

COMPLAINT FOR FORECLOSURE OF MECHANIC'S LIEN

Sample Only
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INSTRUCTIONS: The following is a “cause of action” to be inserted after the heading of the complaint and common allegations. Include as many other causes of action as you have claims such as fraud, accounting, etc. Your “prayer” (request for relief) comes after your causes of action and must describe the relief you are seeking for each cause of action.

FIRST CAUSE OF ACTION

(Breach of Contract Against ____)

1. Plaintiff, _____ [name], is now, and at all times mentioned in this complaint was, a corporation organized and existing under the laws of the State of California, with its principal place of business in _____ County, California, duly licensed by the State of California to perform the work alleged in this complaint.

2. At all times mentioned in this complaint plaintiff was, and is, doing business under the fictitious name _____. Plaintiff has filed the statement and published the notice required by section 17918 of the Business and Professions Code.

3. Plaintiff does not know the true names of defendants DOES 1 through 50, inclusive, and therefore sues them by those fictitious names. _____ [Optionally, in addition to language in charging allegations that includes fictitiously named defendants: Plaintiff is informed and believes, and on the basis of that information and belief alleges, that each of those defendants was in some manner legally responsible for the events and happenings alleged in this complaint and for plaintiff's injuries and damages.]

4. Plaintiff is informed and believes and on that basis alleges that, at all times mentioned in this complaint, defendants _____ [names], and Does 1 through 50 were and are corporations doing business in the State of California.

5. Plaintiff is informed and believes and on that basis alleges that, at all times mentioned in this complaint, defendant _____ [name] is now, and at all times mentioned in this complaint was, a limited partnership organized under the laws of the State of California, with its principal place of business in _____ County, California, doing business under the fictitious name _____, and is sued in the name _____ [which it has assumed or by which it is known].

6. Plaintiff is informed and believes and on that basis alleges, that at all times mentioned in this complaint, defendants were the agents and employees of their codefendants, and in doing the things alleged in this complaint were acting within the course and scope of that agency and employment.

7. The real property ("building parcel") referred to in this complaint is located in the City of _____, County of _____, State of California, and is commonly known as _____ [address or location]. The real property is more particularly described in Exhibit _____ attached to this complaint and incorporated by reference.

8. On or about _____ [date], plaintiff and defendant _____ [name of defendant] entered into a written agreement, by which plaintiff agreed to furnish certain labor, services, equipment, and materials for a work of improvement on the building parcel, for an agreed contract price of \$_____, plus those additional sums as the parties would determine as the price for extra work, all of which defendant agreed to pay. A true and correct copy of the agreement is attached to this complaint as Exhibit _____ and incorporated by reference. The whole of the building parcel, and the entire estate of defendant, are required for the convenient use and occupation of the work of improvement.

9. During the period _____ [dates], pursuant to the agreement and at defendants' special request, plaintiff furnished labor, services, equipment, and materials used and intended to be used in the work of improvement on the building parcel,

including extra work having an agreed price and reasonable value of \$_____.

10. Plaintiff has performed all conditions and covenants to be performed on its part under the agreement.

11. The labor, services, equipment, and materials urnished by plaintiff had and have a reasonable value of \$_____, which defendant agreed to pay.

12. Defendant breached the agreement, in that it paid plaintiff only \$_____ and there is now due, owing, and unpaid the sum of \$_____, together with interest at the legal rate.

13. The agreement contains an attorney fees provision. As the result of the foregoing breach, plaintiff has been required to, and has, retained the firm of _____ [name of firm] to represent it in connection with this matter. The exact amount of attorney fees to be incurred by plaintiff is presently unknown to plaintiff, who will seek leave to amend this complaint after that sum has been ascertained.

SECOND CAUSE OF ACTION

(Mechanics' Lien Foreclosure Against _____)

14. Plaintiff incorporates herein by reference paragraphs 1 through _____.

15. On _____ [date], plaintiff duly caused a preliminary notice to be given in accordance with the provisions of Civil Code section 3097.

16. On _____ [date], plaintiff duly recorded a verified Mechanics' Lien Claim, describing the building parcel and the labor, services, equipment, and materials to be furnished on the work of improvement, at _____ [include book, page, and instrument number] in the official records of _____ [name of county], California, in accordance with the provisions of Civil Code section 3084. The cost of recording the Mechanics' Lien Claim was \$_____, no part of which has been repaid.

17. Each defendant claims some right, title, or interest in or to the building parcel, each

of which claim is junior and inferior to plaintiff's claim.

WHEREFORE, plaintiff demands judgment against defendants for the following:

1. The sum of \$_____, together with interest according to law as damages;
- 2 . The sum of \$_____ in costs incurred in recording the verified Mechanics' Lien Claim;
3. The sum of \$_____, together with attorney fees and interest, be ordered as a lien against the building parcel, senior and superior to any claim of right, title or interest in or to the real property of any defendant, and that the real property be ordered sold by the Sheriff of _____ County, California, according to law, and that all proceeds of sale be applied to plaintiff's claim and to the cost of these proceedings and the sale of the real property;
4. Reasonable attorney fees and costs as allowed under Civil Code section 3148; and
5. Any other and further relief the court considers proper.

Date: _____
_____ [Plaintiff's name]
Plaintiff *In Pro Per*

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