* note 54, at 876-77.

1 States, small claims courts originated in the early 1900's.⁷⁷ At the time, formal and
 2 cumbersome court procedures resulted in unreasonable delay and expense and
 3 made it almost impossible for the average citizen to collect on a small debt without
 4 hiring an attorney.⁷⁸ Small claims courts were intended to make it easier for the
 5 average citizen to use the court system.⁷⁹ All but four states in the nation now have
 6 small claims courts.⁸⁰

7 In California, legislation creating the small claims court was enacted in 1921,
 8 effective in 1922.⁸¹ The original jurisdictional limit of \$50 has increased over
 9 time:

10	Year	Small Claims Limit⁸²	Value in 2002⁸³
11	1922	\$ 50	\$ 540
12	1952	\$ 100	\$ 684
13	1958	\$ 150	\$ 941
14	1962	\$ 200	\$ 1,201
15	1968	\$ 300	\$ 1,563
16	1972	\$ 500	\$ 2,169
17	1977	\$ 750	\$ 2,244
18	1982	\$ 1,500	\$ 2,818
19	1989	\$ 2,000	\$ 2,924
20	1991	\$ 5,000	\$ 6,656

21 This history reflects a continuing rise in the size of the disputes submitted to the
 22 small claims courts, even when inflation is taken into account. The increase was
 23 particularly sharp in 1991 (from \$2,924 to \$6,656 in 2002 dollars), the last time
 24 the jurisdictional limit was increased.⁸⁴

77. Best, et al., *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 Fordham Urb. L.J. 343, 347 (1994).

78. *Id.*

79. *Id.*

80. Delaware, Georgia, Mississippi, and South Carolina do not have small claims courts. HALT, *National Small Claims Report Card* (11/26/02) <<http://www.halt.org/SmallClaims/screportcard.cfm>>.

81. 1921 Cal. Stat. ch. 125, § 1.

82. See 1921 Cal. Stat. ch. 125, § 1; 1951 Cal. Stat. ch. 1737, § 11; 1957 Cal. Stat. ch. 1201, § 1; 1961 Cal. Stat. ch. 2022, § 1; 1967 Cal. Stat. ch. 195, § 1; 1971 Cal. Stat. ch. 572, § 1; 1976 Cal. Stat. ch. 1289, § 2; 1981 Cal. Stat. ch. 958, § 2; 1988 Cal. Stat. ch. 481, § 1; 1990 Cal. Stat. ch. 1305, § 3.

83. These values were calculated using the CPI Inflation Calculator provided by the United States Department of Labor, Bureau of Labor Statistics (12/26/02) <<http://www.bls.gov>>.

84. Several attempts have been made to change the jurisdiction of the small claims court since the \$5,000 limit was established. See AB 2506 (Andal) (1993-94 Reg. Sess.) (proposed increase of small claims limit to \$10,000, with exceptions); AB 246 (Lempert) (1997-98 Reg. Sess.) (proposed increase of small claims limit to \$7,500; passed by Legislature but vetoed by Governor); SB 1342 (Lockyer) (1997-98 Reg. Sess.) (proposed increase of small claims limit to \$10,000 in auto accident case); AB 1131 (Ackerman) (1999-00 Reg. Sess.) (proposed small claims jurisdiction of suit by assignee in specified circumstances); SB 110 (Ackerman) (2001-02 Reg. Sess.) (same); see also 1998 Cal. Stat. ch. 240, § 2 (small claims action may be filed against defendant guarantor if demand does not exceed \$4,000 and

1 **Empirical Results**

2 PSI's web-based attorney survey showed that about 74% of the attorney
3 respondents supported some increase in the small claims limit.⁸⁵ By a substantial
4 margin, the most favored limit was \$10,000.⁸⁶ A limit of \$7,500 was the second
5 choice.⁸⁷ The level of support for increasing the limit was fairly consistent across
6 the state, regardless of region or size of county.⁸⁸

7 One reason given for raising the small claims limit was to keep up with
8 inflation.⁸⁹ The primary reason given, however, was that it is difficult if not
9 impossible for a party to find an attorney who will handle a case seeking \$5,000-
10 \$10,000 for a fee that is significantly less than the potential recovery.⁹⁰ Often, it is
11 even difficult to find an attorney to take the case at all.⁹¹

12 PSI further found that the use of small claims procedures raises issues relating to
13 the quality of justice. Responses to the web-based survey, as well as interviews of
14 judges, commissioners, and temporary judges in all three of the counties selected
15 for intensive study, indicated that many small claims litigants have difficulty
16 presenting their cases, even at the present jurisdictional limits.⁹² Persons who do
17 not speak English well can be particularly disadvantaged.⁹³ Some small claims
18 litigants speak English but are not articulate or confident enough to effectively
19 present their cases.⁹⁴

20 Although a small claims advisory service is supposed to be available in each
21 county,⁹⁵ PSI found that the quality of the service varied widely in the counties
22 that it studied.⁹⁶ Similarly, a recent law review article lauds California's small
23 claims advisory service as a model for other jurisdictions, but cautions that "this
24 promising program, which has proved to be extremely helpful to people coming

defendant charged a fee for its guaranty); 1995 Cal. Stat. ch. 366, § 1 (incarcerated plaintiff must exhaust administrative remedies before filing small claims case); 1994 Cal. Stat. ch. 479, § 10 (small claims jurisdiction relating to arbitration of fee dispute between attorney and client); 1994 Cal. Stat. ch. 971, § 1 (local entities exempted from two-claim limit of Section 116.231); 1993 Cal. Stat. ch. 1264, § 95 (small claims limit for suit against defendant guarantor increased from \$1,500 to \$2,500); 1992 Cal. Stat. ch. 8, § 1 (small claims jurisdiction over certain unlawful detainer cases discontinued); 1992 Cal. Stat. ch. 142, § 2 (authority to issue conditional judgment in small claims case).

85. PSI Report, *supra* note 33, at 31.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 32-33.

90. *Id.* at 33-34.

91. *Id.*

92. *Id.* at 34, 43-44.

93. *Id.* at 34, 43.

94. *Id.*

95. Sections 116.269, 116.940.

96. PSI Report, *supra* note 33, at 34-35.

1 through the small claims process, has suffered from under-funding and under-
2 staffing in many locations.”⁹⁷

3 PSI also found some dissatisfaction with the quality of temporary judges who
4 handle small claims cases, at least in Fresno and San Diego Counties.⁹⁸ In San
5 Francisco, most small claims cases are heard by a commissioner.⁹⁹ The temporary
6 judges used in San Francisco are paid employees who serve frequently.¹⁰⁰ In
7 contrast, the temporary judges used in Fresno and San Diego are volunteers who
8 serve irregularly.¹⁰¹

9 PSI further reported that some attorneys expressed concern about increasing the
10 jurisdictional limit due to the lack of discovery in a small claims case.¹⁰² Given the
11 minimal evidence that is sometimes presented in a small claims case, determining
12 the truthfulness of a claim can be challenging.¹⁰³ Some of the respondents to the
13 web-based survey cautioned that raising the stakes would increase the risk of a
14 wrong decision that causes serious harm.¹⁰⁴

15 California’s small claims system has, however, been favorably evaluated in a
16 nationwide empirical study conducted in late 2001 by HALT, an organization
17 dedicated to “helping all Americans handle their legal affairs simply, affordably,
18 and equitably.”¹⁰⁵ In the study, data was collected through a telephone survey of a
19 sampling of small claims courts in the four largest counties and six other randomly
20 selected counties in each state.¹⁰⁶ HALT graded each state in nine categories,¹⁰⁷
21 then determined an overall grade for the state. California received an overall grade
22 of “B,” which was the highest grade in the nation.¹⁰⁸ California received a grade of
23 “C” or better in each category except providing help with collecting a judgment, in
24 which it received an “F.”¹⁰⁹

97. Turner & McGee, *Small Claims Reform: A Means of Expanding Access to the American Civil Justice System*, 5 U.D.C. L. Rev. 177, 183 (2000).

98. PSI Report, *supra* note 33, at 44-45.

99. *Id.* at 18.

100. *Id.* at 18, 45.

101. *Id.* at 17-18, 44-45.

102. *Id.* at 45.

103. *Id.*

104. *Id.*

105. See HALT homepage (11/26/02) <<http://www.halt.org/INFO/infohome.cfm>>.

106. See *National Small Claims Report Card*, *supra* note 80.

107. The categories were: (1) dollar limit of the court, (2) availability of injunctive relief, (3) help with the collection process, (4) availability of advisors for litigants, (5) whether the court was open beyond the traditional 40-hour week, (6) existence of user-friendly complaint forms and guides to using the court, (7) amount of filing fees, (8) encouraging self-representation, and (9) availability of mediation. *Id.*

108. See HALT, *California Report Card* (11/26/02) <<http://www.halt.org/PDF/SC-RC/RC-CA.pdf>>.

109. *Id.* Similarly, a recent empirical study of the small claims court in Denver, Colorado, found that many small claims litigants have difficulty collecting on their judgments. Best, et al., *supra* note 77, at 344-45.

1 **Recommendation**

2 Based on the data gathered by PSI, other information obtained in the course of
3 this study, and the Commissioners' own extensive experiences with the civil
4 justice system, the Commission recommends the following reforms to improve
5 small claims procedures:

6 (1) The jurisdictional limit for a small claims case should be raised from \$5,000
7 to \$10,000.

8 (2) Steps should be taken to strengthen the small claims advisory service.

9 (3) The special jurisdictional limits for a small claims case against a defendant
10 guarantor should be eliminated.

11 (4) The provision allowing a party to file only two small claims cases per year
12 seeking over \$2,500 should be adjusted for inflation and increases in the cost of
13 litigation.

14 (5) A clarification should be made in the provision that gives the court
15 discretion to deny recovery of costs to a party who could have sued in the small
16 claims division but chose not to do so. Consistent with case law, the provision
17 should state that the court may deny recovery of attorney's fees in that situation,
18 as well as other types of costs.

19 (6) The Department of Consumer Affairs should study and report on the impact
20 of these reforms.

21 Each of these proposals is explained below. The Commission is also following the
22 progress of the Judicial Council in making improvements relating to the use of
23 temporary judges.

24 **Jurisdictional Limit**

25 Consistent with the results of PSI's web-based survey, the Commission
26 recommends that the jurisdictional limit for a small claims case be increased from
27 \$5,000 to \$10,000,¹¹⁰ effective January 1, 2005.¹¹¹ Such a reform would serve two
28 important purposes.

29 In part, an increase in the jurisdictional limit is warranted due to overall inflation
30 in the cost of goods and services since the limit was last adjusted on January 1,
31 1991, over a decade ago. Based on the Consumer Price Index, \$5,000 in 1991 was
32 equivalent to \$6,656 in 2002.¹¹² By 2005, the corresponding figure is likely to be
33 substantially higher. It may not be as high as \$10,000, but the jurisdictional limit
34 for a small claims case should be set high enough so that it will not need to be
35 adjusted again in the near future.

110. HALT proposes that the small claims limit be increased to \$20,000 to improve access to justice. See HALT, *Small Claims Fact Sheet* (11/26/02) <www.halt.org/SmallClaims/SCfactsheet.cfm>. The Commission's recommendation is modest in comparison.

111. The Commission plans to finalize a proposal for introduction in the Legislature in early 2004. If the proposal were enacted that year, under normal legislative procedures it would not go into effect until January 1, 2005. Cal. Const. art. IV, § 8(c).

112. See discussion of "History of Small Claims Procedures" *supra*.

1 More importantly, it is no longer cost-effective to hire an attorney to pursue a
2 claim for \$5,000-\$10,000. In fact, PSI reports that cases for up to \$15,000 “are too
3 low in value to pursue economically with an attorney.”¹¹³ That is consistent with
4 the Commission members’ own experiences,¹¹⁴ and with testimony presented to
5 the Commission in its study of the double liability problem in home improvement
6 contracts.¹¹⁵ It is not uncommon for a party with a claim for \$5,000-\$10,000 to
7 waive the excess and sue in the small claims division.¹¹⁶

8 The system thus fails to accord justice to persons who have legitimate claims
9 that exceed \$5,000 but are too small to realistically litigate with counsel. Such a
10 party is faced with the unacceptable choice of either forfeiting a part of the claim
11 or pursuing the claim in a manner that will yield little or no net benefit.

12 That situation needs to be remedied. Raising the jurisdictional limit of the small
13 claims division to \$10,000 would help to address the problem. A party with a
14 claim for \$10,000 or less could then sue in the small claims division, avoiding the
15 prohibitive expense of the normal litigation process.

16 In settling on this approach, the Commission examined whether pilot projects
17 should be conducted before raising the jurisdictional limit, whether special rules
18 should apply to a subset of small claims cases, whether the proposed jurisdictional
19 increase would be unconstitutional, and whether the reform would have adverse
20 fiscal consequences. For the following reasons, a simple increase in the
21 jurisdictional limit appears appropriate.

22 *Drawbacks of pilot projects*

23 An alternative to raising the jurisdictional limit statewide would be to conduct
24 pilot projects, raising the limit on an experimental basis in a few selected counties.
25 For example, PSI proposes to test the effects of raising the limit to \$7,500 and
26 \$10,000 in several counties.¹¹⁷ As envisioned by PSI, these pilot projects would

113. PSI Report, *supra* note 33, at 59.

114. It can even be difficult to find counsel to take a case in the \$15,000-\$50,000 range.

115. See *The Double Liability Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm’n Reports 281 (2001), in which the Commission proposed a good faith payment rule with a \$15,000 cap. In setting the amount of the cap, the Commission “recognize[d] that subcontractors and suppliers will rarely pursue the mechanic’s lien remedy under existing law for smaller amounts because of the costs involved.” *Id.* at 292.

116. See, e.g., PSI Report, *supra* note 33, at 41 (“It is difficult to find an attorney who will take a case with a claim amount under \$15,000, as the attorney fees would eat up most of the award. Some people take cases of this size to small claims court, forfeiting any possible amount above \$5,000.”); see also *id.* at 16 (“The judges pro tem we interviewed noted that most cases for \$5,000 involve actual damages in excess of \$5,000 and a plaintiff who is willing to waive the excess to sue in small claims court.”); Lewis, *Not So Small Anymore*, Cal. Law. 22 (June 1999) (“Five thousand dollars is all that a plaintiff can hope to get when taking a case to small claims court. But to avoid the hassles of traditional litigation — not to mention the expense — a growing number of litigants are willing to settle for that meager sum, even when their claim damages are worth three times as much.”). The magnitude of this effect is difficult to quantify. A disproportionate number of small claims cases involve a demand of \$5,000, but in some of these cases the demand may be inflated rather than reduced to conform to the jurisdictional limit.

117. PSI Report, *supra* note 33, Executive Summary at II.

1 include an extensive training program for temporary judges, small claims advisors
2 located at the court, and rigorous data collection.¹¹⁸

3 Such an experiment would offer no immediate assistance to persons with
4 \$5,000-\$10,000 claims that could not be brought in the pilot counties. Those
5 persons would still be caught in the quandary of being unable to sue for the full
6 amount in the small claims division, but also being unable to pursue the claim in a
7 cost-effective manner as a limited civil case.

8 Relief for such persons should not be delayed for purposes of conducting pilot
9 projects. The problem of access to justice in cases for \$5,000-\$10,000 is already
10 well-documented. Pilot projects are unlikely to provide much useful new
11 information.

12 In particular, pilot projects would be of little value in assessing the quality of
13 justice, because that aspect of court procedures is hard to measure and quantify.
14 Making accurate comparisons between counties would be difficult.

15 It would also be impossible to conduct a properly controlled experiment to test
16 the effects of raising the limit to \$10,000. Due to the wide and uncontrollable
17 variations among counties in such factors as demography, court personnel, court
18 procedures, and caseload size and composition, pilot projects would be of limited
19 assistance in predicting the effects of a statewide jurisdictional increase.

20 PSI advocates the use of pilot projects because if the limit was raised, “more
21 complicated cases with more difficult issues of proof probably would be brought
22 in small claims court.”¹¹⁹ PSI states that litigants “might have difficulty presenting
23 those cases, increasing the likelihood of injustice.”¹²⁰ But whether and to what
24 extent the complexity of a dispute correlates with the amount at stake is unclear.¹²¹
25 Further, PSI does not explain how pilot projects could help address the problem
26 that it posits.

27 PSI also says that if the jurisdictional limit was raised without conducting pilot
28 projects, the small claims caseload might increase so much as to strain the
29 resources of some courts and require greater use of volunteer temporary judges,
30 adversely affecting the quality of justice.¹²² The potential impact on judicial
31 resources is uncertain, however, because increasing the jurisdictional limit may
32 mean that resources previously devoted to limited civil cases become available for
33 small claims cases, which typically require less judicial attention than a limited
34 civil case. Any problems relating to the quality of justice, such as concerns

118. *Id.*, Executive Summary at III.

119. PSI Report, *supra* note 33, at 20.

120. *Id.*

121. *See, e.g.,* Selzer, *California’s Pilot Project in Economical Litigation*, 53 S. Cal. L. Rev. 1497, 1518 (1980) (“most defended cases, regardless of size, tend to be factually complex”); Pagter, et al., *supra* note 54, at 877 n.10 (“No correlation between jurisdictional amount and case complexity has been established.”).

122. PSI Report, *supra* note 33, at 56.

1 regarding temporary judges, should be tackled directly instead of used as an
2 excuse to delay raising the jurisdictional limit.

3 ***Keeping the system simple and inexpensive***

4 PSI further suggests the possibility of applying special procedural rules in small
5 claims cases for over \$5,000, such as allowing plaintiffs to appeal and permitting
6 the parties to have attorneys.¹²³ The theory is that these procedural protections
7 might help to prevent erroneous decisions in cases involving significant sums.

8 The Commission believes, however, that it is better to keep the small claims
9 system simple. Establishing special rules for cases over \$5,000 may invite
10 manipulation.¹²⁴ Allowing plaintiffs to appeal and permitting representation by
11 counsel would also increase the costs of bringing a small claims case, defeating the
12 purpose of raising the jurisdictional limit. Small claims procedures should be kept
13 uniform and inexpensive.

14 ***Constitutionality of increasing the jurisdictional limit***

15 Any increase in the small claims limit must comply with constitutional
16 constraints, particularly the right to a jury trial. In *Crouchman v. Superior Court*,
17 the California Supreme Court upheld the lack of a jury trial in a small claims case,
18 even at the trial de novo.¹²⁵ In so doing, the court relied on the lack of a jury trial
19 in a case for a modest sum under English common law in 1850, the year when
20 California adopted its Constitution.¹²⁶ The Court cautioned that “any attempt to
21 raise the small claims limit to a level which could no longer be considered a very
22 small amount, would necessitate re-evaluation of whether a jury trial is
23 constitutionally required for the de novo appeal.”¹²⁷ At the time of the Court’s
24 decision in 1988, the small claims limit was \$1,500.¹²⁸

25 It is clear to the Commission that few disputants regard \$5,000-\$10,000 as “a
26 very small monetary amount.” Such amounts are “very small,” however, in
27 relation to the cost of trying a limited civil case or an unlimited civil case. Such
28 amounts would also be small in relation to the expense of trying a small claims
29 appeal to a jury.¹²⁹

123. *Id.*, Executive Summary at II-III.

124. The Commission also considered the possibility of allowing defendants to opt out of small claims procedures. A key concern in rejecting this approach was the likelihood of gamesmanship, in which a defendant opts out simply to thwart the plaintiff’s choice of forum and force the plaintiff to litigate the claim under complex court procedures, in hopes that this will deter the plaintiff from pursuing recovery.

125. 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988).

126. *Id.* at 1173-78.

127. *Id.* at 1177.

128. 1981 Cal. Stat. ch. 958, § 2.

129. A claim of that size might also seem “very small” to an individual forced to interrupt normal activities to serve on such a jury.

1 Those points are critical, because the focus of the small claims system, both
2 now¹³⁰ and in 19th century England,¹³¹ is on affording an economical means of
3 pursuing a claim that is too small to litigate through normal court procedures. As
4 the Court explained in *Crouchman*, the “principle established by the English
5 common law as it existed in 1850 was that small claims, *as legislatively defined*
6 *within limits reasonably related to the value of money and the cost of litigation in*
7 *the contemporary economy*, were to be resolved expeditiously, without a jury and
8 without recourse to appeal.”¹³² In other words, what constitutes a “very small”
9 claim must be assessed in relation to the cost of litigation. Thus, while it is
10 impossible to predict with certainty, it seems likely that the California Supreme
11 Court would uphold the proposed increase in the small claims limit to \$10,000.¹³³

12 ***Fiscal impact***

13 The fiscal consequences of increasing the jurisdictional limit for small claims
14 cases are difficult to predict. There might be a loss of revenue from filing fees,
15 because the fee for filing a small claims case is less than the fee for filing a limited
16 civil case.¹³⁴ That effect might be offset, however, by savings attributable to
17 reduced demands on judicial resources, because a small claims case typically
18 requires less judicial attention than a limited civil case. In addition, many cases in
19 the \$5,000-\$10,000 range are already brought in the small claims division. It is
20 unclear how many cases now brought as limited civil cases would instead be
21 pursued as small claims cases if the jurisdictional limit were raised. Regardless of
22 the number of such cases, however, the filing fees can be adjusted to help ensure
23 that there is adequate funding to achieve justice in the cases that would be affected
24 by the jurisdictional increase. In particular, revenue from the filing fees for such
25 cases should be directed towards the small claims advisory service, as discussed
26 below.

27 **Small Claims Advisory Service**

28 Small claims advisors are critical to the functioning of a small claims division.
29 They are the key to overcoming the difficulties that PSI reported regarding
30 presentation of small claims cases.¹³⁵ If a litigant has poor English skills, a small
31 claims advisor can help the litigant find an interpreter to assist in court, or simply
32 assure the litigant that it is permissible to bring a friend to court to provide such

130. See Section 116.120.

131. See *Crouchman*, 45 Cal. 3d at 1175-77.

132. *Id.* at 1177 (emphasis added).

133. If the Court concludes otherwise, the problem could be addressed by permitting a jury trial on appeal in a small claims case. That would be manageable for the litigants (albeit expensive), because they are already permitted to be represented by counsel on appeal. Section 116.770(c).

134. Compare Section 116.230 (filing fee for small claims case) with Gov't Code § 72055 (filing fee for first paper in limited civil case).

135. See discussion of “Empirical Results” *supra*.

1 assistance.¹³⁶ If a litigant is confused or disorganized, a small claims advisor can
2 help the litigant prepare to make an effective presentation of the case. If a litigant
3 is nervous, a small claims advisor can explain what to expect and bolster the
4 litigant's confidence.

5 Because of the importance of the small claims advisory service, the Commission
6 recommends that funding for the program be increased. This could be achieved by
7 charging more for filing a small claims case in which the demand exceeds
8 \$5,000¹³⁷ than for filing a small claims case in which the demand is \$5,000 or
9 less.¹³⁸ Revenue attributable to the fee differential¹³⁹ would be allocated to the
10 small claims advisory service, to help ensure that high quality justice is provided
11 in small claims cases.¹⁴⁰ The remainder of the fee would be allocated as under
12 existing law.

13 The Commission further recommends that a provision be added to the codes
14 specifying the types of advice to be provided by small claims advisors. In
15 particular, it should be made explicit that the duties of a small claims advisor
16 include giving advice on how to enforce a judgment in a small claims action.¹⁴¹

17 **Special Jurisdictional Limits for Claims Against Guarantors**

18 The \$5,000 limit applicable to most small claims cases does not apply to a case
19 against a defendant guarantor. Instead, the limit is \$2,500 if the guarantor provided
20 the guaranty free of charge, and \$4,000 if the guarantor charged a fee for its
21 services.¹⁴²

22 In the past, however, the same small claims limit applied to a claim against a
23 guarantor as to other types of claims.¹⁴³ This situation is preferable, because it

136. The Commission considered the possibility of having the state provide free interpreters to small claims litigants who do not speak English well. The Commission decided against this because of the expense, because there is a shortage of certified interpreters, and because issues relating to use of such interpreters have been controversial.

137. For example, a fee of \$40 if the party has previously filed no more than 12 small claims cases within the state within the previous 12 months.

138. Under Section 116.230, the fee is \$20 if the party has previously filed no more than 12 small claims cases within the state within the previous 12 months.

139. For example, \$40 (from *supra* note 137) minus \$20 (from *supra* note 138) equals a fee differential of \$20.

140. See the proposed amendments of Sections 116.230 (filing fee for small claims case) and 116.910 (allocation of fees) *infra*.

141. HALT identified the lack of assistance in collecting judgments as a serious deficiency in California's small claims system. See *supra* note 109 and accompanying text.

142. Section 116.220(c). The \$4,000 limit also applies if the defendant guarantor is the Registrar of the Contractors' State License Board. *Id.* The \$4,000 limit was enacted in 1998, in a bill sponsored by the Contractors' State License Board. 1998 Cal. Stat. ch. 240, § 2. Before then, the same jurisdictional limit applied to both paid and unpaid guarantors.

143. See, e.g., 1981 Cal. Stat. ch. 958, § 2 (\$1,500 limit applicable to all claims for recovery of money). The differentiation between a claim against a guarantor and other types of claims commenced in 1989, when the small claims limit was increased to \$2,000 for most claims but left at \$1,500 for a claim against a guarantor. See 1988 Cal. Stat. ch. 481, § 1 (effective Jan. 1, 1989).

1 allows a creditor to sue both the primary obligor and a guarantor in a single action
2 in the small claims division, instead of having to pursue separate actions if the
3 claim exceeds the special limit for a guarantor (\$2,500 or \$4,000) but is less than
4 the normal jurisdictional limit (\$5,000).

5 In the interest of simplicity, the Commission recommends that the special limits
6 for defendant guarantors be eliminated. The proposed \$10,000 jurisdictional limit
7 for small claims cases should apply to all types of claims.

8 **Limit of Two Claims Per Year Exceeding \$2,500**

9 Although the jurisdictional limit for most small claims cases is \$5,000, a party is
10 permitted to file only two small claims cases per year in which the demand
11 exceeds \$2,500.¹⁴⁴ This two-claim cap prevents businesses from regularly using
12 the small claims division to collect on debts exceeding \$2,500. It thus helps to
13 preserve the institutional focus on serving the needs of individuals.¹⁴⁵

14 The two-claim cap has been in place since 1991, however, without adjustment
15 for inflation or increases in the cost of litigation.¹⁴⁶ It should be increased along
16 with the jurisdictional limit. Because the Commission proposes to double the
17 jurisdictional limit, the two-claim cap should also be doubled, increasing to \$5,000
18 effective January 1, 2005.

19 **Award of Attorney's Fees in a Case That Could Have Been Filed as a Small Claims Case** 20 **But Was Not**

21 To improve the processing of cases involving small amounts, the Commission
22 also recommends a revision of Section 1033(b)(1), which applies when a party
23 chooses to bring a case as a limited civil case instead of as a small claims case. If
24 the party prevails but recovers less than the jurisdictional limit of a small claims
25 case, under Section 1033(b)(1) “the court may, in its discretion, allow or deny
26 costs to the prevailing party, or may allow costs in part in any amount as it deems
27 proper.”

28 By allowing the court to limit the recovery of costs, the statute provides an
29 incentive to sue in the small claims division when possible. Importantly, the term
30 “costs” has been interpreted to include attorney’s fees in this context.¹⁴⁷ That
31 significantly strengthens the impact of the provision, because attorney’s fees are
32 generally much more substantial than other items of costs.

33 The term “costs” is subject to some ambiguity, however, because it is not used
34 consistently throughout the codes. Sometimes it is used to encompass attorney’s

144. Section 116.231. This restriction does not apply to a local entity. *Id.*

145. See Section 116.120.

146. See 1990 Cal. Stat. ch. 1683, § 4 (effective Jan. 1, 1991).

147. *Dorman v. DWLC Corp.*, 35 Cal. App. 4th 1808, 1815, 42 Cal. Rptr. 2d 459 (1995) (“discretion to award attorney fees pursuant to section 1717 is controlled by the provisions of section 1033 in that situation where the primary damages awarded are less than the jurisdictional limit of a court of lesser jurisdiction”).

1 fees, sometimes it is not, and sometimes the usage is unclear.¹⁴⁸ To ensure that
2 litigants, attorneys, and judges clearly understand that Section 1033(b)(1) permits
3 a court to deny attorney’s fees as well as other types of costs, the provision should
4 be revised to specifically refer to attorney’s fees.

5 That nonsubstantive revision would bolster the impact of the provision by
6 underscoring the incentive to sue in the small claims division — i.e., the net
7 recovery may be greater if a dispute is pursued as a small claims case than if it is
8 pursued as a limited civil case, because a small claims litigant incurs no attorney’s
9 fees whereas a litigant in a limited civil case may incur substantial attorney’s fees
10 that the court declines to award under Section 1033(b)(1).

11 That effect may be of particular importance to a consumer in an action on a
12 consumer contract, which typically includes an attorney’s fees provision.¹⁴⁹
13 Because the contract provides for recovery of attorney’s fees, the seller may
14 consider hiring an attorney to pursue the claim as a limited civil case, instead of
15 pursuing it as a small claims case. Due to the likelihood of volume business and
16 potential recovery of attorney’s fees, the seller may well be able to retain counsel.

17 In contrast, the consumer probably would be unable to hire counsel to defend the
18 action at an affordable price.¹⁵⁰ If the seller decided to pursue the claim as a
19 limited civil case, the consumer might be forced to proceed without counsel,
20 unable to understand the court procedures and effectively defend the action, and
21 might be required to pay both the amount demanded and the other side’s attorney’s
22 fees upon losing. Even if the consumer happened to prevail, the consumer would

148. For example, Section 1033.5(a)(10) states that attorney’s fees authorized by contract, statute, or law “are allowable *as costs* under Section 1032.” (Emphasis added.) Thus, “costs” under Section 1032 include attorney’s fees.

In contrast, other provisions appear to differentiate between attorney’s fees and “costs,” using the term “costs” only to refer to traditional court costs such as filing fees. *See, e.g.*, Bus. & Prof. Code § 6203(a) (“The award shall not include any award to either party for costs or attorney’s fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney’s fees.”); Fin. Code § 1810.5 (“The court shall award the prevailing party costs and attorney’s fees.”); Gov’t Code § 19632 (“In any proceeding brought pursuant to Section 1094.5 of the Code of Civil Procedure, for the purpose of inquiring into the validity of any final administrative order or decision by the board, an award of costs or attorney’s fees or both to the petitioner shall be borne by the real party in interest . . .”).

For further discussion of this problem, see Commission Staff Memorandum 2001-17 (Jan. 25, 2001), Attachment pp. 3-4, 19. The Commission plans to address this issue in its study of attorney’s fees.

149. Civil Code Section 1799.201(b) defines “consumer contract” as follows:

(b) “Consumer contract” means a writing prepared by a seller and, except as provided in subdivision (c) of Section 1799.202, signed, or to be signed, by a consumer, which provides (1) for the sale or lease of goods or services that are purchased or leased primarily for personal, family, or household purposes, or (2) for extension of credit, the proceeds of which are used primarily for personal, family or household purposes. Without affecting the enforceability of any incidental provision contained therein, an application for credit shall not be considered to be a consumer contract for purposes of this section even if it contains incidental provisions, such as the consumer’s consent to a credit review, a certification of the accuracy of the information furnished, or the consumer’s agreement to the terms that will be furnished to the consumer pursuant to this title.

150. See discussions of “Empirical Results” and “Jurisdictional Limit” *supra*.

1 not be entitled to a fee award, because a self-represented litigant cannot recover
2 attorney's fees.¹⁵¹

3 That situation would be decidedly unfair to the consumer. It would be better if
4 the seller proceeded in the small claims division, because then neither party would
5 be represented by counsel, the court procedures would be understandable to both
6 sides, and the stakes would not be inflated by a potential fee recovery that, as a
7 practical matter, is available to only one side. By providing an incentive to sue in
8 the small claims division, Section 1033(b)(1) helps to ensure that the parties
9 litigate on a relatively equal basis. To strengthen that effect, the provision should
10 be revised to make clear that the court is authorized to deny recovery of attorney's
11 fees, as case law already provides.

12 **Use of Temporary Judges in Small Claims Cases**

13 To improve the quality of justice in cases involving small amounts, it may also
14 be appropriate to make changes regarding the use of temporary judges, which PSI
15 identified as a problem area.¹⁵² This might involve administrative reforms, new
16 training procedures, new rules of court regulating temporary judges, or perhaps
17 legislation. The Judicial Council is studying this topic. The Commission makes no
18 recommendation on the matter at present.

19 **Monitoring the Effects of the Reforms**

20 The Department of Consumer Affairs (or another state entity with appropriate
21 expertise) should be directed to study, collect data on, and report to the Legislature
22 on the effects of increasing the jurisdictional limit to \$10,000, and the effects of
23 the other proposed changes to small claims procedures. This requirement would
24 ensure that the reform is carefully monitored and the results assessed for purposes
25 of determining whether other legislative steps are necessary. It would also serve as
26 a valuable reference source the next time that the Legislature considers increasing
27 the jurisdictional limit.

28 **Need for Reform**

29 It is an unfortunate reality that it takes time and resources to resolve disputes
30 fairly and justly, but time and resources are limited. The ultimate goal of a justice
31 system is to maximize the amount of justice achieved, within constraints of time
32 and resources available.

33 The importance of achieving justice in a case is not necessarily linked to the
34 amount at stake. As the Legislature recognized in creating the small claims
35 divisions, disputes involving relatively small amounts can be of tremendous
36 importance to the litigants.¹⁵³ It is crucial to provide economically reasonable

151. *Trope v. Katz*, 11 Cal. 4th 274, 902 P.2d 259, 45 Cal. Rptr. 2d 241 (1995).

152. See discussion of "Empirical Results" *supra*.

153. See *supra* note 39.

1 means of resolving these disputes, without sacrificing the quality of justice.
2 Ordinary citizens should be able to obtain fair results in court, so that they are
3 satisfied with their justice system and are not tempted to resort to illegal self-help
4 measures.¹⁵⁴

5 It may be easy to identify problems with the justice system, but it is hard to find
6 solutions.¹⁵⁵ There is no panacea for providing effective access to justice to all
7 persons in the California courts. It is critical, however, to take steps towards that
8 goal, even if they represent only partial or imperfect solutions. The Commission
9 recognizes that its proposed reforms of the small claims system will not make the
10 system work flawlessly. The proposed legislation would be a step towards a more
11 effective system, however, which may lay the groundwork for future
12 improvements.

13 LIMITED CIVIL CASES

14 Most cases seeking \$25,000 or less are limited civil cases,¹⁵⁶ which are subject
15 to simplified procedures known as economic litigation procedures.¹⁵⁷ The theory
16 underlying the use of economic litigation procedures is similar to that underlying
17 the use of small claims procedures: Simplified procedures are necessary because
18 the cost of litigating a small case using standard procedures is prohibitive.¹⁵⁸

19 Existing Law

20 Economic litigation procedures apply to any limited civil case, other than a small
21 claims case or a summary proceeding to obtain possession of real property.¹⁵⁹ An
22 action may, however, be withdrawn from economic litigation procedures “upon a
23 showing that it is impractical to prosecute or defend the action within the
24 limitations” of those procedures.¹⁶⁰

25 Cases subject to economic litigation procedures are governed by the standard
26 rules for civil cases, except as otherwise specified in the economic litigation
27 rules.¹⁶¹ The special economic litigation rules are:

154. *Houghtaling*, 17 Cal. App. 4th at 1144 n.6 (Timlin, J., concurring and dissenting); *see also* Best, et al., *supra* note 77, at 344.

155. Selzer, *supra* note 121, at 1525.

156. See Section 85.

157. Sections 90-100; see discussion of “Impact of Trial Court Unification on Civil Procedure” *supra*. Limited civil cases are also subject to the other procedures traditionally applied to municipal court cases, such as appeal to the appellate division of the superior court. Cal. Const. art. VI, § 11; Section 904.2.

158. 1982 Cal. Stat. ch. 1581, § 5; Epstein, *Development of the Economical Litigation Statutes, in Practice in Municipal Court Under the New Pleadings and Procedures Rules*, at 1 (Cal. Cont. Ed. Bar 1983).

159. Section 91(b).

160. Section 91(c).

161. Section 90.

1 *Simplified pleadings.* The only pleadings allowed are complaints, answers,
2 cross-complaints, answers to cross-complaints, and general demurrers. An answer
3 need not be verified, even if the complaint or cross-complaint is verified. Special
4 demurrers are not allowed.¹⁶²

5 *Motions.* All motions are permitted, but a motion to strike is allowed only on
6 the ground that “the damages or relief sought are not supported by the allegations
7 of the complaint.”¹⁶³

8 *Case questionnaire.* The plaintiff has the option of serving a case questionnaire
9 with the complaint, using a Judicial Council form.¹⁶⁴ These forms are intended to
10 “elicit fundamental information about each party’s case, including names and
11 addresses of all witnesses with knowledge of any relevant facts, a list of all
12 documents relevant to the case, a statement of the nature and amount of damages,
13 and information covering insurance coverages, injuries and treating
14 physicians.”¹⁶⁵ If the plaintiff exercises this option, the plaintiff must complete
15 the questionnaire and serve the completed questionnaire with the complaint, along
16 with a blank questionnaire for the defendant to complete and serve at the same
17 time as the defendant’s answer.¹⁶⁶

18 *Limited discovery.* As to each adverse party, a party may conduct only the
19 following discovery: (1) one oral or written deposition, which may include service
20 of a subpoena duces tecum on the deponent, (2) physical and mental
21 examinations, (3) the identity of expert witnesses, and (4) any combination of
22 interrogatories, inspection demands, and requests for admission that totals no
23 more than 35 altogether.¹⁶⁷ On motion, the court may permit additional discovery,
24 “but only upon a showing that the moving party will be unable to prosecute or
25 defend the action effectively without the additional discovery.”¹⁶⁸

26 *Statement of evidence and witnesses.* A party may serve on any other party a
27 request for a statement of evidence and witnesses, in which the responding party
28 must provide the names and addresses of any witnesses that the party intends to
29 call at trial, as well as a description of any physical or documentary evidence to be
30 offered at trial. If the responding party fails to disclose evidence or witnesses as
31 required, the court may exclude the omitted evidence or testimony at trial.¹⁶⁹

32 *Prepared testimony.* Under specified conditions, a party may present affidavits
33 or declarations instead of live testimony at trial.¹⁷⁰

34 *No collateral estoppel.* A judgment or final order in a case subject to economic
35 litigation procedures “is conclusive between the parties and their successors in
36 interest but does not operate as collateral estoppel of a party or a successor in
37 interest to a party in other litigation with a person who was not a party or a

162. Section 92(a)-(c).

163. Section 92(d)-(e).

164. Section 93(a).

165. Section 93(c).

166. Section 93(a)-(b).

167. Section 94.

168. Section 95.

169. Sections 96-97.

170. Section 98.

1 successor in interest to a party to the action in which the judgment or order is
2 rendered.”¹⁷¹

3 **History of Economic Litigation Procedures**

4 In 1976, the Legislature approved economic litigation pilot projects, which
5 began in 1978 in Fresno and Los Angeles Counties, in the superior court and one
6 municipal court in each of these counties. The pilot projects experimented with the
7 use of simplified pleadings, practices, and procedures in cases for \$25,000 or
8 less.¹⁷²

9 The pilot projects were the subject of several studies.¹⁷³ Following these studies,
10 legislation was enacted extending economic litigation procedures to all civil cases
11 pending in the municipal and justice courts on or after July 1, 1983, in which the
12 amount in controversy was \$15,000 or less.¹⁷⁴ These economic litigation
13 procedures were essentially the same as the ones used today; some of the less
14 popular features of the pilot projects were not continued.¹⁷⁵

15 Effective January 1, 1986, the monetary limit for economic litigation procedures
16 was increased from \$15,000 to \$25,000.¹⁷⁶ The monetary limit remains at \$25,000
17 today, but the terminology was revised in 1998 to accommodate trial court
18 unification.¹⁷⁷ Thus, instead of stating that economic litigation procedures apply to
19 every municipal and justice court civil action for \$25,000 or less, the statute now
20 states that economic litigation procedures apply to every limited civil case (with
21 specified exceptions).¹⁷⁸

22 **Empirical Results**

23 PSI obtained data regarding the application of economic litigation procedures
24 generally, as well as data regarding specific procedural devices.

25 ***Jurisdictional limit***

26 PSI found that “[b]oth plaintiff’s attorneys and defendant’s attorneys who handle
27 smaller civil cases were supportive of raising the limited civil jurisdictional limit
28 at least to \$50,000.”¹⁷⁹ According to PSI, both groups “believe that the limited

171. Section 99.

172. 1976 Cal. Stat. ch. 960, § 1.

173. The results of these studies are summarized in *A Report to the Judicial Council by the Economical Litigation Review Committee* (April 1, 1982).

174. 1982 Cal. Stat. ch. 1581.

175. For example, the special procedures pertaining to jury selection and modified rules of evidence were not adopted statewide. See Epstein, *supra* note 158, at 9.

176. 1985 Cal. Stat. ch. 1383, § 2.

177. 1998 Cal. Stat. ch. 931, § 36.

178. Section 91(a).

179. PSI Report, *supra* note 33, at 35.

1 civil process has value in reducing the potential for discovery abuse.”¹⁸⁰ Defense
2 attorneys “were willing to sacrifice full discovery in trade for the limit on the
3 award.”¹⁸¹ Plaintiff’s counsel expressed concern, however, that “raising the limit
4 would make the \$25,000-\$50,000 cases harder to settle, as the award cap would
5 reduce the incentive on the part of defendants and insurance companies to
6 settle.”¹⁸²

7 PSI further found that about 64% of the attorneys who responded to the web-
8 based survey “support some increase in the limited civil jurisdictional limit, with
9 the majority favoring a limit of \$50,000.”¹⁸³ The level of support for increasing the
10 limit to that level was “fairly consistent across the state, regardless of region or
11 size of county.”¹⁸⁴

12 PSI’s interviews yielded the same result. As PSI explains, there was “consistent
13 support among judges and attorneys whom we interviewed for raising the limits at
14 least to \$50,000 in limited civil.”¹⁸⁵ For a number of reasons, the judges and
15 attorneys that PSI interviewed “generally did not support” raising the limit to more
16 than \$50,000.¹⁸⁶

17 *Limits on discovery*

18 PSI’s web-based survey asked attorneys to rate specific aspects of economic
19 litigation procedures, such as the limits on discovery, the statement of evidence
20 and witnesses, the special pleading rules, the case questionnaire, and the use of
21 prepared testimony. The opinions on the discovery limits showed the greatest
22 divergence of opinion.¹⁸⁷ Although 54% of the attorneys said that the limit on
23 depositions had a positive effect, 31% said that the limit was detrimental.¹⁸⁸
24 Similarly, 61% said that the other discovery limits had a positive effect, but 27%
25 said that those limits were detrimental.¹⁸⁹

26 The attorney interviews indicated that an important issue with regard to the
27 quality of justice in limited civil cases is “the ability to obtain the information
28 necessary to analyze a case for settlement and to prove a case at trial.”¹⁹⁰
29 According to PSI, if the monetary limit for economic litigation procedures is

180. *Id.* at 35-36.

181. *Id.* at 36.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.* at 57.

186. *Id.* at 58.

187. *Id.* at 39.

188. *Id.*

189. *Id.*

190. *Id.* at 46.

1 raised, “there may be cases falling into the limited civil jurisdiction that require
2 additional discovery above the present statutory limits.”¹⁹¹

3 ***Statement of evidence and witnesses***

4 PSI’s web-based survey found very strong support for the statement of evidence
5 and witnesses. Fully 63% of the attorneys said that the statement of evidence and
6 witnesses had a positive effect, 16% said it had no effect, and only 6% said that it
7 had a negative effect.¹⁹² Many attorneys said that the statement of evidence and
8 witnesses should be authorized in unlimited civil cases, as well as in limited civil
9 cases.¹⁹³

10 PSI summed up the situation by stating that the statement of evidence and
11 witnesses is an “important tool for lawyers in controlling the trial in limited civil
12 cases.”¹⁹⁴ “In essence it is used as an elimination tool, similarly to the way
13 interrogatories are typically used, in that failure to disclose a witness or item of
14 evidence by a party precludes that party from presenting the evidence at trial.”¹⁹⁵

15 ***Other simplified procedures***

16 PSI further found that 61% of the attorneys responding to the web-based survey
17 gave a positive rating to the use of simplified pleadings in limited civil cases.¹⁹⁶
18 Almost a majority of the attorneys gave a positive rating to the use of testimony by
19 affidavit and the lack of special demurrers.¹⁹⁷

20 The case questionnaire was not as well-received. It was only rated positively by
21 45% of the attorneys. Another 30% said that it had no effect, while 8% rated it
22 negatively.¹⁹⁸

23 **Recommendation**

24 In light of PSI’s results and other information available, the Commission
25 recommends that the jurisdictional limit for a limited civil case be increased to
26 \$50,000.¹⁹⁹ As PSI explains, such an increase is necessary because

27 the original reason for limiting discovery in cases under \$25,000, that the cost of
28 litigation in those cases would make attorney representation uneconomical, both

191. *Id.*

192. *Id.* at 40, 47-48.

193. *Id.* at 48.

194. *Id.* at 47.

195. *Id.*

196. *Id.* at 40.

197. *Id.*

198. *Id.*

199. The Commission is aware of only one previous bill to extend economic litigation procedures to cases seeking over \$25,000. See AB 3381 (Baugh) (1995-96 Reg. Sess.) (proposing to raise the municipal court jurisdictional limit to \$50,000).

1 in hourly fee cases and contingent fee cases, now applies equally to cases under
2 \$50,000. Without limits on discovery in hourly fee cases, it would be hard today
3 to bring a case to trial for under \$50,000, including attorney fees and costs. In
4 contingent fee cases, the time spent by the attorney on the case could easily
5 exceed the fee, making it uneconomical for the attorney to take and risk the
6 possibility of no recovery (and thus no fee).²⁰⁰

7 The jurisdictional limit should also be raised to account for inflation.²⁰¹

8 PSI states that the limit could either be raised to \$50,000 statewide, or as a pilot
9 project in a few counties.²⁰² Although PSI prefers the latter approach,²⁰³ the
10 Commission does not think that the delay inherent in conducting a pilot project is
11 justified, given the need for reform, the strong and broad support for increasing the
12 jurisdictional limit to \$50,000, and the limited value of a pilot project.²⁰⁴ To
13 promptly improve access to justice, the limit should simply be increased statewide
14 effective January 1, 2005.

15 The Commission sees no need to modify the economic litigation procedures in
16 any respect in conjunction with the jurisdictional increase.²⁰⁵ Those procedures
17 were carefully crafted at the time when they were extended statewide. To address
18 the concerns regarding the discovery limits,²⁰⁶ PSI proposes conducting a pilot
19 project in which higher discovery limits are used for larger limited civil cases,²⁰⁷
20 or a “reasonable safety valve” is provided to allow for extra discovery in cases that
21 require it.²⁰⁸ But a mechanism for obtaining extra discovery in a case subject to

200. PSI Report, *supra* note 33, at 58.

201. The impact of inflation depends on whether one looks to the \$25,000 limit used in the economic litigation pilot projects that began in 1978 (equivalent to approximately \$69,515 in 2002, according to the CPI Inflation Calculator provided by the United States Department of Labor, Bureau of Labor Statistics(12/26/02) <<http://www.bls.gov>>), the \$15,000 limit that applied when economic litigation procedures were extended statewide in 1983 (equivalent to approximately \$28,182 in 2002), or the \$25,000 limit established in 1986, the last time that the limit was raised (equivalent to approximately \$41,355 in 2002).

202. PSI Report, *supra* note 33, at 57.

203. *Id.* at 61-62.

204. See discussion of “Drawbacks of pilot projects” *supra*.

205. The Commission recognizes the importance of continuing efforts to improve those procedures, but would not link the proposed jurisdictional increase to any reform along those lines.

206. See discussion of “Limits on discovery” *supra*.

207. PSI Report, *supra* note 33, at 47. For example, a party in a case for more than \$25,000 could be permitted to take two depositions as to each adverse party, instead of only one. *Id.* at 58.

208. *Id.* at 47. PSI also suggests the possibility of allowing a party to “move a case more easily to unlimited civil at any time during the period of ongoing discovery when it appears that the value of the case could exceed the limited civil limit.” This idea may sound appealing, but in fact reclassifying a case from limited civil to unlimited civil is already a simple process: The party only needs to amend the complaint to seek increased damages and pay a \$125 reclassification fee. Sections 403.020, 403.060. A motion for reclassification is not necessary; a motion for leave to amend the complaint is required only if the complaint has already been amended or a response has already been filed. Section 427. Motions to amend are routinely granted and amendments are frequently permitted by stipulation, so it is questionable whether anything really needs to be done to ease the reclassification process.

1 economic litigation procedures already exists.²⁰⁹ If that mechanism proves
2 inadequate once the jurisdictional limit is increased, adjustments can be made at
3 that time, when the nature of the problem (if any) is more clear.

4 The Commission also recommends against experimenting with a fourth
5 procedural track for cases seeking \$5,000-\$15,000, a possibility suggested by PSI
6 due to the difficulties in obtaining counsel for cases in that range.²¹⁰ California's
7 civil justice system is already complex. Adding a fourth procedural track might
8 create more problems than it would solve, such as new reclassification issues, new
9 computerization and filing complications, and new needs for training attorneys and
10 self-represented litigants.

11 Instead, the Legislature should stick with the current three track system,
12 modified as previously discussed to increase the jurisdictional limits for small
13 claims cases and limited civil cases, improve funding for the small claims advisory
14 service, eliminate the special jurisdictional limits for claims against a guarantor,
15 adjust the two-claim cap, and make clear that a court may deny recovery of
16 attorney's fees to a party who could have sued in the small claims division but
17 elected not to do so. These reforms would help to ensure that the justice system is
18 accessible to persons with claims for relatively small amounts, and that the quality
19 of justice in these situations is high.

20 To effectively achieve these goals, however, it is critical that all concerned —
21 counsel, judges, court administrators, and others — treat such cases with the same
22 level of respect as other civil cases in the system. The parties and the public would
23 be best served under these circumstances.

209. Section 95; see *supra* text accompanying note 168.

210. PSI proposes that a pilot project test a new process as a voluntary alternative to the present small claims and limited civil processes. This new process would apply to cases with an amount in controversy under \$15,000 (except unlawful detainer cases), and would be subject to an award cap of \$15,000. As envisioned by PSI, this new procedural track would have the following features: Simplified notice pleading as in small claims cases, an answer required of the defendant, a statement of evidence and witnesses on the request of either party (as under economic litigation procedures), no additional discovery permitted, simplified trial procedure as in small claims courts, attorneys permitted at trial, all trials before a judge or commissioner, no jury trials, appeal on the record, and possibly also immunity from liability for malpractice based on failure to remove a case from the process. PSI Report, *supra* note 33, at 59-60.

PROPOSED LEGISLATION

1 ☞ **Note.** The following draft would implement the Commission’s proposed reforms relating to
2 the jurisdictional limits for small claims cases and limited civil cases. It also includes a few
3 conforming revisions (Code Civ. Proc. §§ 86, 86.1, 1710.20; Food & Agric. Code §§ 7581,
4 12647, 27601, 52514, 53564). The Commission has not yet done a comprehensive search for
5 provisions that need to be conformed. Further conforming revisions will be added later.

6 **Code Civ. Proc. § 85 (amended). Limited civil cases**

7 SEC. _____. Section 85 of the Code of Civil Procedure is amended to read:

8 85. An action or special proceeding shall be treated as a limited civil case if all
9 of the following conditions are satisfied, and, notwithstanding any statute that
10 classifies an action or special proceeding as a limited civil case, an action or
11 special proceeding shall not be treated as a limited civil case unless all of the
12 following conditions are satisfied:

13 (a) The amount in controversy does not exceed ~~twenty-five thousand dollars~~
14 ~~(\$25,000)~~ fifty thousand dollars (\$50,000). As used in this section, “amount in
15 controversy” means the amount of the demand, or the recovery sought, or the
16 value of the property, or the amount of the lien, that is in controversy in the action,
17 exclusive of attorneys’ fees, interest, and costs.

18 (b) The relief sought is a type that may be granted in a limited civil case.

19 (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise,
20 is exclusively of a type described in one or more statutes that classify an action or
21 special proceeding as a limited civil case or that provide that an action or special
22 proceeding is within the original jurisdiction of the municipal court, including, but
23 not limited to, the following provisions:

24 (1) Section 798.61 of the Civil Code.

25 (2) Section 1719 of the Civil Code.

26 (3) Section 3342.5 of the Civil Code.

27 (4) Section 86.

28 (5) Section 86.1.

29 (6) Section 1710.20.

30 (7) Section 7581 of the Food and Agricultural Code.

31 (8) Section 12647 of the Food and Agricultural Code.

32 (9) Section 27601 of the Food and Agricultural Code.

33 (10) Section 31503 of the Food and Agricultural Code.

34 (11) Section 31621 of the Food and Agricultural Code.

35 (12) Section 52514 of the Food and Agricultural Code.

36 (13) Section 53564 of the Food and Agricultural Code.

37 (14) Section 53069.4 of the Government Code.

38 (15) Section 53075.6 of the Government Code.

39 (16) Section 53075.61 of the Government Code.

40 (17) Section 5411.5 of the Public Utilities Code.

41 (18) Section 9872.1 of the Vehicle Code.

- 1 (19) Section 10751 of the Vehicle Code.
- 2 (20) Section 14607.6 of the Vehicle Code.
- 3 (21) Section 40230 of the Vehicle Code.
- 4 (22) Section 40256 of the Vehicle Code.

5 **Comment.** Subdivision (a) of Section 85 is amended to increase the maximum amount in
6 controversy for a limited civil case.

7 ☞ **Note.** Section 85(c) refers to statutes that “provide that an action or special proceeding is
8 within the original jurisdiction of the municipal court.” The Legislature has cleaned many
9 municipal court references out of the codes on Commission recommendation. See 2002 Cal. Stat.
10 ch. 784. A few such references still remain, however, because they require further study or
11 because stakeholders requested that the Commission refrain from technical clean-up pending
12 resolution of other issues relating to the pertinent provisions. The Commission plans to propose
13 amendments to Section 85(c) when all provisions referring to municipal court jurisdiction have
14 been amended to reflect trial court unification.

15 **Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

16 SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

17 86. (a) The following civil cases and proceedings are limited civil cases:

18 (1) Cases at law in which the demand, exclusive of interest, or the value of the
19 property in controversy ~~amounts to twenty-five thousand dollars (\$25,000) or less~~
20 does not exceed the maximum amount in controversy for a limited civil case as
21 provided in Section 85. This paragraph does not apply to cases that involve the
22 legality of any tax, impost, assessment, toll, or municipal fine, except actions to
23 enforce payment of delinquent unsecured personal property taxes if the legality of
24 the tax is not contested by the defendant.

25 (2) Actions for dissolution of partnership where the total assets of the partnership
26 do not exceed ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in
27 controversy for a limited civil case as provided in Section 85; actions of
28 interpleader where the amount of money or the value of the property involved does
29 not exceed ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in
30 controversy for a limited civil case as provided in Section 85.

31 (3) Actions to cancel or rescind a contract when the relief is sought in connection
32 with an action to recover money not exceeding ~~twenty-five thousand dollars~~
33 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided
34 in Section 85 or property of a value not exceeding ~~twenty-five thousand dollars~~
35 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided
36 in Section 85, paid or delivered under, or in consideration of, the contract; actions
37 to revise a contract where the relief is sought in an action upon the contract if the
38 action otherwise is a limited civil case.

39 (4) Proceedings in forcible entry or forcible or unlawful detainer where the
40 whole amount of damages claimed is ~~twenty-five thousand dollars (\$25,000) or~~
41 ~~less~~ does not exceed the maximum amount in controversy for a limited civil case
42 as provided in Section 85.

1 (5) Actions to enforce and foreclose liens on personal property where the amount
2 of the liens is ~~twenty-five thousand dollars (\$25,000) or less~~ does not exceed the
3 maximum amount in controversy for a limited civil case as provided in Section 85.

4 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,
5 materialmen, artisans, laborers, and of all other persons to whom liens are given
6 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of
7 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment
8 lien on a common interest development as defined in Section 1351 of the Civil
9 Code, where the amount of the liens is ~~twenty-five thousand dollars (\$25,000) or~~
10 ~~less~~ does not exceed the maximum amount in controversy for a limited civil case
11 as provided in Section 85. However, where an action to enforce the lien affects
12 property that is also affected by a similar pending action that is not a limited civil
13 case, or where the total amount of the liens sought to be foreclosed against the
14 same property aggregates an amount in excess of ~~twenty-five thousand dollars~~
15 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided
16 in Section 85, the action is not a limited civil case.

17 (7) Actions for declaratory relief when brought pursuant to either of the
18 following:

19 (A) By way of cross-complaint as to a right of indemnity with respect to the
20 relief demanded in the complaint or a cross-complaint in an action or proceeding
21 that is otherwise a limited civil case.

22 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
23 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
24 Division 3 of the Business and Professions Code, where the amount in controversy
25 is ~~twenty-five thousand dollars (\$25,000) or less~~ does not exceed the maximum
26 amount in controversy for a limited civil case as provided in Section 85.

27 (8) Actions to issue temporary restraining orders and preliminary injunctions,
28 and to take accounts, where necessary to preserve the property or rights of any
29 party to a limited civil case; to make any order or perform any act, pursuant to
30 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)
31 in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited
32 civil case; to determine title to personal property seized in a limited civil case.

33 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of
34 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property
35 or to enforce the liability of the debtor of a judgment debtor where the interest
36 claimed adversely is of a value not exceeding ~~twenty-five thousand dollars~~
37 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided
38 in Section 85 or the debt denied does not exceed ~~twenty-five thousand dollars~~
39 ~~(\$25,000)~~ the maximum amount in controversy for a limited civil case as provided
40 in Section 85.

41 (10) Arbitration-related petitions filed pursuant to either of the following:

42 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
43 except for uninsured motorist arbitration proceedings in accordance with Section

1 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
2 becomes final and the matter to be resolved by arbitration is a limited civil case
3 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
4 after the arbitration award becomes final and the amount of the award and all other
5 rulings, pronouncements, and decisions made in the award are within paragraphs
6 (1) to (9), inclusive, of subdivision (a).

7 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
8 and client that is binding or has become binding, pursuant to Article 13
9 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
10 Professions Code, where the arbitration award is ~~twenty-five thousand dollars~~
11 ~~(\$25,000) or less~~ does not exceed the maximum amount in controversy for a
12 limited civil case as provided in Section 85.

13 (b) The following cases in equity are limited civil cases:

14 (1) Cases to try title to personal property when the amount involved is not more
15 than ~~twenty-five thousand dollars (\$25,000)~~ the maximum amount in controversy
16 for a limited civil case as provided in Section 85.

17 (2) Cases when equity is pleaded as a defensive matter in any case that is
18 otherwise a limited civil case.

19 (3) Cases to vacate a judgment or order of the court obtained in a limited civil
20 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

21 **Comment.** Section 86 is amended to reflect the increase in the maximum amount in
22 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
23 increases.

24 **Code Civ. Proc. § 86.1 (amended). Long-Term Care, Health, Safety, and Security Act**

25 SEC. _____. Section 86.1 of the Code of Civil Procedure is amended to read:

26 86.1. An action brought pursuant to the Long-Term Care, Health, Safety, and
27 Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2
28 of the Health and Safety Code) is a limited civil case if civil penalties are not
29 sought or ~~amount to twenty-five thousand dollars (\$25,000) or less~~ do not exceed
30 the maximum amount in controversy for a limited civil case as provided in Section
31 85.

32 **Comment.** Section 86.1 is amended to reflect the increase in the maximum amount in
33 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
34 increases.

35 **Code Civ. Proc. § 116.220 (amended). Jurisdiction of small claims division**

36 SEC. _____. Section 116.220 of the Code of Civil Procedure is amended to read:

37 116.220. (a) The small claims court shall have jurisdiction in the following
38 actions:

39 (1) Except as provided in subdivisions ~~(e), (e), and (f)~~ (d) and (e), for recovery of
40 money, if the amount of the demand does not exceed ~~five thousand dollars~~
41 ~~(\$5,000)~~ ten thousand dollars (\$10,000).

1 (2) Except as provided in subdivisions ~~(e), (e), and (f)~~ (d) and (e), to enforce
2 payment of delinquent unsecured personal property taxes in an amount not to
3 exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000), if the
4 legality of the tax is not contested by the defendant.

5 (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of
6 the Civil Code if the amount of the demand does not exceed ~~five thousand dollars~~
7 ~~(\$5,000)~~ ten thousand dollars (\$10,000).

8 (4) To confirm, correct, or vacate a fee arbitration award not exceeding five
9 ~~thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) between an attorney and
10 client that is binding or has become binding, or to conduct a hearing de novo
11 between an attorney and client after nonbinding arbitration of a fee dispute
12 involving no more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars
13 (\$10,000) in controversy, pursuant to Article 13 (commencing with Section 6200)
14 of Chapter 4 of Division 3 of the Business and Professions Code.

15 (b) In any action seeking relief authorized by subdivision (a), the court may
16 grant equitable relief in the form of rescission, restitution, reformation, and
17 specific performance, in lieu of, or in addition to, money damages. The court may
18 issue a conditional judgment. The court shall retain jurisdiction until full payment
19 and performance of any judgment or order.

20 (c) ~~Notwithstanding subdivision (a), the small claims court shall have~~
21 ~~jurisdiction over a defendant guarantor who is required to respond based upon the~~
22 ~~default, actions, or omissions of another, only if the demand does not exceed (1)~~
23 ~~two thousand five hundred dollars (\$2,500), or (2) on and after January 1, 2000,~~
24 ~~four thousand dollars (\$4,000), if the defendant guarantor charges a fee for its~~
25 ~~guarantor or surety services or the defendant guarantor is the Registrar of the~~
26 ~~Contractors' State License Board.~~

27 (d) In any case in which the lack of jurisdiction is due solely to an excess in the
28 amount of the demand, the excess may be waived, but any waiver shall not
29 become operative until judgment.

30 (e) (d) Notwithstanding subdivision (a), in any action filed by a plaintiff
31 incarcerated in a Department of Corrections facility or a Youth Authority facility,
32 the small claims court shall have jurisdiction over a defendant only if the plaintiff
33 has alleged in the complaint that ~~he or she~~ the plaintiff has exhausted ~~his or her~~ the
34 plaintiff's administrative remedies against that department, including compliance
35 with Sections 905.2 and 905.4 of the Government Code. The final administrative
36 adjudication or determination of the plaintiff's administrative claim by the
37 department may be attached to the complaint at the time of filing in lieu of that
38 allegation.

39 (f) (e) In any action governed by subdivision ~~(e)~~ (d), if the plaintiff fails to
40 provide proof of compliance with the requirements of subdivision ~~(e)~~ (d) at the
41 time of trial, the judicial officer shall, at ~~his or her~~ the officer's discretion, either
42 dismiss the action or continue the action to give the plaintiff an opportunity to
43 provide such proof.

1 (g) (f) For purposes of this section, “department” includes an employee of a
2 department against whom a claim has been filed under this chapter arising out of
3 his or her that person’s duties as an employee of that department.

4 (g) The Department of Consumer Affairs shall study and collect data on the
5 effects of increasing the jurisdictional limits in subdivision (a) to \$10,000, and the
6 effects of the other changes to small claims procedures made by [Senate or
7 Assembly] Bill [xxx] of the 2003-04 Regular Session. The Department of
8 Consumer Affairs shall report to the Legislature on this matter on or before July
9 31, 2007.

10 **Comment.** Subdivision (a) of Section 116.220 is amended to increase the jurisdictional limit
11 for a small claims case. Subdivision (a) is also amended to reflect the deletion of former
12 subdivision (c), relating to jurisdiction in an action against a defendant guarantor, and the
13 redesignation of former subdivisions (e) and (f).

14 Former subdivision (c), limiting small claims jurisdiction to a demand of \$2,500 in an action
15 against a defendant guarantor (\$4,000 under specified circumstances), is not continued. The
16 jurisdictional limit for a small claims action against a defendant guarantor is \$10,000, just as in
17 other actions for recovery of money. See subdivision (a)(1).

18 Subdivisions (d)-(f) (former subdivisions (e)-(g)) are amended to conform to preferred drafting
19 style. Subdivision (e) is also amended to reflect the redesignation of former subdivision (e).

20 Subdivision (g) is added to provide a mechanism for assessing the effects of increasing the
21 jurisdictional limit for a small claims case and related changes to small claims procedures.

22 ☞ **Note.** The proposed amendment would increase the jurisdictional limit for a small claims case
23 to \$10,000. The Commission solicits comment on whether this amount is appropriate.

24 The Commission also solicits comment on whether the Department of Consumer Affairs is the
25 appropriate entity to study the effects of the proposed reform, as provided by proposed new
26 subdivision (g).

27 **Code Civ. Proc. § 116.230 (amended). Filing fee for small claims case**

28 SEC. _____. Section 116.230 of the Code of Civil Procedure is amended to read:

29 116.230. (a) ~~A fee of twenty dollars (\$20) shall be charged and collected for the~~
30 ~~filing of a claim if the number of claims previously filed by the party in each court~~
31 ~~within the previous 12 months is 12 or less; and a fee of thirty five dollars (\$35)~~
32 ~~shall be collected for the filing of any additional claims~~ Except as provided in
33 subdivision (b), the following fee shall be charged and collected for filing a small
34 claims case:

35 (1) Twenty dollars (\$20) if the demand does not exceed five thousand dollars
36 (\$5,000).

37 (2) Forty dollars (\$40) if the demand exceeds five thousand dollars (\$5,000).

38 (b) If a party has previously filed more than 12 small claims cases within the
39 state within the previous 12 months, the following fee shall be charged and
40 collected for filing a small claims case:

41 (1) Thirty-five dollars (\$35) if the demand does not exceed five thousand dollars
42 (\$5,000).

43 (2) Seventy dollars (\$70) if the demand exceeds five thousand dollars (\$5,000).

1 (b) ~~(c)~~ A fee to cover the actual cost of court service by mail, adjusted upward to
2 the nearest dollar, shall be charged and collected for each defendant to whom the
3 court clerk mails a copy of the claim under Section 116.340.

4 (e) ~~(d)~~ The number of claims filed by a party during the previous 12 months
5 shall be determined by a declaration by the party stating the number of claims so
6 filed and submitted to the clerk with the current claim.

7 ~~(d)~~ ~~(e)~~ Five dollars (\$5) of the fees authorized in ~~subdivision (a)~~ subdivisions (a)
8 and (b) shall be deposited upon collection in the special account in the county
9 treasury established pursuant to subdivision (b) of Section 68085 of the
10 Government Code, and transmitted therefrom monthly to the Controller for deposit
11 in the Trial Court Trust Fund.

12 **Comment.** Section 116.230 is amended to specify the fee for filing a small claims case in
13 which the demand exceeds \$5,000. For disposition of that fee, see Section 116.910. For pleading
14 requirements to assist the clerk in determining the proper fee, see Section 116.320 (claim form
15 shall set forth amount of claim).

16 **Code Civ. Proc. § 116.231 (amended). Limitation on number of small claims cases per year**

17 SEC. _____. Section 116.231 of the Code of Civil Procedure is amended to read:

18 116.231. (a) Except as provided in subdivision (d), no person may file more than
19 two small claims actions in which the amount demanded exceeds ~~two thousand~~
20 ~~five hundred dollars (\$2,500)~~ five thousand dollars (\$5,000), anywhere in the state
21 in any calendar year.

22 (b) Except as provided in subdivision (d), if the amount demanded in any small
23 claims action exceeds ~~two thousand five hundred dollars (\$2,500)~~ five thousand
24 dollars (\$5,000), the party making the demand shall file a declaration under
25 penalty of perjury attesting to the fact that not more than two small claims actions
26 in which the amount of the demand exceeded ~~two thousand five hundred dollars~~
27 ~~(\$2,500)~~ five thousand dollars (\$5,000) have been filed by that party in this state
28 within the calendar year.

29 (e) ~~The Legislature finds and declares that the pilot project conducted under the~~
30 ~~authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the~~
31 ~~removal of the limitation on the number of actions public entities may file in the~~
32 ~~small claims courts on claims exceeding two thousand five hundred dollars~~
33 ~~(\$2,500).~~

34 (d) ~~(c)~~ The limitation on the number of filings exceeding ~~two thousand five~~
35 ~~hundred dollars (\$2,500)~~ five thousand dollars (\$5,000) does not apply to filings
36 where the claim does not exceed ~~five thousand dollars (\$5,000)~~ that are filed by a
37 city, county, ~~city and county~~, school district, county office of education,
38 community college district, local district, or any other local public entity. If any
39 small claims action is filed by a city, county, ~~city and county~~, school district,
40 county office of education, community college district, local district, or any other
41 local public entity pursuant to this section, and the defendant informs the court
42 either in advance of the hearing by written notice or at the time of the hearing, that

1 ~~he or she~~ the defendant is represented in the action by legal counsel, the action
2 shall be transferred out of the small claims division. A city, county, ~~city and~~
3 ~~county~~, school district, county office of education, community college district,
4 local district, or any other local public entity may not file a claim within the small
5 claims division if the amount of the demand exceeds ~~five thousand dollars~~
6 ~~(\$5,000)~~ ten thousand dollars (\$10,000).

7 **Comment.** Subdivision (a) of Section 116.231 is amended to increase the amount to which the
8 two-claim limit applies.

9 Subdivision (b) is amended to reflect the increase in the amount to which the two-claim limit
10 applies.

11 Former subdivision (c) is deleted as unnecessary and obsolete.

12 Subdivision (c) (former subdivision (d)) is amended to reflect the increase in the amount to
13 which the two-claim limit applies. The provision is also amended to reflect the increase in the
14 jurisdictional limit of a small claims case. See Section 116.220 (jurisdiction of small claims
15 division) & Comment. References to “city and county” are deleted as surplusage. See Section 17
16 (“county” includes “city and county”).

17 ☞ **Note.** The Commission solicits comment on whether Section 116.231 should be repealed, and,
18 if not, whether it is appropriate to increase the \$2,500 limit to \$5,000 as proposed. The
19 Commission specifically requests input on any impact that such reforms would have on the nature
20 of claims brought in the small claims division.

21 **Code Civ. Proc. § 116.910 (amended). Allocation of fees**

22 SEC. _____. Section 116.910 of the Code of Civil Procedure is amended to read:

23 116.910. (a) Except as provided in this chapter (including, but not limited to,
24 Section 116.230), no fee or charge shall be collected by any officer for any service
25 provided under this chapter.

26 (b) All fees collected under this chapter shall be deposited with the treasurer of
27 the ~~city and county~~ or county in whose jurisdiction the court is located.

28 (c) Six dollars (\$6) of each ~~fifteen-dollar (\$15) fee~~ charged and collected under
29 subdivision (a) of Section 116.230, and fourteen dollars (\$14) of each ~~thirty-dollar~~
30 ~~(\$30) fee~~ charged and collected under subdivision (a) (b) of Section 116.230, shall
31 be deposited by each county in a special account. Of the money deposited in this
32 account:

33 (1) In counties with a population of less than 4,000,000, a minimum of 50
34 percent shall be used to fund the small claims adviser advisory service described in
35 Section 116.940. The remainder of these funds shall be used for court and court-
36 related programs. Records of these moneys shall be available for inspection by the
37 public on request.

38 (2) In counties with a population of at least 4,000,000, not less than five hundred
39 thousand dollars (\$500,000) shall be used to fund the small claims adviser
40 advisory service described in Section 116.940. That amount shall be increased
41 each fiscal year by an amount equal to the percentage increase in revenues derived
42 from small claims court filing fees over the prior fiscal year. The remainder of
43 these funds shall be used for court and court-related programs. Records of these
44 moneys shall be available for inspection by the public on request.

1 (d) In addition to the amounts allocated to the small claims advisory service
2 under subdivision (c), twenty dollars (\$20) of each fee charged and collected under
3 paragraph (2) of subdivision (a) of Section 116.230, and thirty-five dollars (\$35)
4 of each fee charged and collected under paragraph (2) of subdivision (b) of Section
5 116.230, shall be used to fund the small claims advisory service described in
6 Section 116.940.

7 (d) (e) This section and Section 116.940 shall not be applied in any manner that
8 results in a reduction of the level of services, or the amount of funds allocated for
9 providing the services described in Section 116.940, that are in existence in each
10 county during the fiscal year 1989-90. Nothing in this section shall preclude the
11 county from procuring other funding, including state court block grants, to comply
12 with the requirements of Section 116.940.

13 **Comment.** Subdivision (b) of Section 116.910 is amended to delete surplusage. See Section 17
14 (“county” includes “city and county”).

15 Subdivision (c) is amended to encompass the fees for filing a small claims case seeking over
16 \$5,000 (\$40 if the plaintiff has previously filed no more than 12 small claims cases during the
17 previous 12 months, and \$70 if the plaintiff has previously filed more than 12 small claims cases
18 during the previous 12 months). See Section 116.230 (filing fee for small claims case).

19 Subdivision (c) is also amended to reflect that the fees for filing a small claims case seeking
20 \$5,000 or less were increased in 1997, from \$15 to \$20 if the plaintiff has previously filed no
21 more than 12 small claims cases in the previous 12 months, and from \$30 to \$35 if the plaintiff
22 has previously filed more than 12 small claims cases in the previous 12 months. 1997 Cal. Stat.
23 ch. 850, § 4. The amounts to be deposited in the special account established pursuant to this
24 section (\$6 and \$14, respectively) are not changed, because the \$5 fee increases enacted in 1997
25 were allocated to the account established pursuant to Government Code Section 68085(b), to be
26 transmitted monthly to the Controller for deposit in the Trial Court Trust Fund. 1997 Cal. Stat. ch.
27 850, § 4; see Section 116.230(e).

28 Subdivisions (c)(1) and (c)(2) are amended to conform to the terminology used in Section
29 116.940 (small claims advisory service).

30 Subdivision (d) is added to provide additional funding for the small claims advisory service,
31 derived from the filing fees for small claims cases seeking over \$5,000. The amount of this
32 increased funding is based on the amount by which the filing fee for a case seeking over \$5,000
33 exceeds the corresponding filing fee for a case seeking \$5,000 or less.

34 **Code Civ. Proc. § 116.941 (added). Types of advice to be provided by the small claims**
35 **advisory service**

36 SEC. _____. Section 116.941 is added to the Code of Civil Procedure, to read:

37 116.941. The small claims advisory service described in Section 116.940 shall
38 provide advice to small claims litigants and other interested persons on all of the
39 following matters:

40 (a) How to complete the necessary forms for presenting or defending a small
41 claims action.

42 (b) How to determine the proper court in which a small claims action may be
43 filed.

44 (c) How to present and defend against a small claims action.

45 (d) How to appeal from a judgment in a small claims action.

46 (e) How to enforce a judgment in a small claims action.

1 (f) How to protect property that is exempt from enforcement of a small claims
2 judgment.

3 (g) Any other aspect of a small claims action that the small claims advisory
4 service deems necessary and appropriate.

5 **Comment.** Section 116.941 is added to provide guidance on the types of advice to be provided
6 by the small claims advisory service. It is drawn from Section 116.930(b) (content of small claims
7 manual).

8 **Code Civ. Proc. § 1033 (amended). Award of costs for small recovery**

9 SEC. _____. Section 1033 of the Code of Civil Procedure is amended to read:

10 1033. (a) Costs or any portion of claimed costs shall be as determined by the
11 court in its discretion in a case other than a limited civil case in accordance with
12 Section 1034 where the prevailing party recovers a judgment that could have been
13 rendered in a limited civil case.

14 (b) When a prevailing plaintiff in a limited civil case recovers less than the
15 amount prescribed by law as the maximum limitation upon the jurisdiction of the
16 small claims court, the following shall apply:

17 (1) When the party could have brought the action in the small claims division but
18 did not do so, the court may, in its discretion, allow or deny costs, including,
19 without limitation, attorney's fees otherwise allowable under paragraph (10) of
20 subdivision (a) of Section 1033.5, to the prevailing party, or may allow costs in
21 part in any amount as it deems proper.

22 (2) When the party could not have brought the action in the small claims court,
23 costs and necessary disbursements shall be limited to the actual cost of the filing
24 fee, the actual cost of service of process, and, when otherwise specifically allowed
25 by law, reasonable attorneys' fees. However, those costs shall only be awarded to
26 the plaintiff if the court is satisfied that prior to the commencement of the action,
27 the plaintiff informed the defendant in writing of the intended legal action against
28 the defendant and that legal action could result in a judgment against the defendant
29 that would include the costs and necessary disbursements allowed by this
30 paragraph.

31 **Comment.** Subdivision (b)(1) of Section 1033 is amended to make clear that the court's
32 authority to allow or deny costs where a party could have elected to sue in the small claims
33 division encompasses authority to allow or deny attorney's fees otherwise authorized by contract,
34 statute, or law. This codifies *Dorman v. DWLC Corp.*, 35 Cal. App. 4th 1808, 1815, 42 Cal. Rptr.
35 2d 459 (1995) ("discretion to award attorney fees pursuant to section 1717 is controlled by the
36 provisions of section 1033 in that situation where the primary damages awarded are less than the
37 jurisdictional limit of a court of lesser jurisdiction").

38 **Code Civ. Proc. § 1710.20 (amended). Filing of application for entry of judgment based on**
39 **sister state judgment**

40 SEC. _____. Section 1710.20 of the Code of Civil Procedure is amended to read:

41 1710.20. (a) An application for entry of a judgment based on a sister state
42 judgment shall be filed in a superior court.

1 (b) Subject to the power of the court to transfer proceedings under this chapter
2 pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for
3 the filing of an application is any of the following:

4 (1) The county in which any judgment debtor resides.

5 (2) If no judgment debtor is a resident, any county in this state.

6 (c) A case ~~in which the~~ based on a sister state judgment amounts to ~~twenty-five~~
7 ~~thousand dollars (\$25,000) or less~~ is a limited civil case if the sister state judgment
8 does not exceed the maximum amount in controversy for a limited civil case as
9 provided in Section 85.

10 **Comment.** Section 1710.20 is amended to reflect the increase in the maximum amount in
11 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
12 increases.

13 **Food & Agric. Code § 7581 (amended). Jurisdictional classification of proceeding relating to**
14 **seed screening or cleaning**

15 SEC. _____. Section 7581 of the Food and Agricultural Code is amended to read:

16 7581. A proceeding pursuant to this article ~~where the value of the property~~
17 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less~~ is a limited civil
18 case if the value of the property seized does not exceed the maximum amount in
19 controversy for a limited civil case as provided in Section 85 of the Code of Civil
20 Procedure.

21 **Comment.** Section 7581 is amended to reflect the increase in the maximum amount in
22 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
23 increases.

24 **Food & Agric. Code § 12647 (amended). Jurisdictional classification of proceeding relating**
25 **to produce carrying impermissible pesticide residue**

26 SEC. _____. Section 12647 of the Food and Agricultural Code is amended to
27 read:

28 12647. A proceeding pursuant to this article ~~where the value of the property~~
29 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less~~ is a limited civil
30 case if the value of the property seized does not exceed the maximum amount in
31 controversy for a limited civil case as provided in Section 85 of the Code of Civil
32 Procedure.

33 **Comment.** Section 12647 is amended to reflect the increase in the maximum amount in
34 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
35 increases.

36 **Food & Agric. Code § 27601 (amended). Abatement proceeding relating to eggs constituting**
37 **public nuisance**

38 SEC. _____. Section 27601 of the Food and Agricultural Code is amended to
39 read:

40 27601. Upon the request of the director or an authorized representative, the
41 district attorney of the county in which the eggs and their containers which are a

1 public nuisance are found, shall maintain, in the name of the people of the State of
2 California, a civil action to abate and prevent the public nuisance.

3 Upon judgment and by order of the court, the eggs and their containers which
4 are a public nuisance shall be condemned and destroyed in the manner which is
5 directed by the court, or reconditioned, remarked, denatured, or otherwise
6 processed, or released upon the conditions as the court in its discretion may
7 impose to ensure that the nuisance is abated.

8 If the owner fails to comply with the order of the court within the time specified
9 in the order, the court may order disposal of the eggs and their containers or their
10 sale, under the terms and conditions as the court may prescribe, by the
11 enforcement officer, or by the sheriff or marshal.

12 If the court orders the sale of any of the eggs and their containers which can be
13 salvaged, the costs of disposal shall be deducted from the proceeds of sale and the
14 balance paid into court for the owner.

15 A proceeding pursuant to this chapter or any regulation adopted pursuant to this
16 chapter ~~where the value of the property seized amounts to twenty-five thousand~~
17 ~~dollars (\$25,000) or less is a limited civil case~~ if the value of the property seized
18 does not exceed the maximum amount in controversy for a limited civil case as
19 provided in Section 85 of the Code of Civil Procedure.

20 A public nuisance described in this section may only be abated in any action or
21 proceeding pursuant to the remedies provided by this chapter. This chapter
22 provides the exclusive source of costs and civil penalties which may be assessed
23 by reason of the public nuisance against the owner of eggs and their containers
24 which are found to be a public nuisance.

25 **Comment.** Section 27601 is amended to reflect the increase in the maximum amount in
26 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
27 increases.

28 **Food & Agric. Code § 52514 (amended). Jurisdictional classification of proceeding relating**
29 **to nonconforming lot of agricultural or vegetable seed**

30 SEC. _____. Section 52514 of the Food and Agricultural Code is amended to
31 read:

32 52514. A proceeding pursuant to this article ~~where the value of the property~~
33 ~~seized amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil~~
34 ~~case~~ if the value of the property seized does not exceed the maximum amount in
35 controversy for a limited civil case as provided in Section 85 of the Code of Civil
36 Procedure.

37 **Comment.** Section 52514 is amended to reflect the increase in the maximum amount in
38 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
39 increases.

1 **Food & Agric. Code § 53564 (amended). Jurisdictional classification of proceeding relating**
2 **to nonconforming lot of nursery stock**

3 SEC. _____. Section 53564 of the Food and Agricultural Code is amended to
4 read:

5 53564. A proceeding pursuant to this article ~~where the value of the property is~~
6 ~~twenty-five thousand dollars (\$25,000) or less~~ is a limited civil case if the value of
7 the property does not exceed the maximum amount in controversy for a limited
8 civil case as provided in Section 85 of the Code of Civil Procedure.

9 **Comment.** Section 53564 is amended to reflect the increase in the maximum amount in
10 controversy for a limited civil case (from \$25,000 to \$50,000), and to accommodate future
11 increases.
