

Research Guide: Responding to a Breach of Contract Lawsuit

Law Library for San Bernardino County

Research Guide, www.sblawlibrary.org, (909) 885-3020.

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How to Respond to a Breach of Contract Lawsuit

If you have been served with a Summons for a breach of contract civil lawsuit, there are a few things you need to know before filing a response. To respond to a Summons, you will need to submit an Answer. An Answer is a legal form you fill out and file with the Court Clerk's Office which identifies you, and it explains your side of the story regarding the lawsuit. Answer forms can be found at www.courts.ca.gov/forms in the drop down menu under the heading titled "Pleading-Contract". The following Answer form is available in a format you can fill out and print:

Answer-Contract (PLD-C-010)

<http://www.courts.ca.gov/pldc010.pdf>

In the Answer, you may have Affirmative Defenses to the Complaint. If you have defenses, for example, there is a discharge of debt by means of a bankruptcy, etc., you can fill these defenses into Section 4 of the Answer form. To help you determine whether you have defenses, see the list of Affirmative Defenses at <http://www.courts.ca.gov/partners/152.htm#temp> under Templates and Samples titled *Attachment of Answer-Contract (Affirmative Defenses)*. Also, you might want to review [California Code of Civil Procedure § 312](#) and subsequent code sections.

Proof of Service

In addition to your Answer form, you will need to determine the appropriate Proof of Service form to fill out as well. Proof of Service forms are located at www.courts.ca.gov/forms in the drop down menu under the heading Proof of Service. Additionally, you can find Proof of Service forms in the resource titled *California Forms of Pleading and Practice* by Matthew Bender or the Nolo Press guide titled *Win Your Lawsuit* at the law library. Both resources will walk you through the court process, and they provide samples of forms.

You might want to look at the following Proof of Service forms:

Proof of Service by First Class Mail- Civil (POS-030)

<http://www.courts.ca.gov/pos030.pdf>

Proof of Service- Civil (POS-040)

<http://www.courts.ca.gov/pos040.pdf>

Fee Waiver

If you feel you qualify for a Fee Waiver, you will need to fill out the appropriate Fee Waiver forms, file them with the appropriate court, and have your forms filed-stamped. Your Fee Waiver forms might be returned to you immediately, you may need to return to the court clerk's office within a 24 hour period, or the forms might be mailed to you. You should check with the court clerk for more specific information regarding the filing of legal forms. Fee Waiver forms can be accessed at <http://www.courts.ca.gov/forms.htm?filter=FW> or at www.courts.ca.gov/forms in the drop down menu under the Fee Waiver heading. Also, they are available in print in the resource titled *California Judicial Council Forms Manual* at the law library.

If you are not asking for a Fee Waiver, then you will need to pay the court's filing fee, and have your documents filed-stamped. Be sure to get your filed-stamped copies back from the court clerk.

Time

You have 30 days to respond to the Summons and Complaint with your Answer and file it with the court. The 30 days includes Saturdays and Sundays, but it does not count the day you are served the Summons. You can begin counting the 30 days on the day following the day you are served. For instance, if you are served on a Tuesday, the next day, Wednesday, would be Day 1 of the 30 total days, Thursday would be Day 2, and so on.

How to Serve Your Answer

Before you file your Answer with the court, you must serve the plaintiff or the plaintiff's attorney with a copy of the Answer along with the Proof of Service. To "serve" or "service" means a person who is 18 years old or older must mail or hand-deliver a copy of your forms to the other party in the lawsuit. The person serving the documents must be someone other than YOU. You can ask a friend, relative, neighbor, etc. to serve the papers, or you can look in your local phone book and hire a "process server" to mail the papers for you. The person you select to serve the Answer must sign the Proof of Service form. The Sacramento County Law Library has provided a Step-by-Step on Proof of Service by Mail. <http://www.saclaw.org/pages/pos-mail.aspx>

How to File Your Documents

To file, you will need to turn in the original and the copies of the Answer, the Affirmative Defenses (Section 4 of the Answer form), and the Proof of Service to the court clerk. If you are asking for a Fee Waiver, you will need to turn that in too. For more information go to <http://www.courts.ca.gov/xbcr/partners/kanspart4.pdf>

If you do not fill out and file an Answer with the Court, a default judgment might be awarded to the plaintiff against you. In other words, if the plaintiff wins the case, they can collect money from your bank account, your wages (garnishment), or they can place a lien on property you own.

Discovery

If you decide to file an Answer, the plaintiff could send you a Discovery Request. A Discovery Request is a legal document that requires you to respond to detailed questions about the case. Also, it might request paperwork from you regarding your side of the case to be given to the plaintiff or the plaintiff's attorney.

If you decide not to file an Answer, you will not need to respond with more paperwork unless you lose the case and the plaintiff tries to collect money from you through a Judgment. If this occurs, you might want to file additional legal paperwork with the court.

Resource Guides for Breach of Contract at the Law Library for San Bernardino County

- ❖ *California Forms of Pleading and Practice Annotated* by Matthew Bender, KFC 1010 .A65 C3, available at all branches
- ❖ *California Judicial Council Forms Manual*, KFC 995 .A65 C34, available at all branches
- ❖ *California Law of Contracts* by CEB, KFC 215 .K86, available at all branches
- ❖ *California Legal Secretary* by Marlene Hazlewood and James Publishing, KFC 77 .H39, available at all branches
- ❖ *California Procedure*, 5th edition by Witkin, KFC 995 .W52, available at all branches
- ❖ *Civil Procedure Before Trial*, 4th edition by CEB, KFC 995 .C34, available at all branches
- ❖ *Deerings California Codes Annotated*, KFC 30.5 .D4, available at all branches
- ❖ *Legal Secretaries Handbook* by Rutter Group, KFC 77 .B7, available at all branches
- ❖ *Summary of California Law* 10th edition by Witkin, KFC 80 .W5, available at all branches
- ❖ *West's Annotated California Codes*, KFC 30.5 .W4, available at all branches
- ❖ *West's California Code Forms*, KFC 68 .W5, available at all branches
- ❖ *Win Your Lawsuit* by Nolo Press, see staff at the reference desk, available at all branches

Electronic Resource Guides for Responding to a Breach of Contract Case

Breach of Contract Research Guides

<http://www.courts.ca.gov/partners/152.htm>

Judicial Council's Official Court Forms

www.courts.ca.gov/forms

Santa Clara County Superior Court Website

http://www.scscourt.org/self_help/civil/lawsuits/defendant.shtml

http://www.scscourt.org/self_help/civil/lawsuits/plaintiff_defendant.shtml

Sacramento County Public Law Library

<http://www.saclaw.org/pages/pos-mail.aspx>

ATTORNEY OR PARTY WITHOUT ATTORNEY

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

TO COMPLAINT OF (name):

TO CROSS-COMPLAINT (name):

CASE NUMBER:

Enter your name, address, & phone number here. For attorney, either enter your attorney's name or "In Pro Per" if you are representing yourself.

Enter "Superior Court of California", "Civil Division", and the court's address information here.

Enter the Person or Company who is suing you here.

Enter your name here

Check "To Complaint Of" and enter the person or company who is suing you

Enter your case number here.

Place the number of pages attached here. Do not include the Proof of Service.

Read both statements under number 3 ("a" or "b") & select the one that best fits your situation.

If you select "b", write in this space the number of the paragraph(s) from the papers that were given to you that you believe are NOT TRUE. (Example: 3 b or BC-1)

If you select "b", write in this space the number of the paragraphs(s) from the papers that were given to you that you are NOT SURE are true. (Example: 3 b or BC-1)

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 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:	Enter the person suing you VS. your name here	CASE NUMBER:
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ANSWER—Contract

Enter your case number here

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

Review the Affirmative Defenses list at <http://www.courts.ca.gov/partners/152.htm#temp>. If you see that any apply to your case, check number 4 and the box labeled "Continued on Attachment 4" and check the box(es) on the Affirmative Defenses attachment that apply to your case.

Continued on Attachment 4.

5. Other

If you would like to explain your side of the case, check box number 5 and write your explanation here.

6. DEFENDANT PRAYS
a. that plaintiff take nothing.

You may check box "b" or "other" depending upon your situation.

b. for costs of suit.
c. other (specify):

Print your name here

Sign your name here

.....
(Type or print name)

(Signature of party or attorney)