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ANSWER-CONTRACT

Responding to a Breach of Contract Lawsuit

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance, consult a lawyer.

FORMS
The Judicial Council forms commonly used in this procedure are:

- *Answer-Contract* (PLD-C-010) www.courts.ca.gov/documents/pldc010.pdf
- *Request to Waive Court Fees* (FW-001) www.courts.ca.gov/documents/fw001.pdf
- *Order on Court Fee Waiver* (FW-003) www.courts.ca.gov/documents/fw003.pdf
- *Proof of Service by Mail* (POS-030) www.courts.ca.gov/documents/pos030.pdf

In addition, customizable templates for some commonly used non-Judicial Council forms may be downloaded from these links:

- *Affirmative Defenses* (Attachment 4) www.saclaw.org/uploads/files/forms/Attach4.pdf
- *Verification* www.saclaw.org/uploads/files/forms/Verification.rtf

BACKGROUND
When a lawsuit is started against you, the Plaintiff will have you served with a Summons and Complaint. These documents formally notify you that a lawsuit has been initiated, and what the lawsuit is about. You will also receive an *Alternative Dispute Resolution* packet, which provides information about resolving your case out of court, and a *Program Case Notice*, which will list important deadlines you must meet in your case. You have three basic options once you are sued:

1) **Respond to the lawsuit**. If you believe you have a valid legal defense to this lawsuit and wish to defend yourself, you will need to file a response. There are many methods for responding to this type of lawsuit. One common method is to file an Answer. This Guide provides information about filing an Answer to a Breach of Contract case. For more information about your other responsive options, see the Legal Resource Guide on Responding to a Lawsuit on our website at www.saclaw.org/pages/responding-lawsuit.aspx.

You have 30 days from the day you received the papers in person, or the day you were "served," to file a written response ***in proper legal form***. If you received the documents by "substituted service," that is, if the papers were left with someone at your home or office and later mailed to you, you have 40 days after the date the documents were mailed to file a written response in proper legal form. Your 30 (or 40) days start the day after service. If the 30th (or 40th) day falls on a weekend or court holiday, you have until the end of the next business day to file your papers. Your Summons will probably have a date stamped near the bottom. This is the date the documents were filed with the court, **not** the date you were served.

2) **Allow the plaintiff to obtain a default judgment.** Many people who do not have a valid legal defense to this type of case choose not to respond. (Note: not having the money to make payments is NOT a valid legal defense!). If you do not respond to the lawsuit, the other party may get a default judgment against you. This means that the other party wins, and the court will not consider anything you have to say. Although this may sound bad, for many people it is the quickest, least expensive way to resolve the case. To file a response to the lawsuit, you will have to pay a court filing fee of $225-$435, based on the amount you're being sued for (see www.saccourt.ca.gov/fees/docs/fee-schedule.pdf for the current fee schedule), unless you qualify for a fee waiver (see **Step 2** for more information on obtaining a fee waiver). If you lose the case, you will be responsible for the other party's court and attorney fees. If you do not respond and the judgment is obtained by default, these fees are usually less because the attorney has spent less time working on the case.

   Once a default judgment is entered against you, the plaintiff may begin collection efforts, such as garnishing your wages or levying your bank account. You may be able to reduce or stop the amount being taken, if you can show the court that the funds are exempt from collection. For more information, see the Step-by-Step guide on How to File a Claim of Exemption from Wage Garnishment on our website at www.saclaw.org/pages/claim-exemption.aspx, and the Step-by-Step guide on How to Ask the Court to Stop or Reduce a Bank Levy on our website at www.saclaw.org/pages/claim-exemption-bank-levy.aspx. You may also be able to ask the court for permission to pay the judgment in installments over time. For more information, see the Step-by-Step guide on filing a Motion to Pay Judgment in Installments on our website at www.saclaw.org/pages/motion-installments.aspx. The judgment will appear on your credit report for at least seven years. The judgment can be renewed, and re-reported on your credit report until paid in full.

3) **Try to negotiate a settlement.** You can attempt negotiations at any time during your case. Your negotiations ***do not*** automatically stop the lawsuit. The other party can proceed with a default judgment against you unless you file a response with the court. If you attempt negotiations prior to filing a response, you may want to ask the other party for additional time to reply to the lawsuit, in case your negotiations fall through. Be sure any agreement you reach is in writing.

If you reach a settlement, the other party should dismiss your case using a *Request for Dismissal* (CV-110) www.courts.ca.gov/documents/civ110.pdf. The first question on this form indicates if the case is being dismissed "With Prejudice" or "Without Prejudice." This indicates whether the case may be refiled in the future. "With Prejudice" means the case is permanently dismissed; the plaintiff is waiving the right to refile. This is common if the plaintiff agrees to accept, and the defendant pays, a lump-sum payment. "Without Prejudice" means that the case is dismissed, but the plaintiff reserves the right to refile the case if necessary. This is common if the plaintiff agrees to allow payments over time. If you miss a payment, they may refile the lawsuit.

If the plaintiff agrees to dismiss the case, you can make sure the dismissal is entered with the court by checking online. In Sacramento County, you are able to access your court file online at any time from www.saccourt.ca.gov. Be sure to check often, to make sure you're not missing anything. For more information, see the Public Case Access User Guide and Training Video on the Superior Court's website at services.saccourt.ca.gov/PublicCaseAccess/Home/Help.

For more information to help you make your decision about responding to the lawsuit, see the "Being Sued" page from the California Courts Self Help Website at www.courts.ca.gov/1322.htm.

Step-by-Step Instructions

STEP 1: REVIEW THE SUMMONS AND COMPLAINT
Carefully read the Summons and Complaint you receive, to determine the specifics of the case, including who is suing you, why you are being sued, and the amount being demanded. You may not recognize the plaintiff's name; it's possible that your debt has been assigned to a third party for collection. This is legal, and very common, especially for cases related to debts such as credit cards and medical bills. The complaint will usually specify who originally held your contract.

You will then need to determine if an Answer is appropriate for your case. You may want to consider other responsive options. For more information about your other responsive options, see the Legal Resource Guide on Responding to a Lawsuit on our website at www.saclaw.org/pages/responding-lawsuit.aspx.

STEP 2: FILL OUT YOUR PAPERS
If you decide to file an Answer, there are several forms you'll need to complete. Blank and sample forms are available at the end of this packet.

***Answer-Contract* (PLD-C-010)**. This is the official fill-in-the-blanks form to answer a breach of contract case. This form may be used in any Superior Court in California.

Affirmative Defenses* (Attachment 4*). In your Answer, you can present information or evidence that reduces or eliminates your liability, even if the allegations in the complaint are true. These are called "affirmative defenses." Affirmative defenses are the legal reason why, even if everything happened just as described by the plaintiff, you should not be held liable.

Your affirmative defenses must be raised in your Answer, and all facts essential to supporting the particular defense must be included. If you do not raise a particular defense in your Answer, you will be prohibited from using or raising it later on. (California Code of Civil Procedure (CCP) § 431.30(b)(2)); *Ekstrom v. Marquesa at Monarch Beach Homeowners Ass'n*, 168 Cal. App. 4th 1111 (2008) (available online at www.tinyurl.com/Ekstrom-v-Marquesa)).

There many affirmative defenses available. The *Affirmative Defenses (Attachment 4)* form describes the most common defenses to a breach of contract case, including statute of limitations:

> **Running of the Statute of Limitations**. CCP §§ 312-366.3 sets time limits for filing most types of lawsuits. This defense may apply if the complaint was filed after the time period allowed by law.
> ***Example**:* Under California Law, cases for breach of written contract must be started within 4 years from the date the contract is breached. If a creditor sues you, and it has been more than 4 years since your last payment or other activity on the credit card, you may raise this defense. The creditor has missed the statute of limitations for this type of case.

Although the Sacramento County Superior Court will accept this form for filing when attached to the *Answer-Contract* (PLD-C-010), every court has its own procedures and policies. Be sure to check with the court where you're filing to see if they will accept this form. After reviewing this form, you may decide that none of the affirmative defenses it describes apply to your case. If you choose not to raise any of these defenses, you do not need to use this form.

***Verification*.** This form is only needed if you are responding to a verified complaint. Sometimes a Plaintiff will include a *Verification* with their Complaint, where they state under penalty of perjury that everything in the Complaint is true to the best of their knowledge. California law requires some types of Complaints to be verified, while for other types of Complaints it is optional. Read the Complaint carefully, to determine if it is verified. Sometimes a *Verification* will be separate from the complaint; other times it will be included at the end of the Complaint itself. Under CCP § 446, if a Plaintiff verifies an Unlimited Civil Complaint (over $25,000), the Defendant must also verify his or her Answer. If your Answer is verified, the verification becomes the last page of your Answer.

Fee Waiver forms

If you wish to ask the court to waive all or part of your court filing fees, or allow you to make payments over time, you will need to complete the *Request for Fee Waiver* (FW-001) and *Order on Fee Waiver* (FW-003). For more information, see the Step-by-Step guide on Fee Waivers available at the end of this Guide, and on our website at www.saclaw.org/pages/fee-waiver.aspx.

***Proof of Service by Mail* (POS-030)**. Complete the caption of the form with the Defendant's name and address, the court's information, and the names of the Plaintiff and Defendant. You may also complete Question 5 regarding the name and address of the person served. Your server will complete the rest of this form and sign it. For more

information, see the Step-by-Step guide on Proof of Service by Mail available at the end of this Guide, and on our website at www.saclaw.org/pages/pos-mail.aspx.

FOR HELP

The Civil Self-Help Center provides assistance in completing all of these forms to Sacramento County residents and those with qualifying cases in the Sacramento County Superior Court. To receive an appointment, simply arrive at the Law Library by 8:30 a.m., Monday through Friday. Appointments are assigned in a random order determined by a lottery at 8:30 a.m. (not first-come, first-served), so there is no need to arrive earlier, but if you are not here by 8:30 a.m. you may not receive an appointment.

Plan your parking (and child care, if needed) so that you do not have to leave the Law Library during the lottery to feed the parking meter. The lottery is usually over by 9:00 a.m. Directions and parking and transit information are available at www.saclaw.org. For more information, call our Reference Desk at (916) 874-6012, or email reference @saclaw.org.

If you would prefer to complete the forms on your own, you can find instructions at the end of this Guide, and from: Win Your Lawsuit KFC 968 .Z9 D86 (Self-Help) Chap. 8. Electronic access is available from any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at www.saclaw .org/pages/nolo-ebooks.aspx.

STEP 3: MAKE COPIES OF YOUR COMPLETED FORMS

- *Answer* (PLD-C-010), *Affirmative Defenses* (Attachment 4) and *Verification*– 2 copies
  One copy will be served on the Plaintiff's attorney (or the Plaintiff if he or she doesn't have an attorney). The original and the other copy will be filed with the court. The court will keep the original and return the copy to you after it is stamped. The stamped copy is for your records.
- *Request to Waive Court Fees* (FW-001) and *Order on Court Fee Waiver* (FW-003) – 2 copies
  Only if you are filing a fee waiver. These will not be served to the other party.

STEP 4: SERVE THE ANSWER

Someone over the age of 18 who is not a party to the case must serve your documents. This service can be done by mail. Before mailing your documents, this person must fill out a *Proof of Service by Mail* (POS-030). In **Step 2**, you completed several questions on this form; your server will need to finish the form by adding his or her address and the date and location of mailing. They should not sign this form yet.

Make one photocopy of the completed (but unsigned) POS-030. Attach this copy of the unsigned Proof of Service to one of the copies of your Answer. This is the packet of forms your server will mail for you. After depositing this packet of documents in the mail, your server must sign the original *Proof of Service by Mail* (POS-030), and return it to you for filing.

STEP 5: COPY THE SIGNED PROOF OF SERVICE
Make one (1) copy of the signed *Proof of Service by Mail* (POS-030). It is not necessary to copy the instruction page.

STEP 6: ASSEMBLE YOUR PAPERS FOR FILING
After service, you will need to file your documents with the court. Assemble your packet as follows:

- *Request to Waive Court Fees* (FW-001) plus one copy beneath it, if requesting fees to be waived. The original will be unstapled in Sacramento, while the copy is stapled.
- *Order on Court Fee Waiver* (FW-003) plus one copy, if requesting fees be waived. The original will be unstapled in Sacramento, while the copy is stapled.
- *Answer (PLD-C-010)* (with *Affirmative Defenses* and *Verification*, if used), plus one copy. The original will be unstapled in Sacramento, while the copy is stapled.
- Signed *Proof of Service by Mail* (POS-030), plus one copy. This proof of service can be attached as the last page of the Answer when filing. If this is the case, then the original Proof of Service should be attached to the original Answer, and the copy of the Proof of Service should be attached to the copy of the Answer.

STEP 7: FILING/FEES
Your Answer-Contract documents are filed in the drop box in Room 102 in the Sacramento Superior Court at 720 Ninth Street. Fill out and attach the *Civil Document Drop-Off Sheet* (www.saccourt.ca.gov/forms/docs/cv-drop-off-sheet.pdf), and date stamp the back of the original packet. A supply of *Civil Document Drop-Off Sheets*, *Credit Card Authorization Forms* (www.saccourt.ca.gov/forms/docs/cv-201.pdf), and a date stamp are located near the drop box. Following the instructions posted at the drop box, place the unstapled original document packet plus one copy of the packet in the drop box, along with a check or *Credit Card Authorization Form* for the filing fee, or the fee waiver forms if you are requesting to have the filing fee waived. The court will process the paperwork, and return a copy, stamped "Endorsed/Filed," to the filing party. The court will retain the original papers for its file.

No filing fees will be collected at the time of filing if you also file a *Request to Waive Court Fees* (FW-001). You should receive the *Order on Court Fee Waiver* (FW-003) in about five court days.

If you are not requesting your fees be waived (or if your fee waiver is denied), your filing fee is based on the amount asked for in the Complaint. Check the current fee schedule at www.saccourt.ca.gov/indexes/fees-forms.aspx.

Your filing fee, called a "first appearance fee," is only paid with the first paper that you file in a lawsuit. Most other documents filed later do not have a filing fee, or will have a much lower filing fee.

NEXT STEPS

Serving and filing your Answer are just the first steps in your case. There will be many more documents for you to file and serve throughout the lawsuit. It will likely be several months before you go to court. As a self-represented litigant, you are responsible for knowing what is happening in your case. In Sacramento County, you are able to access your court file online at any time from www.saccourt.ca.gov. Be sure to check often, to make sure you're not missing anything. For more information, see the Public Case Access User Guide and Training Video on the Superior Court's website at services.saccourt.ca.gov/PublicCaseAccess/Home/Help.

Discovery

The next step in a civil case is usually discovery. Discovery procedures allow the parties to exchange documents, evidence, and other information before going to court. Discovery is a very important part of a lawsuit, and failure to comply with discovery rules and timelines can result in monetary sanctions.

FOR HELP

The Civil Self Help Center offers assistance with discovery on Thursday afternoons:

Introduction to Written Discovery Class
1:30 pm - 3:30 pm 1st & 3rd Thursday.
Come to understand what discovery is, how to answer questions you received by mail and how you can use discovery yourself. Bring a USB flash drive to download sample forms. The Law Library sells USB drives at the Circulation Desk.

Discovery Lab
1:30 pm - 3:30 pm 2nd & 4th Thursday.
Work on your discovery requests or responses in this drop-in computer lab. Bring your USB flash drive with your requests or responses. No entrance after 3:15 pm. Lab closes promptly at 3:30 pm.

On the Web:
The Sacramento County Public Law Library offers numerous Step-by-Step guides and instructional videos on the discovery process at www.saclaw.org/pages/discovery-topic.aspx.

At the Law Library:
Win Your Lawsuit KFC 968 .Z9 D86 (Self Help) Chap. 10
Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at www.saclaw.org/pages/nolo-ebooks.aspx.

Case Management

For Unlimited Cases (over $25,000), the court will also require periodic status reports from the parties, called Case Management Statements. The court will mail out a Notice of Case Management Conference, which includes an order to serve and file a Case Management Statement no later than fifteen days before the case management

conference. Failure to file a Case Management Statement will result in more paperwork for you, and possibly in sanctions, including striking all or part of your pleadings; dismissing all or part of your case; entering a default judgment against you; and/or ordering that you pay reasonable costs, including attorney fees, to the court and to the other parties. For more information, see the Step-by-Step guide on Case Management Statements on our website at www.saclaw.org/pages/case-management.aspx.

FOR HELP

On the Web:
Completing Your Case Management Statement (48:54)
www.saclaw.org/video2/cms.htm
This video provides background on the Case Management Program and explains how to fill out the forms.
Note: a new page has been added to the form, which is not yet covered in the video. The Step-by-Step guide on Case Management Statements on our website at www.saclaw.org/pages/case-management.aspx includes the latest information.

At the Law Library:
Win Your Lawsuit KFC 968 .Z9 D86 (Self Help) Chap. 12
Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at www.saclaw.org/pages/nolo-ebooks.aspx.

The Tentative Ruling Process
In Sacramento County, Case Management Orders and most types of Motions are subject to the Tentative Ruling process. For these types of proceedings, the judge renders a decision the court day before the scheduled hearing date. The tentative ruling is available by 2 p.m. the day prior to the scheduled hearing. The tentative ruling will become the final ruling on the matter, unless either party asks for the hearing to be held. If you would like the judge to hear oral arguments on the matter, you must notify the other party, the other party's attorney, and the department clerk of your intent to appear at the hearing no later than 4 p.m. the day before the scheduled hearing. If you do not give this notice, your hearing will be taken off the schedule. The tentative ruling will become the final ruling of the court. For more information on the Tentative Ruling System in the Sacramento Superior Court, take a look at their website at https://www.saccourt.ca.gov/civil/motions-hearings-tentative.aspx .

PLD-C-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE: 916-555-4678
Paul Sample
1234 Main Street
Sacramento, CA 95814

ATTORNEY FOR (NAME): In Pro Per

Your name, address and phone number. "In Pro Per" means you're representing yourself.

Insert name of court, judicial district or branch court, if any, and post office and street address:
Superior Court of California County of Sacramento
720 Ninth Street
Sacramento, CA 95814
Civil Division

Court name, address, and branch

PLAINTIFF:
Debt Recovery Services, Inc.

Enter the party names, exactly as they appear on the Complaint

DEFENDANT:
Paul Sample

Check this box and enter the plaintiff's name

Case number

ANSWER—C

☑ TO COMPLAINT OF (name): Debt Recovery Services, Inc.
☐ TO CROSS-COMPLAINT (name):

CASE NUMBER:
34-2012-00012345

1. This pleading, including attachments and exhibits, consists of the following number of pages: 6

The total number of pages in your Answer. This includes attachments such as the Affirmative Defenses and Verification.

2. DEFENDANT *(name)*: Paul Sample
answers the complaint or cross-complain

Enter your name, as it appears on the Complaint

3. Check ONLY ONE of the next two boxes:

Check this box if the complaint is **not** verified, and you wish to deny every claim in the complaint. If you check this box, skip to the next question

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)*:

3, 4, 6, 9, 10, 11

If the Complaint is verified, you MUST check 3b. List the number for each paragraph or question on the Complaint that you claim are false. If you've checked 3a, do not complete 3b.

☐ 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)*:

5, 7, 8

If you need additional space to write your statement you may check the box and attach a page labeled "Attachment 3b(1)" or "Attachment 3b(2)" at the end of this form.

List the number for each paragraph or question on the Complaint that you don't know is true or false. If you've checked 3a, do not complete 3b.

☐ 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.

Enter the party names. For individuals, you can list only the last names

Case number

PLD-C-010

SHORT TITLE:	CASE NUMBER:
Debt Recovery Services, Inc. vs. Sample	34-2012-00012345

ANSWER—Contract

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

If you want to assert any affirmative defenses, you can either list them here, or check the "Continued" box and include an attachment such as the Affirmative Defenses form. The form is already labeled "Attachment 4." If you use a different attachment, label it "Attachment 4."

☑ Continued on Attachment 4.

5. ☐ Other

If you have any other information you need to include in your Answer, check this box and write in that information here.

6. DEFENDANT PRAYS
   a. that plaintiff take nothing.
   b. ☑ for costs of suit.
   c. ☐ other *(specify)*:

If you would like the other party to reimburse you for court fees and other costs if you win this case, check box 6b.

Print your name and sign.

Paul Sample
(Type or print name)

(Signature of party or attorney)