

**Superior Court, County of
Ventura
Self-Help Legal Access Center**

**DEFENDING LAWSUITS
FOR
BREACH OF CONTRACT
OR
COLLECTION OF MONEY
(COMMON COUNT)**

*Legal Reasons Why I Should
Not Have to Pay the Money*

2a

Common Legal Reasons For Not Paying a Debt (also called Affirmative Defenses)

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 raised in the **Complaint**. If you want the court to consider your legal defenses you MUST include them in your **Answer**. Therefore, any possible defense you might want the court to consider at trial should be in your Answer.

The plaintiff has to prove his or her case against you, but you have to prove your affirmative defenses. Sometimes the plaintiff may not be the same person or entity you contracted with. The plaintiff might be a collection agency that received the debt by way of **assignment**. This means that the person or entity that you contracted with **assigned** (gave) their claim to someone else. The one who gives the claim to someone else is called the **assignor** and the one who receives the claim is called the **assignee**. For example, if a hospital is claiming money for medical bills, and the hospital assigns its claim to a collection agency, the collection agency can sue to recover the money the hospital is owed. If the plaintiff in your case is an **assignee**, such as a collection agency, you can raise all the defenses you would raise to claim by the **assignor** (the person or entity you contracted with).

The following are common defenses to a complaint based on breach of contract or **common count** (money that is owed for goods or services, or for a loan):

a. **Running of the Statute of Limitations.**

Every lawsuit must be brought within a certain time frame that the law provides depending on the **cause of action**, or legal theory being sued upon. For example, lawsuits for breach of a written contract must be brought within 4 years from the date of the breach. Lawsuits for breach of an oral contract must be brought within 2 years from the date of the breach.

To find out whether the statute of limitations has run on part or all of the plaintiff's claims against you, check the statutes of limitation in California Code of Civil Procedure beginning at section 350. If it appears that some or all of plaintiff's claims are time barred because the limitation period has run, then you can raise this defense.

(If you want to research the law for this defense you can find it at California Code of Civil Procedure (CCP) sections 350, *et seq.*) *

b. **Failure to State a Cause of Action.**

Every complaint must have at least one **cause of action**. A cause of action is a legal theory upon which a lawsuit can be based. Some lawsuits are based on many legal theories, and thus have a number of causes of action. Each cause of action has certain elements or parts that must be stated in the complaint and proved at trial. For example, a breach of contract cause of action must include the following allegations: 1) the existence of a contract, including whether the contract was oral or written; 2) performance or attempted performance of the contract by plaintiff; 3) breach of the contract by defendant; and 4) damages suffered by plaintiff as a result of defendant's breach. If a cause of action does not contain all the necessary elements or parts this defense can be raised.

(If you want to research the law for this defense you can find it beginning at California Code of Civil Procedure (CCP) section 430.10.)

**All references to code sections or cases can be found in the law library.*

c. and d. 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. The law recognizes that people may rely on promises or statements in choosing how to act. If the party that makes the promise changes his or her mind, it could hurt the party who relied on it. 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.

(If you want to research the law for these defenses you can find it in California Civil Code sections 1511, 1521, 1541, and 3513 and the cases interpreting these code sections.)

e. Unclean Hands. The law requires those coming into the court seeking justice to do justice themselves. This concept is called “clean hands.” The law says that no one can take advantage of his or her own wrong. If you believe the plaintiff has taken advantage of his or her own wrongdoing in relation to the lawsuit, you may raise this defense.

(If you want to research the law for this defense you can find it in California Civil Code section 3517 and the cases interpreting this code section.)

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

(If you want to research the law for this defense you can find it in California Civil Code section 3527 and the cases interpreting this code section.)

g. Failure to Mitigate Damages. The law does not compensate plaintiffs for damages that could have been avoided by reasonable effort or expense. Someone who commits a wrong is not required to compensate the wronged party for damages that could have

been avoided by the wronged party's reasonable effort. If you believe the plaintiff acted in a way to make the damages worse, or refused to act reasonably to minimize the damages, you may claim this defense.

(If you want to research the law for this defense you can read a discussion about the duty to mitigate damages in the case of *Green v. Smith*, 261 Cal.App.2d 392 at pages 396-397, 67 Cal.Rptr. 796, 799-800 (1968). See also *Guerrieri v. Severini*, 51 Cal.2d 12, 23 [330 P.2d 635].)

h. **Unjust Enrichment**. The law requires those who receive more than they are legally entitled to, to return the extra money or property to the party from whom they received it. If the plaintiff has received more money than he or she is entitled to, then you may wish to raise this defense.

(If you want to research the law for this defense you can read the decision in the case of *Branche v. Hetzel*, (1966) 241 CA2d 801, 51 Cal Rptr 188. See Also California Civil Code section 3300.)

i. and j. **Prevention of Performance and Act of God**. Certain occurrences can excuse someone from performing obligations in a contract. If the plaintiff has acted to prevent you from performing your part of the contract, or it is prevented by a "superhuman cause" such as a storm, earthquake or other natural disaster, one or both of these defenses may apply.

(If you want to research the law for these defenses see California Civil Code section 1511.)

k. **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. You will need to check with your bankruptcy attorney to find out if the plaintiff's claim was "discharged" or released by the bankruptcy court. If you believe it has been discharged, you can use this defense, but be sure to include the bankruptcy case information including the date of discharge and the case number.

(Federal law governs bankruptcy. Since federal law has greater authority over state law (it **preempts** state law), you will need to check the federal bankruptcy statutes to find out whether the plaintiff's claim was discharged. If you want to research the Bankruptcy Code you can find it in the Law Library in the United States Codes Annotated (U.S.C.A.).)

l. **Statute of Frauds.** The law requires many different types of contracts be in writing signed by those who are obligated to perform the contract. This law is called the "Statute of Frauds." 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 not in writing, that should have been in writing, this defense may apply to you.

(If you want to research the law for this defense see California Civil Code section 1624, and for contracts pertaining to the sale of goods, see also California Uniform Commercial Code section 2201.)

m. **Parole Evidence Rule.** The law states that when people put their agreement in writing, the written contract takes priority over what is said in relation to the agreement. If the plaintiff's claim is based on a verbal statement that contradicts, or falls outside the written terms of the agreement, you may raise this defense.

(If you want to research the law for this defense see California Code of Civil Procedure section 1856 and California Civil Code section 1625.)

n. **Failure of Condition Precedent.** Sometimes one party's performance of a contract is dependent on the other party first performing his or her obligations. If the plaintiff was required to do certain things before you had do other things under the contract, and the plaintiff failed to do his or her job, you may raise this defense.

(If you want to research the law for this defense see California Code of Civil Procedure section 457 and California Civil Code sections 1436 and 3513.)

o. **Attorneys' Fees Not Recoverable.** The law only allows the winning side in a lawsuit to be reimbursed the money they paid for

attorneys' fees if the contract upon which the lawsuit is based says that the winning side can recover attorneys' fees, or a **statute** (law) says the winning side can recover attorneys' fees. If the plaintiff has asked for reimbursement of attorneys' fees but there is no contract provision or law that entitles plaintiff to recover attorneys' fees, you can raise this defense.

(If you want to research the law for this defense see California Code of Civil Procedure sections 1021, 1031, and 1035.5)

p. **Improper Notice of Breach.** In most circumstances the law expects people to go to court as a last resort, not as a first choice for resolving disputes. Plaintiffs are expected to inform the other side of their claim before filing a lawsuit in order to give the defendant an opportunity to correct the problem. If the plaintiff failed to notify you of the claim before filing suit, and as a result you did not have the opportunity to cure the breach before being sued, this defense might apply to you.

(If you want to research the law for this defense see California Uniform Commercial Code section 2714.)

q. **Offset.** If the plaintiff owes you money and you want the court to credit the amount you are owed by the plaintiff against the amount you owe the plaintiff, you can raise the defense of "offset." **WARNING:** If the plaintiff owes you more than you owe the plaintiff, and you want the court to order the plaintiff to pay you the extra amount, you have to file a **cross-complaint** for the additional money. Raising a defense of offset can only credit the amount you owe plaintiff; it cannot result in an award of money to you. The only way you can get an order that the plaintiff pays you money is by filing a cross-complaint against the plaintiff at the same time you file your **answer**. You can get forms for a cross-complaint at the Self-Help Legal Access Center.

(If you want to research the law for this defense see California Code of Civil Procedure section 431.70.)

r. **Usury.** The law limits the amount of interest that can be charged when loaning money or giving credit. The legal rate of interest in California is 10% per year. Charging more than is legal is called “**usury.**” Unless the person loaning the money falls within an exception to the usury law (such as banks and other commercial lenders), any agreement to charge or pay interest above the legal limit may be void or unenforceable. If the plaintiff has charged you interest higher than the legal rate, and the plaintiff does not fall within an exception to the usury law, you can raise this defense.

(If you want to research the law for this defense see California Constitution Article XV, section 1; California Civil Code Appendix sections 2 and 3; California Civil Code section 1916.)

s. **Accord and Satisfaction.** Reaching a new agreement to resolve a dispute over a previous agreement is called reaching an “**accord.**” Once the money is paid under the new agreement the **accord** is satisfied. If you and the plaintiff agreed to resolve the debt and you did what you were supposed to do, but the plaintiff sued you anyway, this defense may apply to you.

(If you want to research the law for this defense see California Civil Code section 1521.)

t. **Other Defenses:**
If you have any other defenses that are not listed on the answer form, you can state your defenses in this section.

WARNING

THERE MAY BE OTHER AFFIRMATIVE DEFENSES, WHICH THE LAW RECOGNIZES, BUT WHICH ARE NOT LISTED HERE. AN ATTORNEY CAN BEST INFORM YOU WHICH AFFIRMATIVE DEFENSES ARE APPROPRIATE FOR YOU TO RAISE BASED ON THE FACTS OF YOUR CASE. YOU ARE STRONGLY URGED TO TALK WITH A PRIVATE ATTORNEY, IF POSSIBLE, TO EVALUATE THE FACTS OF YOUR CASE AND ADVISE YOU

WHICH AFFIRMATIVE DEFENSES YOU SHOULD INCLUDE
BEFORE FILING YOUR ANSWER.