

SUPERIOR COURT OF STANISLAUS COUNTY
SELF HELP CENTER

**HOW TO FILE AN ANSWER
TO A CIVIL COMPLAINT FOR
BREACH OF AN AGREEMENT
(CONTRACT)**

(Revised 7/2013)

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KNOW YOUR OPTIONS?

A lawsuit for money based on a contract, loan or agreement is a civil action. The one who is bringing the lawsuit is called the plaintiff. The one who is being sued is called the defendant. If you are sued, you have several choices:

1. You can defend yourself by filing an **Answer** to the lawsuit in court. Special forms are used, which you can get from the court. You must file an Answer **within 30 days** of the date you are personally served with the Summons and Complaint.
2. You can choose to do nothing and allow the plaintiff to obtain a default judgment against you. A **default** means that you failed to answer the complaint in the time required by law. If a default is entered against you, you CANNOT defend yourself in the case. **WARNING:** a judgment against you could show on your credit report and result in a wage garnishment or other means of collection.
3. You can try to reach an agreement with the plaintiff. The Stanislaus County Superior Court offers Mediation services to assist the parties to resolve their issues with the help of a neutral third party. Mediation is a voluntary process in which a neutral third party, who is a trained mediator, meets with the parties to assist them in settling their dispute. For further information you may call **The Stanislaus County Mediation Center at (209) 236-1577.**

IMPORTANT: If you wish to explore this option it is **advisable that you request an extension of time to answer the complaint confirmed in writing by the Plaintiff or attorney for the Plaintiff or file an Answer to prevent a default being taken against you.**

FILING AN ANSWER TO THE COMPLAINT

Review the Summons

One of the papers you should have received is called a **Summons**. If you choose to respond to the summons and complaint you **must do so within 30 days** of the date you were **personally served**. The 30 days includes Saturdays and Sundays. Do not count the day you were given the lawsuit, but begin counting with the next day. If the 30th day falls on a Saturday or Sunday, you can file the Answer on the following Monday.

To respond you must file a formal paper with the court. The paper is called the **Answer**. You cannot call the Clerk's office to get extra time to file an answer in a civil case. Only the plaintiff or the plaintiff's attorney can give you extra time (called an extension). If you are given an extension, you should confirm it in writing in a letter to the plaintiff or the plaintiff's attorney and keep a copy of the confirming letter.

Review Your Insurance Policies

It is possible that the lawsuit is covered by your auto, renter's, homeowner's or other type of insurance. Take out your policy and review it. Your insurance company may cover your defense in some types of cases.

If your insurance company will cover your defense, make sure to deliver a copy of the Summons and Complaint to the insurance company immediately. Get a receipt from your insurance agent for delivering the lawsuit paperwork.

FILING FEES

Unless you qualify for a fee waiver the following fees will be due at the time of filing:

- \$225 if the complaint is asking for monetary relief up to \$10,000
- \$370 if the complaint is asking for monetary relief over \$10,000 and up to \$25,000
- \$435 if the complaint is asking for monetary relief over \$25,000

COMPLETING THE ANSWER FORM

All forms should be completed in type or printed clearly using blue or black ink. The first part of the form is called the caption box and looks like this:

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)	PLD-C-010 FOR COURT USE ONLY
ATTORNEY FOR (NAME)	YOUR NAME YOUR STREET ADDRESS YOUR CITY, STATE, AND ZIP CODE YOUR TELEPHONE NUMBER
Insert name of court, judicial district or branch court, if any, and post office and street address: Superior Court, County of Stanislaus 1100 I Street P.O. Box 1098 Modesto, CA 95353	Write in "IN PRO PER" WRITE IN THE NAME OF THE PLAINTIFF AS SHOWN ON THE SUMMONS AND COMPLAINT
PLAINTIFF:	WRITE IN THE NAMED DEFENDANTS AS SHOWN ON THE SUMMONS AND COMPLAINT
DEFENDANT:	IF YOU HAVE BEEN SERVED WITH A COMPLAINT, CHECK THE FIRST BOX AND WRITE IN THE NAME OF THE PLAINTIFF. IF YOU HAVE BEEN SERVED WITH A CROSS COMPLAINT, CHECK THE SECOND BOX AND WRITE IN THE NAME OF THE CROSS-COMPLAINANT.
<input type="checkbox"/> TO COMPLAINT OF <input type="checkbox"/> TO CROSS-COMPLAINT	CASE NUMBER WRITE IN THE CASE NUMBER AS SHOWN ON THE SUMMONS

The next section of the form looks like this:

1. This pleading, including attachments and exhibits, 2. DEFENDANT (name): answers the complaint or cross-complaint as follows: 3. Check ONLY ONE of the next two boxes: a. <input type="checkbox"/> Defendant generally denies each statement in the verified complaint or cross-complaint demands more than \$1,000.) b. <input type="checkbox"/> Defendant admits that the following statements are true, so defendant denies them (use paragraph numbers or explain): <input type="checkbox"/> Continued on Attachment 3.b.(1). (2) Defendant has no information or belief that the following statements are true, so defendant denies them (use paragraph numbers or explain): <input type="checkbox"/> Continued on Attachment 3.b.(2). If this form is used to answer a cross-complaint,	WRITE IN YOUR NAME. IF THERE IS MORE THAN DEFENDANT LISTED IN THE COMPLAINT EACH MUST RESPOND, OR A DEFAULT MAY BE ENTERED AGAINST THE ONE WHO FAILS TO FILE AN ANSWER. TWO DEFENDANTS MAY SHARE ONE ANSWER FORM, BUT EACH MUST SIGN THE ANSWER AND PAY A SEPARATE FILING FEE. FIRST LOOK AT THE LAST PAGE OF THE COMPLAINT WHERE IT IS SIGNED BY THE PLAINTIFF OR THEIR ATTORNEY AND SEE IF THERE IS A "VERIFICATION". IF NOT, YOU CAN CHECK BOX 3(a) GENERALLY DENYING ALL STATEMENTS CONTAINED IN THE COMPLAINT. IF THERE IS A VERIFICATION, YOU MUST CHECK BOX 3(b) AND RESPOND TO EACH PARAGRAPH OF THE COMPLAINT BY EITHER: IF YOU ARE ADMITTING ALL THE STATEMENTS IN THE COMPLAINT ARE TRUE, YOU ONLY NEED TO MARK 3(b). IF YOU ARE DENYING ANY OF THE STATEMENTS IN THE COMPLAINT, YOU NEED LIST THE PARAGRAPH NUMBERS OF THOSE STATEMENTS HERE UNDER 3(b)(1). IF YOU DO NOT KNOW IF ANY OF THE STATEMENT IN THE COMPLAINT ARE TRUE OR FALSE BECAUSE YOU DO NOT HAVE ENOUGH INFORMATION, THEN LIST THE PARAGRAPH NUMBERS OF THOSE STATEMENTS HERE UNDER 3(b)(2).
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ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): ATTORNEY FOR (NAME): <i>In Pro Per</i>	TELEPHONE:	FOR COURT USE ONLY
Insert name of court, judicial district or branch court, if any, and post office and street address: Stanislaus County Superior Court 801 - 10th Street, 4th Floor Modesto, CA 95354		
PLAINTIFF:		
DEFENDANT:		
<div style="text-align: center;">ANSWER—Contract</div> <input type="checkbox"/> TO COMPLAINT OF <i>(name)</i> : <input type="checkbox"/> TO CROSS-COMPLAINT OF <i>(name)</i> :		CASE NUMBER:

1. This pleading, including attachments and exhibits, consists of the following number of pages: _____
2. DEFENDANT *(name)*:

answers the complaint or cross-complaint as follows:

3. Check ONLY ONE of the next two boxes:

- a. Defendant generally denies each statement of the complaint or cross-complaint. *(Do not check this box if the verified complaint or cross-complaint demands more than \$1,000.)*
- b. Defendant admits that all of the statements of the complaint or cross-complaint are true EXCEPT:
 (1) Defendant claims the following statements are false *(use paragraph numbers or explain)*:

Continued on Attachment 3.b.(1).

(2) Defendant has no information or belief that the following statements are true, so defendant denies them *(use paragraph numbers or explain)*:

Continued on Attachment 3.b.(2).

If this form is used to answer a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

SHORT TITLE:	CASE NUMBER:
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ANSWER—Contract

4. AFFIRMATIVE DEFENSES Defendant alleges the following additional reasons that plaintiff is not entitled to recover anything:

Continued on Attachment 4.

5. Other:

6. DEFENDANT PRAYS

a. that plaintiff take nothing.

b. for costs of suit.

c. other (*specify*):

..... (Type or print name)

_____ (Signature of party or attorney)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Stanislaus STREET ADDRESS: 801 - 10th Street, 4th Floor MAILING ADDRESS: 801 - 10th Street, 4th Floor CITY AND ZIP CODE: Modesto, CA 95354 BRANCH NAME: Civil Division	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: _____

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
3. On (date): _____ I mailed from (city and state): _____
the following **documents** (specify):

The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. **Name** of person served:
 - b. **Address** of person served:

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

INFORMATION SHEET FOR PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL

(This information sheet is not part of the Proof of Service and does not need to be copied, served, or filed.)

NOTE: This form should **not** be used for proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Use these instructions to complete the *Proof of Service by First-Class Mail—Civil* (form POS-030).

A person over 18 years of age must serve the documents. There are two main ways to serve documents:

(1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document. Use the *Proof of Personal Service—Civil* (form POS-020) if the documents were personally served.

The person who served the documents by mail must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, a fillable version of the Proof of Service form is available at www.courtinfo.ca.gov/forms.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are on the documents that you served.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Complete items 1–5 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action. You are also stating that you either live in or are employed in the county where the mailing took place.
2. Print your home or business address.
3. Provide the date and place of the mailing and list the name of each document that you mailed. If you need more space to list the documents, check the box in item 3, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)), and attach it to form POS-030.
4. For item 4:
 - Check box a if you personally put the documents in the regular U.S. mail.
 - Check box b if you put the documents in the mail at your place of business.
5. Provide the name and address of each person to whom you mailed the documents. If you mailed the documents to more than one person, check the box in item 5, complete the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (form POS-030(P)), and attach it to form POS-030.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form. By signing, you are stating under penalty of perjury that all the information you have provided on form POS-030 is true and correct.

Short Title:	Case No.
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Attachment 4 - AFFIRMATIVE DEFENSES

Check all boxes that apply to your case

Running of the Statute of Limitations

The plaintiff has a limited amount of time to sue you from the date the incident (they are suing you about) happened.

Below are common time limits:

- a. **Personal Injury** 2 years from the injury or discovery (if injury in 2003).
- b. **Oral Contract** 2 years from the date the contract is broken.
- c. **Written Contract** 4 years from the date the contract is broken.
- d. **Property Damage** 3 years from when the damage happened.

For more information, see California Code of Civil Procedure sections 312 and those following it.

Failure to State a Cause of Action

Every lawsuit must have at least one **cause of action**. A cause of action is a legal theory upon which a lawsuit can be based. Each cause of action has certain parts that must be written in the complaint and proved at trial. If you think the plaintiff has not written any part of their cause or causes of action, you can use this defense.

Waiver and Estoppel

These two defenses are closely related. They are based on the concept that if someone "says one thing but does another," he or she may be held to what was first said. If the plaintiff told or promised you something regarding the money you are being sued for, and you relied upon the statement or promise, but plaintiff failed to honor it, these defenses may apply to you.

Unclean Hands (only used in equity)

The law requires those coming into the court seeking justice to do justice themselves. This concept is called "clean hands." If you believe the plaintiff has taken advantage of his or her own wrong doing in relation to the lawsuit, you may raise this defense.

Laches

The law requires people to act promptly to enforce their rights. If the plaintiff waited a long time to file a lawsuit, without having a good reason for the delay, and the delay has made it harder for you to defend the case, this defense may apply to you.

Failure to Mitigate Damages

Plaintiffs should not be able to collect money from you if they could have prevented the damage. For example, if you break a year long lease, a landlord is required to find a new tenant as soon as possible. You may still be responsible for the difference in the rent and the time the unit was not rented. But the landlord cannot just wait out the year and then try and force you to pay the whole year's rent.

Unjust Enrichment

You can use this defense if giving the plaintiff the amount they request in the lawsuit would result in the plaintiff receiving more money than s/he is entitled to.

Prevention of Performance

If you were prevented from doing your part of the contract by the plaintiff this affirmative defense may apply to you.

Act of God

If you were prevented from doing your part of the contract due to a natural occurrence (earthquake, flood, storm), this affirmative defense may apply to you.

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Discharge by Bankruptcy

If you filed bankruptcy, and the claim you are being sued for was included in your bankruptcy, you may have been released from paying the claim when your bankruptcy case was over. Check with your bankruptcy attorney to find out if the plaintiff's claim was "discharged" or released by the bankruptcy court. Include the bankruptcy case information including the date of discharge and the case number. Case # _____, discharge date: _____.

Failure to Exhaust Administrative Remedies

You may use this defense if the plaintiff was supposed to pursue different administrative avenues but failed to do so before suing you. This defense is most commonly used by government agencies or businesses.

Failure to Pursue Alternative Dispute Resolution (ADR)

You may use this defense if the person suing you failed to request mediation or arbitration as required before filing a lawsuit. **CAUTION:** If you think this affirmative defense applies to you, and you want to enforce an arbitration clause in the contract which is the subject of the lawsuit, filing an answer alone, without filing a petition to compel arbitration at the same time, may cause you to waive your right to have the dispute resolved through arbitration. You can get a form for filing a petition to compel arbitration from the court's Self-Help Legal Access Center.

Lack of Privity

You can raise this defense if there was no contract or agreement between you and the person suing you, or the debt was not properly assigned to the person suing you.

Statute of Frauds

The "Statute of Frauds" is a law that requires many different types of contracts be in writing. There are some exceptions to the Statute of Frauds, but if you think the claim the plaintiff is suing you for arose out of an agreement that was required by law to be in writing, but was not in writing, this defense may apply to you.

Parole Evidence Rule

The law states that when people put their agreements in writing, the written contract takes priority over whatever else is said in relation to the agreement. If the plaintiff's claims are based on a verbal statement that contradicts, or falls outside the written terms of the agreement, you may raise this defense.

Frustration of Purpose

If enforcement of the actual contract would go against the very purpose of the agreement you made with the person suing you, you may raise this defense.

Failure of Condition Precedent

Sometimes one party's performance of a contract is dependant on someone else first performing an obligation, or something else happening first. If someone else was required to do something before you had to perform your obligations under the contract but failed to do it, or something was required to happen before you had to perform but it did not happen, you may raise this defense.

Breach by Plaintiff

If the person suing you broke their end of the contract first, and you believe you were therefore excused from performing your part, you can raise this defense.

Anticipatory Repudiation

If the person suing you cancelled the contract, or pulled out of the deal before you had a chance to perform your part of the contract, you can raise this defense.

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Attorney's Fees Not Recoverable

The law only allows the winning side in a lawsuit to be reimbursed the money they paid for attorney's fees if the contract upon which the lawsuit is based says that the winning side can recover attorney's fees, or a **statute** (law) says the winning side can recover attorney's fees. If the plaintiff has asked for reimbursement of attorney's fees but there is no contract provision or law that entitles plaintiff to recover attorney's fees, you can raise this defense.

Improper Notice of Breach

You may use this defense if the plaintiff did not tell you before suing you that you were violating the terms of the contract, and therefore denied you the opportunity to fix the problem. In this defense, notice of breach may need to be required in the contract, and the other side's failure to give you notice must have deprived you of your opportunity to fix the problem.

Offset

You may use this defense if the plaintiff owes you money, or the plaintiff failed to credit you for money you already paid.

Usury

You may use this defense if the plaintiff is charging higher interest than the law allows.

Accord and Satisfaction

You may use this defense if you and the plaintiff agreed to settle the claim for a lower amount than the lawsuit is asking for and you have paid the lower amount.

Contract Void as Against Public Policy

If the contract required a party to perform an illegal act or to violate a law, then it may be unenforceable, and this defense may apply.

CONTRACT FOR SERVICES ONLY

Failure of Consideration

You may use this defense if the person suing you never performed the services that they are suing you for.

Lack of Consideration

You may use this defense if the services provided by the person suing you were so poorly performed that any further payment to that person would be unreasonable and unfair.

Breach of Express Warranty

This defense applies if the person suing you failed to honor a promise or written warranty for services.

Breach of Implied Warranty

This defense applies if the services provided by the person suing you failed to meet the custom and standard within the industry.

CONTRACT FOR GOODS OR PRODUCTS ("Things") ONLY

Failure of Consideration

You may use this defense if the goods or products you bought from the person or entity suing you are completely defective.

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Lack of Consideration

You may use this defense if the goods or products you purchased were so defective that enforcement of the contract would be unreasonable and unfair.

Breach of Express Warranty

This defense applies if the goods or products you purchased were defective, you requested their repair within the written or promised warranty period, and the plaintiff failed to make the repair.

Breach of Implied Warranty

This defense applies if the goods or products purchased from the person or entity suing you could not be used for the purpose for which they were sold. You tried to return the goods but the seller refused to accept them.

No Deficiency Judgment Permitted by Law

If the complaint is asking for money after the goods or property that served as collateral on a loan were sold, and the sale was not properly noticed or conducted, this defense may apply. Plaintiff, or the person or entity that assigned the claim to plaintiff, is not entitled to sue for extra money after the sale of the goods or property if the law does not allow for a deficiency judgment, or there was improper notice of sale, or the sale was conducted improperly.

Failure to Act in a Commercially Reasonable Manner

If the person who is suing you failed to follow the procedures required by the California Commercial Code in selling you goods or products, this defense may apply.

OTHER DEFENSES:
