

**SUPERIOR COURT OF STANISLAUS COUNTY  
SELF HELP CENTER**

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

**(THIS GUIDE ONLY APPLIES TO LAWSUITS  
INVOLVING \$25,000.00 OR LESS)**

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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 30<sup>th</sup> 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.

## FORMS AND FILING FEES

You can get the Answer forms from the Court Clerk's office, located at 1100 I Street, Modesto, CA or the Self-Help Center located at 800 – 11<sup>th</sup> Street, Room 220 of the Courthouse. You can also get them online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).

There is a filing fee due at the time of filing the Answer. If the lawsuit is requesting a judgment for \$10,000.00 or less the filing fee is \$180.00. If the lawsuit is requesting a judgment for over \$10,000.00,

the filing fee is \$300.00. This fee is due from each person named as a defendant who is filing an answer. If your income is below a certain level, you may qualify for a waiver of the filing fees. You can get a fee waiver application packet from the Court Clerk's office or the Self-Help Center.

### 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
YOUR NAME YOUR STREET ADDRESS YOUR CITY, STATE, AND ZIP CODE YOUR TELEPHONE NUMBER	
ATTORNEY FOR (NAME) <span style="float: right;">Write in "IN PRO PER"</span> 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 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):	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.
<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):	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.
<input type="checkbox"/> Continued on Attachment 3.b.(1). If this form is used to answer a cross-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).
<input type="checkbox"/> Continued on Attachment 3.b.(1). If this form is used to answer a cross-complaint:	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).
<input type="checkbox"/> Continued on Attachment 3.b.(1). If this form is used to answer a cross-complaint:	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).

The next section of the form is at the top of page two and looks like this:

SHORT TITLE: <span style="border: 1px solid red; padding: 2px;">Last Name of Plaintiff vs. Last Name of Defendant</span>	PLD-C-010
	CASE NUMBER: <span style="border: 1px solid red; padding: 2px;">WRITE IN THE CASE NUMBER AS SHOWN ON THE SUMMONS</span>

**ANSWER—Contract**

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

ALTHOUGH MANY DEFENDANTS BELIEVE THEY HAVE A MORAL DEFENSE FOR NOT PAYING A DEBT, SUCH AS LOSING A JOB OR A SPOUSE, THE LAW ONLY RECOGNIZES CERTAIN KINDS OF LEGAL DEFENSES TO A LAWSUIT. AFFIRMATIVE DEFENSES ARE LEGAL DEFENSES THAT RAISE NEW FACTS OR ISSUES NOT STATED IN THE COMPLAINT. IF YOU WANT THE COURT TO CONSIDER YOUR LEGAL DEFENSES YOU MUST INCLUDE THEM IN YOUR ANSWER.

MANY COMMON AFFIRMATIVE DEFENSES CAN BE FOUND ON AN ATTACHMENT LIST INCLUDED IN THIS PACKET. IF YOU CHOOSE TO ATTACH ONE OF THE AFFIRMATIVE DEFENSE LISTS, MARK THE BOXES NEXT TO THE DEFENSES THAT YOU BELIEVE APPLY TO YOU AND PLACE THE ATTACHMENT BEHIND THE ANSWER FORM. BE SURE TO CHECK THE "CONTINUED ON ATTACHMENT 4" BOX BELOW.

5.  Continued on Attachment 4.

5.  Other:

6. DEFENDANT PRAYS

a. that plaintiff take

b.  for costs of suit.

c.  other (specify):

IF YOU BELIEVE YOU DO NOT OWE THE PLAINTIFF ANY MONEY AT ALL, AND THAT YOU SHOULD NOT HAVE BEEN SUED, YOU CAN ASK THE COURT TO ORDER THE PLAINTIFF TO PAY YOU BACK THE COSTS YOU PAID TO THE COURT TO FILE YOUR ANSWER. YOU DO THIS BY CHECKING BOX (B). IF YOU WANT THE COURT TO ORDER SOMETHING ELSE, YOU CAN MARK BOX (C) AND EXPLAIN WHAT YOU WANT.

**WARNING!** IF YOU BELIEVE THE PLAINTIFF OWES YOU MONEY OVER AND ABOVE WHAT THE PLAINTIFF IS SUING YOU FOR, YOU MUST FILE A CROSS-COMPLAINT IF YOU WANT THE COURT TO ORDER THE PLAINTIFF TO PAY YOU MONEY. THE COURT CANNOT ORDER THE PLAINTIFF TO PAY YOU MONEY OTHER THAN YOUR COSTS OF SUIT, BASED ON YOUR ANSWER ALONE.

<b>PRINT YOUR NAME</b>	<b>SIGN YOUR NAME</b>
(Type or print name)	(Signature of party or attorney)

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## SERVING THE ANSWER

Before you file your answer with the Clerk, a copy must be served on the Plaintiff or Plaintiff's attorney. It can be served by mail but must be done by a person who **is not** a plaintiff or defendant in this case.

The server must then complete a Proof of Service by Mail as shown below:

<b>POS-030</b>	
<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</p> <div style="border: 1px solid red; padding: 5px; text-align: center; margin: 5px 0;">             YOUR NAME HERE              YOUR STREET ADDRESS HERE              YOUR CITY, STATE, and ZIP CODE HERE         </div> <p>TELEPHONE NO.: _____ FAX NO. (Optional): _____</p> <p>E-MAIL ADDRESS (Optional): _____</p> <p>ATTORNEY FOR (Name): <span style="border: 1px solid red; padding: 2px;">IN PRO PER</span></p> <p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Stanislaus</b></p> <p>STREET ADDRESS: 1100 <span style="border: 1px solid red; padding: 2px;">COURT'S PHYSICAL ADDRESS HERE</span></p> <p>MAILING ADDRESS: P.O. <span style="border: 1px solid red; padding: 2px;">COURT'S MAILING ADDRESS HERE</span></p> <p>CITY AND ZIP CODE: Modesto, CA 95805 <span style="border: 1px solid red; padding: 2px;">COURT'S CITY, STATE, and ZIP CODE HERE</span></p> <p>BRANCH NAME: _____</p> <p>PETITIONER/PLAINTIFF: _____</p> <p>RESPONDENT/DEFENDANT: <span style="border: 1px solid red; padding: 2px;">FILL THIS OUT EXACTLY AS IT APPEARS ON YOUR OTHER DOCUMENTS</span></p>	<p>FOR COURT USE ONLY</p>
<p><b>PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL</b></p>	<p>CASE NO. <span style="border: 1px solid red; padding: 2px;">COURT CASE NUMBER HERE</span></p>

*(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: SERVER'S NAME  
SERVER'S STREET ADDRESS  
SERVER'S CITY, STATE, AND ZIP CODE
3. On (date): DATE MAILED I mailed from (city and state): \_\_\_\_\_ CITY & STATE WHERE MAILED  
 the following documents (specify): WRITE IN "ANSWER TO COMPLAINT"
- The documents listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form E) CHECK THIS BOX
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: PLAINTIFF'S ATTORNEY'S NAME OR PLAINTIFF'S NAME IF NO ATTORNEY
  - b. Address of person served: ADDRESS WHERE OTHER PARTY WAS 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: SERVER'S PRINTED NAME SERVER'S SIGNATURE

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM) (SIGNATURE OF PERSON COMPLETING THIS FORM)

Form Approved for Optional Use  
Judicial Council of California  
POS-030 [New January 1, 2005]

**PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL**  
(Proof of Service)

Code of Civil Procedure, §§ 1013, 1013a  
**Legal Solutions Plus**

Make two copies of the Answer, any attachments and the Proof of Service by mail. One copy is for the server to mail. Take the original and one copy to the clerk for filing.



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.

Short Title:	Case No.
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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.

Short Title:	Case No.
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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.

Short Title:	Case No.
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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**

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