

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

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ANSWER TO CONTRACT: CIVIL COMPLAINT

This packet includes blank forms of:

PLD-C-010: Answer - Contract

Attachment 4: Affirmative Defenses (*optional*)

Verification of Pleading

POS-030: Proof of Service by First-Class Mail - Civil

If you've been sued, you typically have 30 days to respond, starting from when you were served with the **Summons** and **Complaint**. If you do nothing, the judge can decide the case without your input. The most common way to respond is to file an **Answer**. In an **Answer**, you can deny the claims alleged in the **Complaint** and say what your defenses are or might be. If you file an **Answer**, you and the Plaintiff will have an opportunity to present your case to the court. You can contact the Plaintiff to reach an agreement at any time, even if you file your **Answer**. However, there can be downsides to filing an **Answer**. If the Plaintiff hired an attorney and they win, they may be able to ask for money to pay for their attorney's fees.

The Process: Complete Answer → File Forms → Serve Plaintiff → File POS → Attend Hearing

If you choose to file your **Answer**, complete the **Answer** and **Verification of Pleading** forms. An optional **Affirmative Defenses Attachment** may be attached to your **Answer**; just enter an "X" next to any defenses that apply to your situation. After completing your forms, make two copies of everything and bring them to the Clerk of Court for filing, located in Room 201 of the Visalia Courthouse, or at the Civil Filing windows at the South County Justice Center. You may be required to pay a filing fee. Ask the Clerk of Court about a fee waiver if you cannot afford the filing fee. The court will keep the original documents and give you back two file-stamped copies. One copy is for your records, and the other copy is to be served on the Plaintiff. The server, someone 18 or older who is not a party to the case, will mail the **Answer** to the Plaintiff, and then complete the **Proof of Service**. Bring the original **Proof of Service** and one copy to the Clerk of Court for filing.

Other Resources:

- California Courts' Self-Help website: <https://selfhelp.courts.ca.gov/>
- Tulare County Law Library: <https://tularecounty.ca.gov/lawlibrary/>
- Sacramento County Public Law Library: <https://saclaw.org/>

IMPORTANT NOTICE:

The Self-Help Resource Center (SHRC) is providing this packet to you as a courtesy, because the SHRC only assists with family, probate of the person, and select civil issues which do not include civil claims matters. Nothing in this guide should be considered legal advice. Civil cases can be complicated; speak with an attorney if you have specific questions about your case.

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): ATTORNEY FOR (NAME): Insert name of court, judicial district or branch court, if any, and post office and street address:	TELEPHONE:	FOR COURT USE ONLY:
PLAINTIFF:		
DEFENDANT:		
<div style="text-align: center; font-weight: bold; margin-bottom: 10px;">ANSWER - Contract</div> <input type="checkbox"/> TO COMPLAINT OF (name): <input type="checkbox"/> TO CROSS-COMPLAINT (name):		CASE NUMBER:

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.

ANSWER- Contract

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)

Attachment 4: Affirmative Defenses–Contract

____ **Ambiguity** – Plaintiff did not clearly state the amount or the issue(s) in this case, which makes it hard for me to respond. I ask the Court to allow me to add more defenses later if I need to.

____ **Failure to Mitigate Damages** – Plaintiff is not entitled to interest and/or attorneys' fees when it allowed them to add up unnecessarily by:

____ refusing a reasonable settlement offered by Defendant.

____ failing to take prompt action to collect the alleged debt, to try to obtain a reasonable settlement with Defendant; and/or to file a lawsuit in Court to collect.

____ **Common Counts Only** – Plaintiff is not entitled to the amount demanded in the Complaint:

____ Plaintiff failed to give me credit for payments I made.

____ Plaintiff agreed to accept or accepted a lower amount to pay off the debt, but is now asking for more than the amount we agreed to.

____ Plaintiff failed to make payments under the insurance plan I purchased.

____ I am a victim of identity theft and do not owe the debt.

____ All or part of the transactions resulted from fraud, deceit or misrepresentation.

____ Other reason: _____

____ **Breach of Contract by Plaintiff** - Plaintiff failed to comply with the terms of the contract by:

____ changing the terms of the contract without my consent.

____ failing to give me credit for payments I made.

____ agreeing to change the original contract, but not honoring the new agreement.

____ failing to make payments under the insurance plan I purchased.

____ breaching the implied warranty of good faith and fair dealing by acting unreasonably, which denied me the benefits I had under the contract.

____ **No Breach of Contract** - I did what I was required to do under the contract except anything I was prevented or excused from doing, so I do not owe Plaintiff the money it is demanding.

____ **Breach of Warranty** – What I bought was under warranty but did not work as it was supposed to.

____ **Tender of Payment** – I offered the full payment I owed but the Plaintiff refused to accept it.

____ **Accord and Satisfaction** – Plaintiff and I already resolved our problem, so Plaintiff cannot sue me.

____ **Substantial Compliance** – I complied with most of the contract, except for a small part.

____ **Failure to Disclose** – Plaintiff did not disclose important information to me, so I could not comply with the contract or was unaware of what I had to do.

____ **Unclean Hands** – Plaintiff is attempting to benefit from its wrongdoing.

____ **Unjust Enrichment** – Plaintiff would receive more money than it deserves if it wins.

1 **Invalid/Illegal Contract** – The contract is invalid/illegal and cannot be enforced because:

2 ___ **identity theft** – I am a victim of identity theft and do not owe the debt.

3 ___ **fraud, deceit or misrepresentation** – All or part of the contract or transaction resulted
4 from fraud, deceit or misrepresentation by Plaintiff or another party.

5 ___ **lack of acceptance** - I did not agree to the contract or certain terms of the contract.

6 ___ **lack of consideration** - I did not receive any goods or services, received them late, or
7 received goods that were defective and/or services that were substandard.

8 ___ **rescission/return of goods/security- CC § 1691.** On or about _____, I returned to
9 Plaintiff what I received under the contract on condition that Plaintiff cancel my obligation.

10 ___ **incapacity** - I was under 18, mentally or physically incapacitated, or disabled, which
11 prevented me from having the legal capacity to enter into or understand the contract.

12 ___ **duress/undue influence** Plaintiff made me enter into the contract against my will by
13 taking unfair advantage of my mental state/incapacity or by using threats or force.

14 ___ **mistake** – There was a mistake made as to the terms that were agreed to by the parties.

15 ___ **impossibility or impracticability** - I could not comply with the contract because it was not
16 possible or practical to do so.

17 ___ **frustration of purpose** - Something unexpected occurred which totally destroyed the
18 items or goods, or prevented me from receiving them, so I should not have to pay for them.

19 ___ **translation of contract - Cal. Civ. Code § 1632** I negotiated the contract with Plaintiff or
20 its representative in ___ Spanish ___ Chinese ___ Tagalog ___ Vietnamese or ___ Korean. Plaintiff
21 violated this law by failing to give me copies of the contract in my language as required. I
22 revoke and cancel the contract and Plaintiff cannot collect any money from me.

23 **Excuse** – I have a legal reason why I did not have to comply with the contract.

24 ___ **prevented from performance - Cal. Civ. Code § 1511** - Plaintiff or someone else did or said
25 something that prevented me from complying with the contract.

26 ___ **anticipatory repudiation** – Before I had to make payment, Plaintiff told me it would not do
27 what it was supposed to do under the contract, so I did not have to pay anymore.

28 ___ **failure of condition precedent - Cal. Civ. Code § 1498** – Plaintiff did not comply with a
specific term or condition of the contract which it was required to do before I had to pay.

___ **cancellation** – The contract was already cancelled.

1 **Failure to State a Cause of Action** – Plaintiff failed to state an essential element for:

2 ☐ Breach of Contract: ☐ It is not the original creditor I had an account with and did not state
3 ☐ who the original owner of the account was
4 ☐ it is now the legal owner of this account and has the right to sue on it
5 ☐ It did not state the specific date the contract was entered into
6 ☐ It did not state the specific date the contract was breached/not complied with
7 ☐ Other: _____

8 ☐ Common Counts: ☐ It is not the original creditor I had an account with and did not state
9 ☐ who the original owner of the account was
10 ☐ it is now the legal owner of this account and has the right to sue on it
11 ☐ Other: _____

12 Therefore, Plaintiff's claim is invalid and Plaintiff is not entitled to collect the amount demanded.

13 **Statute of Limitations** – Plaintiff cannot proceed with this case or be awarded any money
14 because it filed and/or served its Complaint after the statute of limitations expired under:

15 ☐ **Cal. Code of Civ. Proc. § 337 subd. 1; subd. 2 (1),(2),(3)** – An action based on a written
16 contract (**subd. 1**); or an open book account or account stated (**subd. 2 (1),(2),(3)**) must be
17 filed within 4 years from the date of the last item, which is the date the last payment became
18 due, but was not paid, Plaintiff stopped extending credit and there was no more activity.

19 ☐ **Cal. Code of Civ. Proc. § 339** – An action based on an oral contract must be filed within 2
20 years of when the cause of action accrued (when the amount became due and not paid).

21 ☐ **Delaware Code Ann. Tit.10, § 8106** - An action based on a written contract must be filed
22 within 3 years of when the claim accrued (when the amount became due and was not paid)
23 because the original creditor of the account is incorporated in Delaware and the credit
24 card agreement between Defendant and the original creditor stated that Delaware law
25 applied. (*Resurgence Financial, LLC v. Chambers* (2009) 173 Cal.App.4th Supp. 1)

26 **Discharge by Bankruptcy** – **11 U.S.C. § 362(a)** I filed for bankruptcy, Case #: _____.

27 ☐ I ask the Court to stay/suspend Plaintiff's action against me until the bankruptcy case is over.

28 ☐ The bankruptcy Court ruled I do not have to pay this debt. I ask the Court to dismiss this case.

Public Policy – Plaintiff violated public policy by engaging in illegal conduct.

Waiver – Plaintiff gave up its right(s) under the contract. It cannot collect the amount demanded.

Standing- Plaintiff is not who I entered into a Contract with.

☐ It did not state that it is the legal owner of this alleged debt and has the right to bring this
case to collect the debt.

☐ It did not provide a copy of an agreement which shows it is the legal owner of this alleged
debt and has the right to bring this case to collect the debt.

Laches – Plaintiff failed to take legal action for a long time, which caused me to believe it was not
trying to collect this alleged debt. This caused me harm as it is now asking for much more money.

1 **No Damage to Plaintiff** – Even if Plaintiff’s other allegations are true, Plaintiff did not suffer
2 damages (economic loss).

3 **Mistaken Identity** – Plaintiff has sued the wrong person.

4 **Parol Evidence Rule** – At the time the contract was entered into, it was intended to be the full
5 agreement between the parties. Plaintiff cannot now present evidence to change the agreement.

6 **Res Judicata/Collateral Estoppel.** - Plaintiff cannot sue me. There was a judgment as to the facts
7 and/or legal issues in a prior case. I ask the Court to take judicial notice of Case # _____.

8 **Usury- CC §§ 1914.12-1, 1916.12-2** - Plaintiff charged a higher interest rate than the law allows.

9 **Lack of Venue** – Plaintiff filed in the wrong court.

10 **Lack of Jurisdiction** – The Court does not have power to hear this case.

11 **Novation** – With Plaintiff’s consent or knowledge, I substituted someone else for myself in the
12 contract. I am no longer responsible for any debt related to the contract.

13 **Statute of Frauds- CC § 1624(a)(1-7)** – The oral contract is unenforceable because it is required
14 to be in writing.

15 **Vexatious Litigant- CC § 391.7** – Plaintiff has abused the court system by filing too many
16 frivolous lawsuits without an attorney and should be prohibited from filing another lawsuit.

VERIFICATION

FORM No. 2

Verification of Pleading (Code Civ. Proc., § 446)
Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)

by Party

CASE TITLE _____

I, _____, declare:
(Name)

I am the _____ in the above-entitled matter.

I have read the foregoing _____
(pleading, e.g., complaint) and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are
therein stated on information and belief, and, as to those matters, I believe it to be true.


Executed on _____, 20____, at _____
_____ County, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

(Signature of Party)

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.