

Superior Court-Alameda County Self-Help Services

FILING AN ANSWER IN A BREACH OF CONTRACT CASE (DEBT COLLECTION)

PLEASE NOTE: THE SELF-HELP CENTER ONLY PROVIDES INFORMATION AND REFERRALS ON DEBT COLLECTION ANSWERS. THIS PACKET IS FOR YOUR INFORMATION ONLY.

If you need help with the Answer or court process, please contact East Bay Community Law Center (510-548-4040) for an appointment if you qualify. You may also contact the Alameda County Bar Association/Legal Access Alameda at (510-302-2222 opt.4) for a referral to a private attorney or for information on the Community Legal Assistance Saturday Program (CLASP) for legal advice.

The Answer is a document you file with the court and serve on the plaintiff in response to the Complaint. In your answer, you may:

- 1) deny all or some of the things that the plaintiff is saying,
- 2) admit all or some of the things that the plaintiff is saying,
- 3) tell the court new facts that contradict what the plaintiff is saying, and
- 4) tell the court new facts that show that you have a defense.



You cannot ask the plaintiff for money or other relief in your answer. (For that, you need to file a cross-complaint. You may need to retain an attorney to do this.)

There are advantages and disadvantages to filing an answer! Please refer to the “Defendant’s Guide to Debt Collection Cases” for more information on filing an answer and other options you may have.

STEP 1

Fill out your answer.

If you decide to file an answer and the complaint alleges a breach of contract as a cause of action, you need to complete form **PLD-C-010** “Answer – Contract” to be filed with the court within **30 days** from the date you were served with the complaint.

- There are many rules you need to follow in completing your Answer. You must either admit or deny each allegation that the plaintiff makes in the Complaint. If you fail to deny an allegation, the Court will consider it to be true.

WARNING: This self-help information and/or instructions are not offered to take the place of legal advice. Self-Help Services does not provide legal advice nor can we act as your lawyer. You must see a lawyer for legal advice. Self-Help Services provides neutral assistance to all parties and we are not responsible for the outcome of your case.

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- You must also include any and all affirmative defenses you may have (see below for more information on affirmative defenses). If you fail to bring up an affirmative defense in your Answer, you may waive, or give up, your right to bring it up later.
- You may use the attached Sample Answer form as a guide in completing your answer. Please note, however, that is only a sample and may not apply to your case.

Common Affirmative Defenses for Civil Breach of Contract Actions

Affirmative defenses are reasons that make it legal for you to do what you did or did not do. Through affirmative defenses, you tell the court new facts that show these reasons.

Below are some common affirmative defenses that may be available for your case:

1. **Failure to State a Cause of Action** – You may use this defense if the complaint is too vague and/or missing key facts in order for the plaintiff to prove their case. For example, the complaint does not include information on the agreement.
2. **Statute of Limitations** – You may use this defense if it has been more than 2 or 4 years since you paid or used the account in dispute, depending on whether the agreement was verbal or in writing. Lawsuits for breach of a written contract (and most common counts) must be brought within 4 years of when the plaintiff says that you breached the contract and 2 years for breach of an oral contract. See Cal. Code of Civil Procedure section 350 for other statutes of limitations.
3. **Identity Theft** – You may use this defense if someone else used your identity in creating and incurring the debt without your knowledge or consent. You may also give notice to the debt collector that you are the victim of identity theft, who is then required to investigate. See Cal. Civil Code section 1798.93, subsection (c)(5).
4. **Excuse (Plaintiff's Breach)** – You may use this defense if the plaintiff failed to do their part of the agreement before you were required to perform your part. For example, they would not accept payment, so they cannot sue you for not paying. If he/she did not perform, you might not have to perform either.
5. **Duress or undue influence**– You may use this defense if the plaintiff improperly threatened or influenced you into the agreement, he/she may not make you perform your promise. You will need to provide proof, which is not easy to do.
6. **Unclean Hands** – You may use this defense if the plaintiff acted wrongfully in entering and/or executing the agreement. Plaintiffs cannot take advantage of their own wrongdoing. For example, if the plaintiff illegally charged you a higher interest rate based on your race. This is a complicated defense. See Cal. Code of Civil Procedure section 3517.
7. **Unjust Enrichment** – You may use this defense if the Plaintiff received more money than they are entitled to. This defense may require the plaintiff to return the extra money. See Cal. Civil Code 3300.
8. **Res Judicata/Collateral Estoppel** - You may use this defense if the Court has already entered a judgment in the case or ruled on the issues regarding the same incident, damages, and parties. Once the Court makes a decision, plaintiffs may not re-file the same case or re-allege the same issues again.

Please note that the list above is not a complete list of all affirmative defenses, and they may not apply to your case.

STEP 2

Prepare your answer for filing.

After you complete your Answer, make 2 copies of the answer. File your answer with the court.

STEP 3

Pay the filing fee or apply for a Fee Waiver.

When you file, you will need to pay a first filing fee, depending on the amount in dispute, as follows:

- Unlimited, over \$35,000, the filing fee is \$435
- Limited, from over \$10,000 to \$35,000, the filing fee is \$370
- Limited, up to \$10,000, the filing fee is \$225

You may apply for a Fee Waiver (FW-001) if you are low income, which is included in this packet. Make an extra copy of your Fee Waiver for filing.

STEP 4

Serve your answer.

You will need to have someone who is 18 years or older and not a party to the action mail a copy of the Answer to each of the plaintiff(s) or their attorney if they have one. The server will need to complete and sign a Proof of Service By First-Class Mail – Civil (**POS-030**), which needs to be filed with the Court.

NEXT STEPS

Once you timely file an Answer with the appropriate court, the plaintiff cannot file a default against you or proceed in the case without you. This is only the beginning! The rest of the litigation process may include some or all of the following:

- **Discovery** – this is the fact-finding part of the process where you or the other side can ask the other questions and obtain information and documentation. You may make requests to the other party but you may also need to respond to the other side's requests. After you file an answer, the plaintiff may begin discovery.
- **Case Management Conferences** – you will need to file a statement and appear in court to report on the status of your case.
- **Settlement Conference** – you will need to appear in court with the other side to try to settle the matter before the case can go to trial.
- **Pre-trial motions** – either side can file various motions to compel the other side to do something or get the case dismissed before the case even goes to trial. There are guidelines and deadlines that you need to follow. There are no forms for these motions or responses, so you need to do them on pleading paper.
- **Trial** – if you are not able to settle the matter out of court, then the case will need to go to trial. There are many procedural requirements and deadlines to follow. It is very difficult to take a case to trial without an attorney, and we strongly suggest you talk to a private attorney.

Because the litigation process is long and complicated, we recommend that you consult a private attorney before and/or after you file your answer.

WHAT IF I CAN'T AFFORD AN ATTORNEY?

If you cannot afford an attorney, you have a right to represent yourself. Unfortunately, there are very limited resources available to assist you with the litigation process. Here are a few resources:

1. **East Bay Community Law Center (EBCLC)** – (510) 548-4040 ext 206
<https://consumerjusticeclinic.squarespace.com/> Provides legal assistance and referrals to low-income residents of Alameda County at the Neighborhood Justice Clinic. Limited capacity depending on staffing.
2. **Bay Area Legal Aid (BALA)** – 1-800-551-5554 (general legal advice line)
<https://baylegal.org/what-we-do/stability/consumer-protections/>
Provides legal assistance and referrals to low-income residents of Alameda County.
3. **Centro Legal de la Raza** – (510) 437-1554 <https://www.centrolegal.org/>
Provides bilingual and bi-cultural assistance to residents of Alameda County. Consumer protection clinic. By appointment only.
4. **Alameda County Bar Association (ACBA)/Legal Access Alameda (LAA)**– (510) 302-2222 opt 4 <http://www.legalaccessalameda.org/>
 - a. Bankruptcy Clinic. By appointment only.
 - b. Community Legal Assistance Saturday Program (CLASP) – Remote clinic 1st Saturday of each month. Call (510) 485-9933 between 10am-12pm 1st Saturday of the month.
 - c. Lawyer Referral Service – provides referrals to private attorneys
 - d. Lawyers in the Library – provides legal information and advice on legal issues.
5. **Housing and Economic Rights (HERA)** - (510) 271-8443
<https://www.heraca.org/> Provides legal assistance with debt collection, managing debt, and accessing credit.
6. **Consumer Credit Counseling Agencies** - Provides credit counseling for consumers. These organizations work with consumers and creditors in figuring out ways to manage the consumers' debts. For a list of nonprofit agencies, please visit the Department of Justice website at: www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111
7. **Alameda County Law Library** – (510) 208-4832 <https://lawlibrary.acgov.org/>
Provides legal information and resources, including sample pleadings, for self-represented litigants. Phone hours: M-F 9am-4pm.
8. **Nolo Press Books** – available at local bookstores.
Provides legal information and sample pleadings, for self-represented litigants.
9. **Judicial Council of California** – www.courts.ca.gov
Provides legal information and resources, including sample pleadings, for self-represented litigants.

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE: YOUR NAME(S) YOUR ADDRESS YOUR CITY, STATE, AND ZIP CODE ATTORNEY FOR (NAME): "IN PRO PER"	FOR COURT USE ONLY:
Insert name of court, judicial district or branch court, if any, and post office and street address NAME & ADDRESS OF THE COURT AS WRITTEN ON THE PLAINTIFF'S SUMMONS & COMPLAINT	
PLAINTIFF: PLAINTIFF'S NAME AS WRITTEN ON THE PLAINTIFF'S SUMMONS & COMPLAINT	
DEFENDANT: YOU NAME(S) AS WRITTEN ON THE PLAINTIFF'S SUMMONS & COMPLAINT	
ANSWER—Contract	
<input checked="" type="checkbox"/> TO COMPLAINT OF (name): PLAINTIFF'S NAME <input type="checkbox"/> TO CROSS-COMPLAINT (name):	CASE NUMBER: CASE NUMBER

WRITE # OF PAGES ATTACHED

- This pleading, including attachments and exhibits, consists of the following number of pages:
- DEFENDANT (name): YOUR NAME(S) answers the complaint or cross-complaint as follows:
- Check ONLY ONE of the next two boxes:

- 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.)
- Defendant admits that all statements of the complaint or cross-complaint are true EXCEPT:
 - Defendant claims the following statements are false (use paragraph numbers or explain):

IF YOU CHOSE "3b," WRITE THE NUMBER OF PARAGRAPHS IN THE COMPLAINT THAT YOU BELIEVE ARE NOT TRUE.

READ EACH STATEMENT AND CHOOSE THE ONE THAT BEST FITS YOUR SITUATION. IF THE PLAINTIFF IS SUING YOU FOR OVER \$1,000, YOU CANNOT MARK "a."

- Continued on Attachment 3.b.(1). Defendant's information or belief that the following statements are true, so defendant denies them (use paragraph numbers or explain):

IF YOU CHOSE "3b," WRITE THE NUMBER OF PARAGRAPH(S) IN THE COMPLAINT THAT YOU ARE NOT SURE ARE TRUE OR DO NOT HAVE ENOUGH INFORMATION ON.

- 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: WRITE PLAINTIFF'S NAME "vs." YOUR NAME(S)	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:

CHECK THIS BOX AND WRITE HERE ANY AFFIRMATIVE DEFENSES OR LEGAL REASONS WHY YOU MAY NOT BE LIABLE. PLEASE REFER TO THE INSTRUCTIONS FOR A LIST OF SOME COMMON AFFIRMATIVE DEFENSES.

Continued on Attachment 4.

CHECK THIS BOX IF YOU NEED MORE SPACE AND WRITE "ATTACHMENT 4 TO CIV-120" ON TOP OF THE PAGE.

5. Other

IF YOU WOULD LIKE TO EXPLAIN YOUR SIDE OF THE CASE OR ADD ANYTHING ELSE YOU CAN WRITE IT OUT HERE.

6. DEFENDANT PRAYS

a. that plaintiff take nothing.

CHECK THIS BOX IF YOU WOULD LIKE TO RECOVER COSTS FROM DEFENDING THIS ACTION.

b. for costs of suit.

c. other (*specify*):

PRINT YOUR NAME(S)

.....
 (Type or print name)

YOUR SIGNATURE(S)

 (Signature of party or attorney)

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE:	FOR COURT USE ONLY:
ATTORNEY FOR (NAME): Insert name of court, judicial district or branch court, if any, and post office and street address:	
PLAINTIFF:	
DEFENDANT:	
ANSWER—Contract	CASE NUMBER:
<input type="checkbox"/> TO COMPLAINT OF (name):	
<input type="checkbox"/> TO CROSS-COMPLAINT (name):	

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 STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
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.