



LA Law Library Locations

Main Library:

(Corner of 1st & Hill)
301 W. First Street
Los Angeles, CA 90012
(213) 785-2529

Mon - Fri: 8:30am–6:00pm
Sat: 9:00am–5:00pm



Courthouse Branch Locations:

Long Beach, Torrance

Courthouse eBranch Locations:

Long Beach, Norwalk, Pomona, Torrance,

Public Library Partnerships:

Compton, Lancaster, Pasadena, Santa Monica
Van Nuys, West Covina

Remote Locations

- **Courthouse Branch Locations:**
Long Beach, Norwalk, Pomona, and Torrance
- **Public Library Partnerships:**
Compton Library, Lancaster Regional Library, Norwalk Public Library, Pasadena Public Library, Pomona Public Library, Santa Monica Public Library, Los Angeles Public Library Van Nuys Branch, West Covina Public Library

Visit www.lalawlibrary.org for more information



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Overview

- The LA Law Library was established in 1891
- The current building was opened in 1953
- Largest print collection in a public law library west of the Mississippi River
- Seven floors
- 35 miles of shelving
- 1,000,000 equivalent volumes including print and digital



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Print Collection

- Primary and secondary legal materials for all 50 states, federal and multi-state Foreign and International materials
- Extensive historical collection including early California and state colonial materials
- California and Ninth Circuit Appellate and Supreme Court briefs

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Electronic Databases

- California State Briefs
- CEB OnLAW
- Foreign Law Guide
- HeinOnline
- Index to Foreign Legal Periodicals
- LA Law Library Catalog
- LLMC Digital
- Legal Information Reference Center
- Legal Trac
- Lexis Advance
- SmartRules
- U.S. Supreme Court Records and Briefs, 1832-1978
- Westlaw
- Wolters Kluwer Cheetah
- Xspouse



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What We Do

- Suggest research avenues and sources for research, identify and locate citations
- Explain how to use legal materials
- Explain the law-making process
- Assist in finding forms
- Aid in the use of electronic resources including Westlaw and Lexis (online databases that contain cases, codes, and statutes for all 50 states and secondary materials), CEB OnLAW, and HeinOnline
- Teach public classes



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Library Services

- Reference Service
 - in library, by phone, email, mail, and live chat through LibChat
- Document Delivery Service
- Members Program
 - Open to members of the State Bar of California
- Computer Services
- Circulation
 - Borrower registration program
 - Reserve books and more...
- Facility Rentals
 - Training Center
 - Conference Rooms
 - Office Space
 - Private Events (up to 500 people)
- Instruction
 - Public training classes
 - MCLE courses
 - Tours



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Civil Lawsuit Basics: How to File and Respond to a Complaint

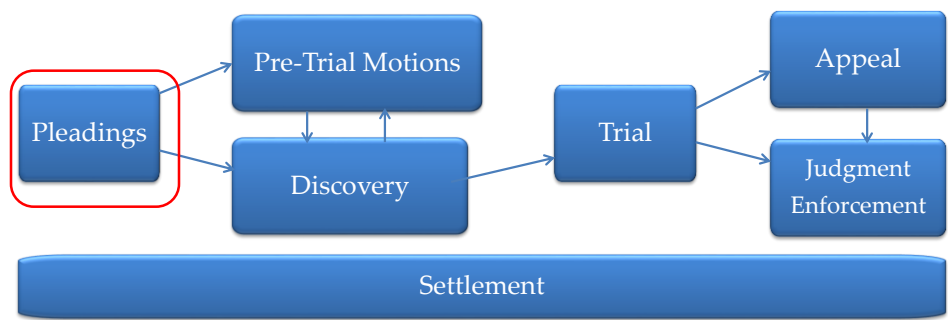
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Phases of a Civil Lawsuit



**Civil Lawsuit Basics at LA Law Library includes classes on each phase except appeals (we have separate clinics/classes on civil appeals).*



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Disclaimer

LA Law Library does not provide legal advice. LA Law Library provides legal resources and assistance with legal research as an educational service. The information presented in this program is not legal advice and is provided solely as an educational service to our patrons. For legal advice, you should consult an attorney.

Also, this class is limited to general civil cases in California state court.



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Is bringing a lawsuit a good idea?



- Can I settle the dispute without going to court?
- If I am suing for money, can the defendant afford to pay?
- Will a lawsuit be worth the expense, time and trouble? (Even without an attorney, there are costs.)
- Will they countersue me? (Do I have more to lose than to gain?)
- What happens if I change my mind?

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Some other options...

- Send a **letter** explaining the dispute and making a demand (you don't want to sue, but...).
- Request **mediation** (free options available, such as LA County Dept. of Consumer and Business Affairs).
- File in **small claim** court (for disputes up to \$10,000 if you're an individual).
- Seek assistance from elected officials, clergy, or other **community leaders**.
- Submit a Better Business Bureau or other **consumer watchdog complaint**.

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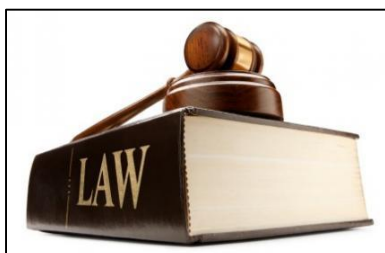
What am I suing for? What are the causes of action (legal theories) I am trying to allege?



- Must do **legal research** to determine what causes of action might apply to your situation.



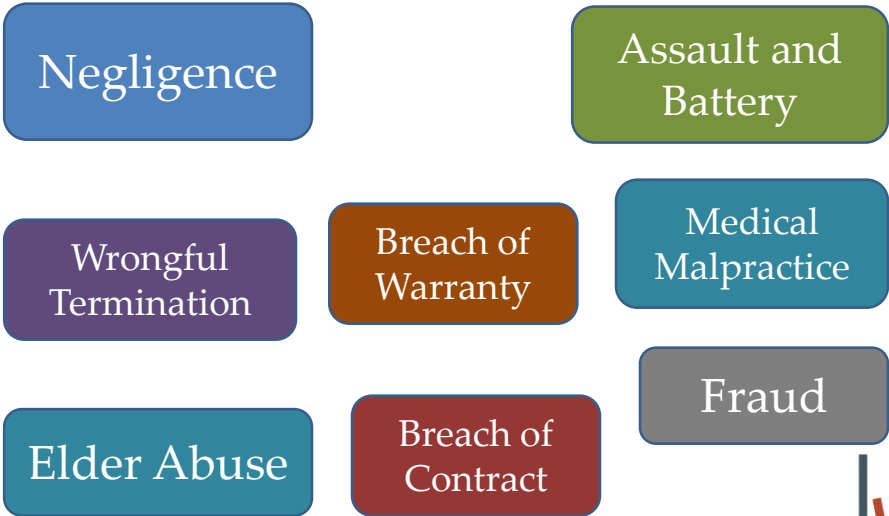
What am I suing for? What are the causes of action (legal theories) I am trying to allege?



- Some library resources to use:
 - *California Causes of Action*
 - *California Elements of An Action*
 - *California Forms of Pleading and Practice*
 - *Rutter's Civil Procedure Before Trial: Claims and Defenses*
- And many more!



Some Common Causes of Action



What are the elements of each cause of action?

Periodic Table of the Elements

Legend:

- hydrogen
- alkali metals
- alkaline earth metals
- transition metals
- poor metals
- nonmetals
- noble gases
- rare earth metals

- Do I have **facts** to support each element of each cause?
- Danger of malicious prosecution if any one cause of action brought without probable cause (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 686).
- TIP: look at the form jury instructions for each cause of action

What are the elements of each cause of action?

Periodic Table of the Elements																	
<div><div>hydrogen</div><div>alkali metals</div><div>alkali earth metals</div><div>transition metals</div><div>poor metals</div><div>metalloids</div><div>noble gases</div><div>rare earth metals</div></div>																	
H	He																
Li	Be	B	C	N	O	F	Ne										
Na	Mg	Al	Si	P	S	Cl	Ar										
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
Cs	Ba	La	Hf	Ta	W	Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
Fr	Ra	Ac	Unq	Unp	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns	Uns
			Ce	Pr	Nd	Pm	Sm	Eu	Gd	Tb	Dy	Ho	Er	Tm	Yb	Lu	
			Th	Pa	U	Np	Pu	Am	Cm	Bk	Cf	Es	Fm	Md	No	Lr	

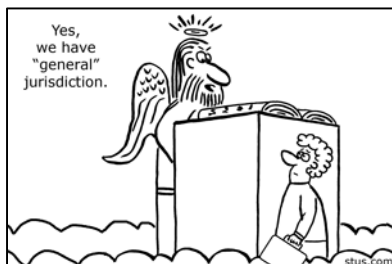
- Example: Cause of action for **breach of contract** has 4 elements:
 1. Existence of contract
 2. “Consideration”
 3. Breach
 4. Damages
- Need facts to support *all 4 elements*

Statutes of Limitation



- Maximum time to bring a lawsuit set by different statutes of limitation
- Am I within the statute for each cause of action?
 - Statutes of limitation chapter of California code located at Code of Civil Procedure sections 312-366.3
- If not, has the statute been **tolled**?
 - Date of discovery and other matters **can** toll statute: See Rutter’s *Civil Procedure Before Trial: Statutes of Limitation*.

Jurisdiction



TIP: This presentation covers California Rules. Federal Rules are similar yet not identical.

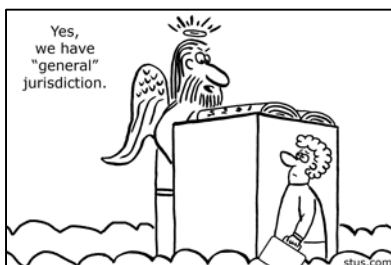
- Does California have **personal jurisdiction** over defendant? Four grounds for personal jurisdiction (*Muckle v. Superior Court* (2002) 102 Cal.App. 218, 226, n. 6):
 - Domicile
 - Physical presence
 - Consent to jurisdiction
 - Minimum contacts



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Jurisdiction, cont.



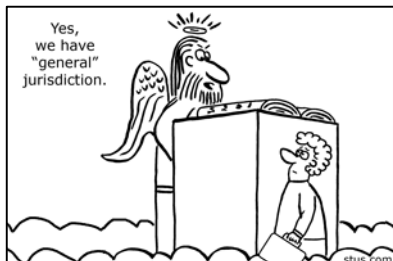
- Are you **required** to file in federal court?
 - Usually not: state courts have "general" jurisdiction
 - Unless a federal statute provides for **exclusive** federal jurisdiction over the cause of action
- **Can** you file in federal court?
 - Yes, if "diversity": Do the parties reside in different states, and does the suit claim more than \$75,000? (28 U.S.C. § 1332)



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Jurisdiction, cont.



- Some “causes of action” require you to file an **administrative claim** first before you are allowed to file a lawsuit (examples: tort claims against municipalities; employment discrimination claims; suit against DMV for not issuing license)
- **Arbitration clause** in contract?



Writ Petition vs. Complaint

- **Writ petition** seeks to reverse the decision of, or issues instructions to, a government agency
- Many of the same rules apply to each, but this presentation focuses on **complaints**
- Complaint can seek: **money damages, injunctions, and declaratory relief**



Drafting the Complaint



www.courts.ca.gov/forms

- Very important not to wait until last minute!
 - A technical error can cause the clerk to reject your complaint, and then you might miss the statute of limitations
 - It takes much longer to write a complaint and prepare all of the paperwork than you might think



Drafting the Complaint



www.courts.ca.gov/forms

- Finding **forms and templates** for drafting your complaint:
 - **Judicial Council forms** available for complaints for:
 - Personal injury
 - Property damage
 - Breach of contract/fraud, and
 - Unlawful detainer
 - **Pros** of Judicial Council forms: easier, faster to prepare complaint. Less room for technical errors.
 - **Cons**: not available for all types of suits; if facts are complicated may not save much time in drafting.



PLD-C-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO. FAX NO. (Optional)

E-MAIL ADDRESS (Optional)

ATTORNEY FOR: (Name)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS

MAILING ADDRESS

CITY AND ZIP CODE

PROPERTY NAME

PLAINTIFF:

DEFENDANT:

DOES 1 TO

☐ COMPLAINT ☐ CONTRACT

☐ AMENDED COMPLAINT (Number):

☐ CROSS-COMPLAINT ☐ AMENDED CROSS-COMPLAINT (Number):

Amount demanded: ☐ does not exceed \$10,000 ☐ exceeds \$10,000 but does not exceed \$25,000 ☐ exceeds \$25,000

☐ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)

☐ ACTION IS RECLASSIFIED by this amended complaint or cross-complaint

☐ from limited to unlimited ☐ from unlimited to limited

CASE NUMBER:

1. Plaintiff (name or names):

alleges causes of action against defendant (name or names):

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

3. a. Each plaintiff named above is a competent adult:

☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ other (specify):

b. ☐ Plaintiff (name):

☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

☐ has complied with all licensing requirements as a licensee (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person:

☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

Form Approved by Superior Court

Superior Court of California

PLD-C-001 Rev. January 1, 2015

COMPLAINT—Contract

Page 1 of 1

Code of Civil Procedure, § 405.10

Drafting the Complaint: Forms & Templates



- Finding forms and templates for drafting your complaint:
 - If there's no Judicial Council form for your cause(s) of action, you must draft complaint yourself on pleading paper.
 - Library resources for finding forms and templates for complaints: *Forms of Pleading and Practice*, and many more – ask at the Reference Desk!

Technical Requirements for Complaint: Important!

- Clerk will reject a complaint if these are not followed! (So don't wait until last minute...)
- RULES CAN CHANGE: check before filing.
- (See Cal. Rules of Court, rules 2.100-119.)
- Library makes available **pleading paper templates** for L.A. County Superior Court and Central District of California federal court, in print at the Reference Desk, and on the public computers
 - Paper: 8 ½ by 11, one-sided, “opaque, unglazed, white or unbleached, of a quality of at least 20-pound weight.”
 - Print must not be smaller than 12-point, and equivalent to Courier, Times Roman, or Helvetica.
 - Left margin one inch, right margin one-half inch.
 - Lines must be numbered with at least three numbers for each inch



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YOUR NAME
Street Address
City, State, Zip
Phone Number (with area code)
Fax Number (if applicable)
Email Address (if applicable)
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

NAME OF PLAINTIFF,
Plaintiff,
vs.
NAME OF DEFENDANT(s),
Defendant(s)

Case No.: No. 12-3-456789-1
DOCUMENT NAME (e.g., COMPLAINT FOR DAMAGES)

Example

Dated this 2nd day of August, 2010

DOCUMENT NAME (e.g., COMPLAINT FOR DAMAGES) - 1

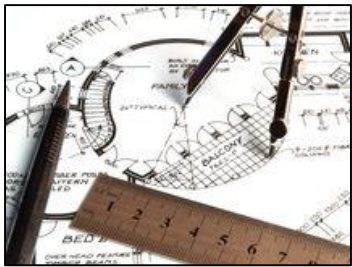


Technical Requirements for Complaint: Important!

- Technical requirements, cont.
 - Pages must be numbered
 - Footers identifying document required on every page except exhibits
 - Pre-punched holes at top (two)
 - Legal citations must follow consistent format
 - SSNs and financial account numbers must be excluded or redacted
 - First page requirements:
 - Attorney/party information
 - Two inches of space at top of page next to party information
 - Caption: court name, party names (may be sued or sue in any name by which generally known), space for number of case, description of complaint, identification of limited case (if applicable)



Drafting the Complaint: Allegations



- Allegations of complaint typically include:
 1. **Names and capacities** of parties, including "Doe" defendants*
 2. **Jurisdictional and venue allegations** (not required, but good idea to establish)
 3. At least one **cause of action** (or "count")
 4. **Demand** for judgment

*Cannot be someone you already know about.



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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
MAR 04 2009
BY MARY GARCIA, Deputy

Alan S. Gutman, SBN 128514
Matthew E. Hess, SBN 214732
LAW OFFICES OF ALAN S. GUTMAN
9401 Wilshire Boulevard, Suite 575
Beverly Hills, CA 90212-2918
Telephone: 310-385-0700
Facsimile: 310-385-0710
email: alanguzman@gutmanlaw.com
email: mehess@gutmanlaw.com

Attorneys for Plaintiff MJJ PRODUCTIONS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MJJ PRODUCTIONS, INC.,
Plaintiff,
vs.
JULIEN'S AUCTION HOUSE, LLC,
DARREN JULIEN, DOES 1-25,
Inclusive,
Defendants.

Case Number **BC 40 891 3**

COMPLAINT

1. CLAIM AND DELIVERY
[DETINUE]
CONVERSION
2. RESCISSION BASED ON FRAUD
3. FRAUD - PROMISSORY FRAUD
4. FRAUD - INTENTIONAL
5. MISREPRESENTATION
6. UNFAIR BUSINESS PRACTICES
7. BREACH OF FIDUCIARY DUTY
8. DECLARATORY RELIEF

Statement of the Case

1. Relying on an illegal contract secured by fraud, Defendants Julien's Auction House, LLC and its principal Darren Julien have effectively stolen Michael Jackson's personal property and are now publicizing their intent to sell the property at an auction starting on April 21, 2009.

2. Even though Julien's Auction House, LLC and Darren Julien are not legally entitled to retain possession of Michael Jackson's personal property – they have no ownership or other lawful interest in the property – they have refused to return the property despite repeated demands for its immediate return.

3. This action has been brought to compel the immediate return of Michael

MJJ COMPLAINT COMPLAINT

GUTMAN LAW
CONFORM COPY

Plaintiff/plaintiff attorney information

Caption

List causes of action

"Doe" defendants

Line numbering

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Jackson's personal property and to recover damages and costs for the defendants' wrongful conduct.

Parties

4. Plaintiff MJJ Productions, Inc. ("MJJ") is a California corporation.

5. Plaintiff is informed and believes and thereon alleges that Defendant Julien's Auction House, LLC ("Julien's Auctions") is a California limited liability company with its principal place of business in West Hollywood, California.

6. Plaintiff is informed and believes and thereon alleges that Darren Julien ("Julien") is an individual residing in the City of West Hollywood, State of California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiff at this time. Plaintiff sues those defendants by such fictitious names pursuant to Code of Civil Procedure § 474 and will amend this complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this complaint, and unlawfully caused the injuries and damages to Plaintiff alleged in this complaint.

8. At all times mentioned in this complaint, each of the defendants were the agents and employees of the other defendants, and in doing the things alleged in this complaint, defendants were acting within the course and scope of their agency and employment.

Allegations Common to All Causes of Action

9. Neverland Valley Ranch ("Neverland") is an approximately 2,800 acre ranch located in the Santa Ynez Valley of California that was home to pop superstar Michael Jackson.

10. In addition to a 13,000 square foot main house, Neverland had a 5,000 square foot theater, an approximate 1,500 square foot storage facility, numerous other structures, as well as a private amusement park and zoo.

MJJ COMPLAINT COMPLAINT

2

Parties & jurisdictional/venue allegations

Common allegations

Page number

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132. Neither Julien nor Julien's Auctions have any ownership interest in Michael Jackson's personal property.

133. Julien's and Julien's Auctions' only interest in Michael Jackson's property is as a consignee.

134. Julien's Auctions' illegal contract, procured by fraud, does not entitle them to retain any of Mr. Jackson's property.

FIRST CAUSE OF ACTION
CLAIM AND DELIVERY (DETINUE)
AGAINST ALL DEFENDANTS

135. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 34 as though they were set forth in their entirety herein.

136. The Defendants are consignees of personal property that belongs to Michael Jackson and have no ownership interest in more than 2,000 items of Michael Jackson's personal property that are currently being detained.

137. MJJ, on behalf of Michael Jackson, is entitled to the immediate possession and return of all of Michael Jackson's property.

138. The Defendants and each of them are consignees (i.e., bailees) and have refused to return the property despite repeated requests to do so.

139. As the direct and proximate result of the wrongful detention of the subject property, Plaintiff is entitled to a writ of possession for the immediate return of all of Michael Jackson's personal property in Defendants' possession, custody or control.

140. Plaintiff is also entitled to immediate injunctive relief (a) enjoining the transfer of any interest in Michael Jackson's personal property by sale, pledge or grant of any security interest; (b) enjoining any disposition or encumbrance of Michael Jackson's personal property; (c) enjoining Defendants from concealing or otherwise removing any of Michael Jackson's personal property in such manner to make it less available to seizure by a levying officer; and, (d) enjoining any acts of destruction or failure to care for the property in a reasonable manner.

MJJ/COMPLAINT

6

COMPLAINT

Cause of action

Incorporate by reference facts stated in common allegations

Elements (supported by facts in common allegations)

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EIGHTH CAUSE OF ACTION
DECLARATORY RELIEF
AGAINST ALL DEFENDANTS

187. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 34 as though they were set forth in their entirety herein.

188. Defendants have proclaimed that they have the right to sell all of Michael Jackson's personal property.

189. Plaintiff has claimed that it has a right to approve of which items can be sold at auction and can refuse to sell anything. Plaintiff further claims that Defendants are fiduciaries, and merely bailees, who have an obligation to return Michael Jackson's personal property. Plaintiff also claims that the Agreement is illegal and unenforceable.

190. An actual controversy exists regarding Plaintiff's right to prevent Defendants from selling Michael Jackson's personal property.

191. A judicial declaration is necessary and appropriate so that the parties may ascertain and know their rights with respect to the selling of Michael Jackson's personal property.

WHEREFORE, Plaintiff prays for the following relief:

As to the first cause of action:

1. For a writ of possession;

As to the second cause of action:

2. For compensatory damages according to proof;

3. For punitive damages;

As to the third cause of action:

4. For an order rescinding the Agreement;

As to the fourth cause of action:

5. For compensatory damages according to proof;

6. For punitive damages;

MJJ/COMPLAINT

13

COMPLAINT

Demand for judgment

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1 As to the fifth cause of action:

2 7. For compensatory damages according to proof;

3 8. For punitive damages;

4 As to the sixth cause of action:

5 9. For an order establishing that the Agreement is void and unenforceable;

6 As to the seventh cause of action:

7 10. For compensatory damages according to proof;

8 11. For punitive damages;

9 As to the eighth cause of action:

10 12. For declaratory relief;

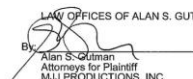
11 As to all causes of action:

12 13. For such other and further relief as the court deems just and proper; and,

13 14. For costs of suit.

14 Dated: March 7, 2009

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16 BY: 
17 Alan S. Gutman
18 Attorneys for Plaintiff
19 MJJ PRODUCTIONS, INC.

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Asks for costs of suit & other relief

Date & signature (here, not verified)

MJCOMPLAINT

14


COMPLAINT

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Drafting the Complaint: Parties to Include

An architectural drawing of a circular structure, possibly a dome or a large wheel, with various lines and labels. A wooden ruler is placed horizontally across the bottom of the drawing. Two drafting tools, a compass and a pencil, are visible on the left side of the drawing.

- Have to include “**necessary parties**”
- “Whenever feasible, the persons **materially interested** in the subject of an action ... should be joined as parties so that they may be heard and a complete disposition made. ” Otherwise, judge may dismiss case (*Countrywide Home Loans, Inc. v. Superior Court* (1999) 69 Cal.App.4th 785).

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Drafting the Complaint: How Specific?



- Complaint should **strike balance between specific and general allegations**. Facts alleged must be sufficient to satisfy elements of cause of action, and cannot be uncertain. Getting too specific may result in some facts being pled that cannot be proven, or facts that are inconsistent with the general conclusion (specific allegations control on demurrer – *Melican v. Regents of the University of California* (2007) 151 Cal.App.4th 168, 174-175).



Drafting the Complaint: How Specific?



- Don't have to say for sure that every allegation is true: May plead on "**information and belief**"
- ...except facts that are a matter of public record and therefore can be ascertained without filing a lawsuit (*Ramsey v. City of Lake Elsinore* (1990) 220 Cal.App.3d 1530, 1541).



Drafting the Complaint: The Demand



- Demand for judgment:
 - Need not state exact amount but should be in excess of jurisdictional minimum for a limited/unlimited case, and not too low because demand sets upper limit on default judgment.
 - Courts of “limited jurisdiction” decide cases of up to \$25,000.
 - Unlimited jurisdiction courts decide cases of more than \$25,000.



Drafting the Complaint: The Demand



- Demand for judgment:
 - Cannot state damages amount in personal injury or wrongful death cases (Code Civ. Proc., § 425.10, subd. (b)).
 - Cannot demand a specific amount of punitive damages sought (Civ. Code, § 3295, subd. (e)).
 - Demand should also include any non-money damage “declaratory” or “injunctive” relief (e.g., return of property)



Drafting the Complaint: Special Pleading Requirements



- Complaint concerning **real estate** must describe piece of land with enough certainty to identify specifically (Code Civ. Proc., § 455).
- Complaint based on **contract** must plead terms of contract or incorporate contract itself (*FPI Dev., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383).
- Complaint based on **contract** must state that plaintiff performed all duties required of him/her (Code Civ. Proc., § 457).
- Special, specific statements required of buyer of **consumer debt** bringing action to collect against consumer (Civ. Code, § 1788.58, subd. (a)).



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Drafting the Complaint: Verification?



- **Verified complaint?**
 - Verification = affidavit or declaration under penalty of perjury that allegations in complaint are true (Code Civ. Proc., §§ 446, 2015.5).
 - Generally verification not required, except in:
 - **Quiet title** complaints (Code Civ. Proc., § 761.020).
 - **Unlawful detainer** (Code Civ. Proc., § 1166).
 - A few other narrow exceptions



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Drafting the Complaint: Verification?



- **Verified complaint?**
 - **Disadvantages:**
 - Can be used to **impeach** plaintiff
 - Inconsistent facts can be **perjury**
 - **Advantage:**
 - Prevents defendant from using “general denial,” and they must verify answer.



Drafting the Complaint: Limited or Unlimited?



- Is case **limited** or **unlimited**? (Limited case if demanding less than \$25,000)
 - If limited, must state “Limited Civil Case” in caption (Code Civ. Proc., § 422.30, subd. (b); Cal. Rules of Court, rule 2.111(10)).
 - And first page of complaint must state “Amount demanded exceeds \$10,000” or “Amount demanded does not exceed \$10,000” (Gov. Code, § 70613, subd. (b); Cal. Rules of Court, rule 2.111(9)).



Drafting the Complaint: Other Documents to Include



- Summons
- Civil case cover sheet (CM-010)
- Local rules may require additional forms under trial court delay reduction program (e.g., LACIV-109)
- Local rules may require additional forms under trial court delay reduction program
- If applicable, fee waiver form and order on fee waiver



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Drafting the Complaint: Important Library Resources



- Library resources for how to draft complaint:
 - *Litigation by the Numbers*,
 - *Nolo's Win Your Lawsuit*,
 - *Bender's California Pretrial Civil Procedure*
 - CEB and Rutter pretrial civil procedure guides



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Where to File the Complaint



- Determine **venue** (which county superior court to file in)
 - General venue rules: **transitory** actions (against persons, businesses) vs. **local** actions (concerning real property – including unlawful detainer actions)
 - If it’s a transitory action, it must be filed in county where defendant, or some of group of defendants, reside(s) (Code Civ. Proc., § 395, subd. (a)).
 - If it’s a local action, it must be filed in county where property is located (Code Civ. Proc., § 392, subd. (a)).



Where to File the Complaint



- In contract actions, venue also proper where contract formed or performed (Code Civ. Proc., § 395, subd. (a)).
- In personal injury and wrongful death actions, venue also proper where injury/death occurred (Code Civ. Proc., § 395, subd. (a)).
- Special rules can apply in variety of suits, including in those against trustees, corporations, and government entities. See, e.g., Wagstaffe Group’s *California Pretrial Civil Procedure*, chapter 6.



Where to File the Complaint



- Each county also has rules determining in which local court a case will be heard.
- L.A. Superior Court filing court locator:
<http://www.lacourt.org/filinglocator/ui/filingsearch.aspx>

How to File the Complaint



- Bring **copies** of all documents (enough for service on all defendants, plus copy for plaintiff's records) to be stamped 'filed.'
- Make sure all formatting rules followed – clerk not allowed to accept otherwise (Cal. Rules of Court, rule 2.118(a)).
- **Electronic filing** has become mandatory in some county courts, including in L.A. County; however, if you do not have a lawyer, you may still file paper documents at court.

How to File the Complaint, cont.



- Civil case cover sheet required (Cal. Rules of Court, rule 3.220(a)), plus any additional cover sheet required by local rule. (L.A. requires Civil Case Cover Sheet Addendum, form LACIV-109 – Super. Ct. L.A. County, Local Rules, rule 2.3.).
- Copies must be same as original.
- For certain types of cases (e.g., consumer collection, unlawful detainer), you must include an affidavit stating facts to show complaint is being filed in proper court.
- Filing fee (or fee waiver application) must be included with complaint when filed.



Service of Process



- Summons and complaint generally must be served by **personal service** on the defendant, by someone not a party to the action, who is at least 18 years old (Code Civ. Proc., §§ 414.10, 415.10).
- Personal service = delivery by hand, face to face.



Service of Process



- Need summons for each defendant (Code Civ. Proc., §§ 412.10, 412.20).
- Generally, service must be made, and proof of service filed, within 60 days of filing (Cal. Rules of Court, rule 3.110).
- TIP: there are exceptions; in some cases service must occur before statute of limitations runs.



Service of Process, cont.



- In some instances, “combination service” – should be “substitute service” (good faith attempt at personal service + mailing) acceptable:
 - Can be used on businesses and public entities (Code Civ. Proc., §§ 415.20, subd. (a), 415.95, subd. (a)).
 - May be used to serve individual after unsuccessful exercise of reasonable diligence in making personal service (Code Civ. Proc., § 415.20, subd. (b)).



Service of Process, cont.



- Service may be made by return receipt mail to a defendant residing outside California (Code Civ. Proc., § 415.40).
- Where service could not be made any other way, with court's permission, service can be made by publication (Code Civ. Proc., § 415.50).



Service of Process, cont.



- Service on an active corporation/LLC/partnership may be made by service on designated agent for service of process (on file with Secretary of State), or on a corporate officer (Code Civ. Proc., § 416.10, subds. (a)-(b)).
- Public entities may also be served by personal delivery to a clerk, officer, or other head of the entity (Code Civ. Proc., § 416.50, subd. (b)).



Service of Process, cont.



- After service is made, file proof of service form with court (60-day deadline after *filing* of complaint applies (Code Civ. Proc., §§ 417.30, 583.210, subd. (b))).



Amend the Complaint?

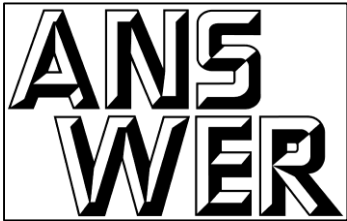
“To amend is
to change something.”

- Sometimes, the first draft isn't right.
- Generally, you may amend “by right” (without asking the court's permission) once, before an answer has been filed (Code Civ. Proc., § 472).
- Otherwise, you have to ask the court's permission*, or agree with the other party to allow the amendment (Code Civ. Proc., § 473).
- However, if the new allegations do not “**relate back**” to the old ones, you may be in trouble if the statute of limitations has run out!

*See Rutter's *Civil Procedure Before Trial* §§6:611-687 (different procedures for different types of amendments).



Answering the Complaint

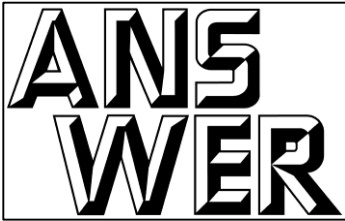


- An answer to a complaint serves two purposes:
 - As a general appearance in court, subjecting defendant to jurisdiction of court and preventing default.
 - To let plaintiff know of defendant’s position regarding allegations in complaint.
- Generally, defendant has 30 days after service of summons to answer **or otherwise plead** (Cal. Rules of Court, rule 3.1110(d)).
 - Exception: Unlawful detainer (5 days!)
 - If you don’t, you’re in **default***

*See our class on vacating defaults



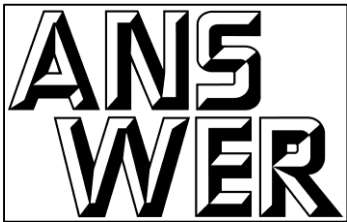
Answering the Complaint: Good Idea?



- **Before filing an answer**, defendant should first determine whether other courses of action might be better:
 - Motion to quash service of summons;
 - Motion for change of venue;
 - **Demurrer**, if complaint does not state facts sufficient to constitute a cause of action, or other reasons;
 - Motion to strike improper allegations;
 - Special motion to strike under anti-SLAPP law for meritless claims that arise from exercise of First Amendment rights;
 - Removal to federal court;
 - Motion for security where plaintiff a vexatious litigant
 - Motion to compel arbitration
- **TIP: Some of these, like motion to quash, cannot be brought if answer filed.**



Answering the Complaint: Other Options



***Motion procedure and practice generally is covered in the Civil Lawsuit Basics class, *Making and Opposing Motions*.**

- Non-answer options are covered on a basic level in library resources like:
 - *Win Your Lawsuit*
 - *Litigation by the Numbers*.
- More in-depth sources at the library include:
 - Rutter's *Civil Procedure Before Trial*
 - Wagstaffe Group's *California Pretrial Civil Procedure*
 - CEB's *California Civil Procedure Before Trial*



One Other Option: Demurrer

DEMUR:
to object, challenge

DEMURE:
shy, modest

- Demurrers may be brought on grounds including Code of Civil Procedure section 430.10:
 - Haven't alleged facts to support all of the elements
 - Statute of limitations has expired
 - Lack of subject matter jurisdiction
 - Lack of legal capacity to sue
 - Another action pending between parties on same cause
 - Uncertain, ambiguous, or unintelligible allegations



Demurrers, cont.

DEMUR:
to object, challenge

DEMURE:
shy, modest

- Before filing a demurrer, you have to “meet and confer” with plaintiff to explain – with legal support – what you think is wrong with the complaint, and try to reach an agreement as to how to fix it (Code Civ. Proc., § 430.41).
- May answer and demurrer together (Code Civ. Proc., § 430.30, subd. (c)).
- Must demurrer within 30 days of service, or within 10 days of answer (Cal. Rules of Court, rules 3.1110(d), 3.1320(g)).
- Involves same notice as a motion.

Demurrers: Pros and Cons

DEMUR:
to object, challenge

DEMURE:
shy, modest

- Advantages of demurrers:

 - Eliminating causes of action that don’t belong;
 - Limiting scope of discovery (save time & money later);
 - Get information you’re entitled to, e.g., terms of contract
- Disadvantages:

 - Time and money now – prolongs the lawsuit;
 - Often better to just amend
 - Reviewable “de novo” – easy for plaintiff to overturn on appeal

Demurrers, cont.

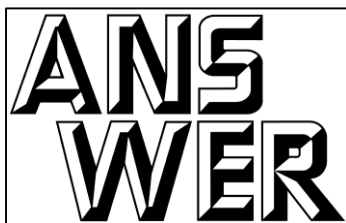
DEMUR:
to object, challenge

DEMURE**:**
shy, modest

- Demurrers are complicated.
- More information on demurrers may be found in:
 - Rutter’s *Civil Procedure Before Trial*
 - Wagstaffe Group’s *California Pretrial Civil Procedure*
 - CEB’s *California Civil Procedure Before Trial*



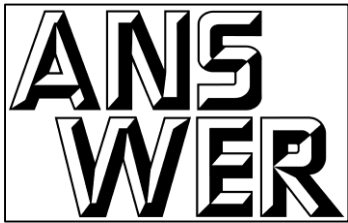
Answering the Complaint



- Answers include:
 - **Denials and admissions** as to allegations in the complaint
 - Defendant must be careful to respond to *each* factual allegation, otherwise an allegation may be deemed admitted (*Kennedy v. Rosecrans Gardens* (1952) 114 Cal.App.2d 87, 89).
 - **Affirmative defenses.**



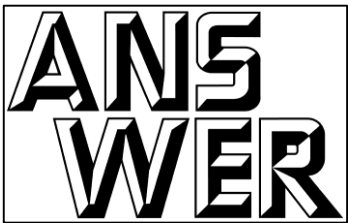
Answering the Complaint: Denials



- For denials, a defendant may “**specifically**” deny an allegation, or “**generally**” deny all allegations.
 - General denials may be made to an entire complaint, in a single Judicial Council form pleading called “General Denial” (Code Civ. Proc., § 431.40, subd. (c)).
 - However, general denials can only be made to unverified complaints, or most types of complaints in a limited civil action (Code Civ. Proc., § 431.30, subd. (d)).



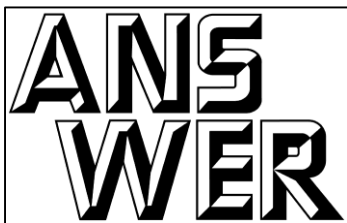
Answering the Complaint: Denials



- **Specific denials** must be made to verified complaints in unlimited cases (Code Civ. Proc., § 431.30, subd. (d)).
- Each denial/admission should be written one by one, numbered to correspond to each numbered paragraph in the plaintiff’s complaint (Code Civ. Proc., § 431.30).
 - Requires self-drafted document with line numbering, etc.



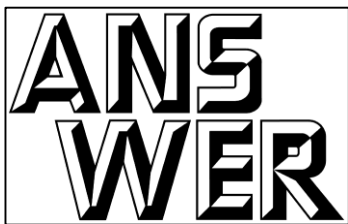
Answering the Complaint: Admissions



- **Admissions** serve the purpose of narrowing the scope of the lawsuit so not everything has to be litigated.
- They can also serve to avoid having evidence as to embarrassing or sensitive matters presented at trial.



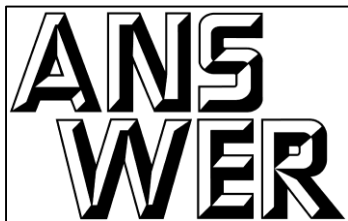
Answering the Complaint: Affirmative Defenses



- Independent reasons why the plaintiff is not entitled to relief, other than the allegations of the complaint being untrue.
- Affirmative defenses must generally be stated in the answer, or they are considered waived.
- There are many different affirmative defenses.
- Good library sources to use:
 - *California Affirmative Defenses*
 - *Rutter's Civil Procedure Before Trial: Claims and Defenses*,
 - Chapter 26 of *California Forms of Pleading and Practice* (Table of Affirmative Defense Forms).



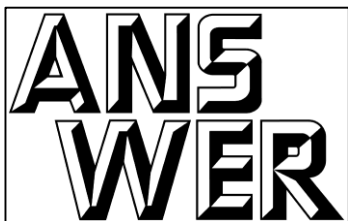
Answering the Complaint: Affirmative Defenses



- Common affirmative defenses include:
 - Failure to raise claim in prior action
 - Related action pending
 - Failure to state a cause of action
 - Assumption of risk
 - Comparative negligence
 - Statute of limitations
 - Accord and satisfaction
 - Duress or undue influence
 - Fraud or mistake
 - Res judicata
- TIP: if you're uncertain about whether it is an affirmative defense, include it in answer.



Answering the Complaint: Important Technicalities



- Answer must follow same technical requirements as a complaint and other court papers (margins, font, paper size & type, caption page, etc.) (Cal. Rules of Court, rule 2.100(b)).
- Can be served by mail rather than in-person – requirements for service of summons do not apply to answer since court already has jurisdiction over plaintiff (Code Civ. Proc., §§ 1010, 1012).



Questions?



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