

ANSWER AND AFFIRMATIVE DEFENSES

Sample Only
Use At Your Own Risk



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.

COMES NOW the defendant, _____, for himself alone and in answering the allegations of the complaint on file herein, affirms, denies, and alleges as follows:

<>. Answering the allegations of Paragraph ____ of the complaint, defendant____ incorporate____ herein ____ answers to Paragraphs ____ through ____ of plaintiff's purported ____ Cause of Action the same as though fully set out herein at length.

<>. [ADMIT] Answering the allegations of Paragraph____, Defendant____ admit each and every allegation contained in said Paragraph____.

<>. [ADMIT PART] Answering the allegations of Paragraph____, Defendant____ admit _____. Except as heretofore admitted, Defendant____ deny____ each and every remaining allegation contained in said Paragraph____.

<>. [DENY] Answering the allegations of Paragraph____ of the Complaint, defendant____ deny____ each and every allegation contained in said Paragraph____.

<>. [DENY – NO INFORMATION OR BELIEF] Answering the allegations of Paragraph____, Defendant____ allege____ that _____ no information or belief sufficient to

allow ___ to answer and so ___ deny__ each and every allegation contained in said Paragraph__

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

<>. These answering _____s allege that the _____ each and every Cause of Action therein fails to state a Cause of Action.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

<>. These answering Defendants allege that to the extent the _____ seeks equitable relief, _____s' inequitable conduct constitutes unclean hands and therefore bars the granting of relief to _____ herein.

THIRD AFFIRMATIVE DEFENSE

(Anticipatory Repudiation)

<>. These answering ___s are informed and believe and on such information and belief allege that ___s breached their contract, if any, with ____, and that by reason of said breach of contract, ___ have been excused of their duties to perform all obligations set forth in said contract.

FOURTH AFFIRMATIVE DEFENSE

(Offset)

<>. These answering ___s allege that they have suffered damage by reason of ___ conduct; that they have the right of offset if any amount of money is owed to ___s or due ___s by way of damage.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

<>. These answering ___s are informed and believe and on such information and belief allege, that ___s were engaged in conduct that constitutes a waiver of their rights under the contract alleged in the ____. By reason of said waiver, ___s are excused from further performance of the obligations under the alleged contract.

SIXTH AFFIRMATIVE DEFENSE

(Release)

<>. These answering ___s allege that ___'s actions constituted a full release and waiver by ___s of any and all claims which ___s may have against ___s.

SEVENTH AFFIRMATIVE DEFENSE

(In Pari Delicto)

<>. These answering ___s allege that the ___s herein and each and every purported Cause of Action in the ___ are barred because ___s have engaged in acts and courses of conduct which rendered them in pari delicto.

EIGHTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

<>. These answering ___s allege that the ___s herein, and each and every Cause of Action contained in the ___, are barred by reason of acts, omissions, representations and courses of conduct by ___s by which ___s were led to rely to their detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by the ___s.

NINTH AFFIRMATIVE DEFENSE

(Condition Precedent)

<>. These answering ___s allege that performance by these ___s of certain acts were contingent upon receipt of specific instructions or otherwise properly directed any action which supposedly were to be undertaken by these ___s, thus ___'s authority, direction and cooperation was a condition precedent to any alleged-obligation-by-these ___s to perform such acts.

TENTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

<>. These answering ___s are informed and believe and thereon allege that the damages referred to in the ___ by ___s were proximately caused by the ___s and/or others affiliated in any manner with ___s in that at all times relevant herein, ___s, failed to exercise for their own protection the proper care and precautions which prudent persons under the same and similar circumstances would have exercised and that if these answering ___s committed any wrongful act at all (which supposition is made for the purpose of their defense without admitting such to be a fact), the aforesaid conduct

of ___s and/or entities or persons associated in any manner with the ___s contributed to the happenings of ___'s alleged damages.

ELEVENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

<>. These answering ___s allege that the ___ is barred by the provisions of Section 1624 of the Civil Code, i.e., the Statute of Frauds.

TWELFTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

<>. These answering ___s allege that the ___s herein and each and every purported Cause of Action in the ___ are barred as a result of a failure of consideration.

THIRTEENTH AFFIRMATIVE DEFENSE

(Substantial or Partial Performance/Divisibility)

<>. These answering ___s are informed and believe and on such information and belief allege that the contract alleged in the ___, if any, has been substantially and/or partially performed, and as such, is subject to divisibility.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

<>. These answering ___s are informed and believe and thereon allege that ___s has failed to mitigate and lessen damages, if any it sustained, as required by law, and are barred from recovery by reason thereof against ___s.

FIFTEENTH AFFIRMATIVE DEFENSE

(Apportionment)

<>. These answering ___s are informed and believe and thereon allege that the matters complained of in the ___ were proximately caused, in whole or in part, by the acts or omissions of a third party or parties or ___s. Accordingly, the liability of the ___s and responsible parties, named or unnamed, should be apportioned according to their respective degrees of fault or other legal responsibility, and the liability, if any, of these answering ___s should be reduced accordingly.

SIXTEENTH AFFIRMATIVE DEFENSE

(Modification)

<>. These answering ___s are informed and believe and thereon allege that the contract in question, if any, was modified by the parties, and that ___s are barred from recovery on the unmodified original contract, if any, by reason of said modification.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Substituted Contract)

<>. These answering ___s are informed and believe and thereon allege that a new contract were substituted in place of the original contract, if any, and that ___s are barred from recovery on the original contract, if any.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Mutual Mistake)

<>. These answering ___s are informed and believe and thereon allege that if there

presently exists or ever existed, any or all of the alleged rights, claims or obligations which ___s seeks by way of their ___, said claims or obligations are unenforceable by reason of mutual mistake.

NINETEENTH AFFIRMATIVE DEFENSE

(Agreement is Not Fully Integrated)

<>. These answering ___s are informed and believe and thereon allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which ___s seeks by way of their ___, said claims or obligations are unenforceable because the written agreement is not fully integrated.

TWENTIETH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

<>. These answering ___s are informed and believe and thereon allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which ___s by way of their ___, said claims or obligations are unenforceable because ___s assumed the risk involved in the transaction.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

<>. These answering ___s are informed and believe and thereon allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which ___s seeks by way of its ___, each and every cause of action in the ___ is barred by the applicable sections of the California Code of Civil Procedure.

WHEREFORE, defendant__ pray__ that plaintiff__ take nothing by __ Complaint and that defendant__ have judgment against plaintiff__ and recover costs of suit herein incurred, and such other relief as the court may deem proper.

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

NOTE: Your answer must verified if the Complaint is verified.

VERIFICATION

I, ____, am a ____in the above-entitled action. I have read the foregoing __ and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at _____, California.

DATED: _____
_____ [NAME]

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