Checklist for Affidavit and Summons

- You must complete a form before you file it. These instructions will help you complete the forms.
- The judicial services representative cannot complete a form for you.
- Attach a copy of any document referred to in the form.
- Keep a copy of all documents for your records.
- Attend all court hearings.
- Some forms may not apply in your case.

(1) Affidavit and Summons

☐ IMPORTANT NOTICE—You must file all claims arising out of the same event or transaction in one lawsuit, whether that is in small claims court or in the district court. For example, if you have had an auto accident, and are seeking to recover money for property damage (such as the cost of repairing your car), and also for personal injuries, you must file all of your claims in one lawsuit. You may file in small claims court or in district court, but you cannot "split" your claims into two separate lawsuits. If you file in small claims court, your total recovery cannot exceed the jurisdictional limit. See Allen v. Moyer, 2011 UT 44.

☐ Print your name and contact information at the top of the first page. Check whether you are the plaintiff or the attorney for the plaintiff.

☐ The plaintiff's name. If you are suing in your personal capacity use your name. If you are representing a business with a trade name, including a corporation, partnership or solely owned business, use the business' trade name.

☐ The defendant's name. If you are suing a natural person, use the person's name. If you are suing a business with a trade name, including a corporation, partnership or solely owned business, use the business' trade name. Contact the Department of Commerce to obtain a corporation's name and the name of its registered agent.

☐ Case number. Leave blank. The court clerk assigns the case number.

☐ Paragraph (1): Enter the amounts claimed in the spaces provided. Include in the principal amount any interest accrued to the date of filing. Do not file an amended Affidavit to claim interest between the filing date and the judgment date. If the court grants judgment, the court will include prejudgment interest in the judgment if you qualify for it.

☐ Paragraph (2): Enter the date on which the events happened. Describe the facts.

☐ Paragraph (3): Check either or both boxes that apply.

- ☐ Paragraph (4): Check the box. You cannot sue in small claims a governmental entity or governmental employee for on-the-job conduct.
- ☐ Paragraph (5): Check the box. You cannot sue in small claims if the claim has been assigned to you.

- ☐ Omit any private or protected information. When filed, this document is a public record. Code of Judicial Administration Rule 4-202.09(9) requires that you omit from a public record any information that is not itself public information. For a list of records, data and information classified as public, private, and protected, see Rule 4-202.02.
- ☐ Signature. Sign the Affidavit.
- ☐ Summons. Leave blank. The court clerk will schedule a trial date and complete the Summons, but you must arrange for serving it.

(2) To file the Affidavit and Summons

- ☐ A small claims case must be filed in the court where the defendant resides or where the claim arose (where the events happened). Depending on the circumstances this may be the justice court or the district court.

(3) To serve the Affidavit and Summons

The court clerk will give you a copy of the Affidavit and Summons to serve on the defendant. The Affidavit and Summons must be served on the defendant by one of the following methods at least 30 days before the trial date. If the defendant cannot be served by one of these methods, the plaintiff must refile the case as a civil complaint and obtain alternative service under Utah Rule of Civil Procedure 4.

Preferred Method

(a) Deliver the Affidavit to a professional process server or constable, (officials authorized by Utah Code Section 78B-8-302), who will serve it on the defendant and file a Proof of Service with the court. You may ask the Judge to include the fee for service, if you are granted a judgment.

If you choose to use the method of service listed on the following page (b), please note; the Judge will not issue an Order to Show Cause on a defendant who did not appear in court, unless the defendant acknowledged receipt of the Affidavit and Summons with a signature.

- ☐ (b) Mail a copy of the Affidavit and Summons to the defendant by any method that requires the defendant to acknowledge receipt with a signature. (Examples are registered or certified mail with return receipt signed by addressee only or a commercial courier service that will return a receipt signed by the addressee only.) The date of service is the date the defendant signs the receipt. Note that this method of service is effective only if the defendant is willing to sign the receipt.

(4) Proof of Service of Affidavit and Summons

- ☐ If a sheriff, constable or private process server serves the Affidavit and Summons on the defendant, that person will complete and file a Proof of Service.
- ☐ If you serve the Affidavit and Summons on the defendant by mail or commercial courier, you must complete and file the Proof of Service form and attach the original signed receipt.
- ☐ Print your name and contact information at the top of the first page. Check whether you are the plaintiff or the attorney for the plaintiff.
- ☐ Complete the heading exactly as it appears in the Affidavit.
- ☐ Print the name and address of each person served.
- ☐ Check whether service was by mail or a commercial courier.
- ☐ Print the date that the defendant signed the receipt.
- ☐ Attach the original receipt.
- ☐ Date and sign the form.
- ☐ File the form and receipt within 10 days after service. If the form is not filed and the other party fails to appear at trial, the judge will not grant a default judgment.