LA Law Library Locations

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

Mon, Wed, Thu, Fri: 8:30–6:00pm
Tue: 8:30–8:00 pm
Sat: 9:00–5:00 pm

Courthouse Branch Locations:
Long Beach, Torrance

Courthouse eBranch Locations:
Long Beach, Norwalk, Pomona, Torrance,

Public Library Partnerships:
Compton, Lancaster, Pasadena, Van Nuys, West Covina

www.lalawlibrary.org
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,
  Los Angeles Public Library Van Nuys Branch,
  West Covina Public Library

Visit [www.lalawlibrary.org](http://www.lalawlibrary.org) for more information
www.lalawlibrary.org
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

www.lalawlibrary.org
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
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
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

www.lalawlibrary.org
Library Services

- **Reference Service**
  - in library, by phone, email, mail and live chat through 24/7 Reference Cooperative

- **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 ppl)

- **Instruction**
  - Public training classes
  - MCLE courses
  - Tours

www.lalawlibrary.org
Civil Lawsuit Basics: How to File and Respond to a Complaint
Phases of a Civil Lawsuit

*Civil Lawsuit Basics at LA Law Library includes classes on each phase, except appeal (we have separate clinics/classes on civil appeals).
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.
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?
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
What am I suing for? What are the causes of action (legal theories) I am trying to allege?

- Must do legal research to determine which 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 Guide on Claims and Defenses
- And much more!
Some Common Causes of Action

- Negligence
- Breach of Contract
- Assault and Battery
- Wrongful Termination
- Breach of Warranty
- Medical Malpractice
- Elder Abuse
- Fraud

www.lalawlibrary.org
What are the elements of each cause of action?

- 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?

• 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 Guide on Statutes of Limitation
Jurisdiction

  – Domicile
  – Physical presence
  – Consent to jurisdiction
  – Minimum contacts

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

• Very important not to wait until last minute!
  – A technical error can cause 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

www.courts.ca.gov/forms
Drafting the Complaint

• 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.

[www.courts.ca.gov/forms](http://www.courts.ca.gov/forms)
Drafting the Complaint: Forms & Templates

- Finding **forms and templates** for drafting your complaint:
  - If no Judicial Council form for your cause(s) of action, 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 computer terminals
  - 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
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.
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MJ PRODUCTIONS, INC.,
Plaintiff,

vs.
JULIEN'S AUCTION HOUSE, LLC.,
Darren Julien, Does 1-25,
Inclusive,
Defendants.

CASE NUMBER
BC 408913

COMPLAINT

1. CLAIM AND DELIVERY [DETINUE]
2. CONVERSION
3. RESCSSION BASED ON FRAUD
4. FRAUD - PROMISSORY FRAUD
5. FRAUD - INTENTIONAL MISTREPRESENTATION
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
Parties & jurisdictional/venue allegations

Common allegations

Page number
32. Neither Julien nor Julien’s Auctions have any ownership interest in Michael Jackson’s personal property.

33. Julien’s and Julien’s Auctions’ only interest in Michael Jackson’s property is as a consignee.

34. 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

35. 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.

36. 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.

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

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

39. 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.

40. 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.
EIGHTH CAUSE OF ACTION
DECLARATORY RELIEF
AGAINST ALL DEFENDANTS

87. 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.
88. Defendants have proclaimed that they have the right to sell all of Michael
Jackson’s personal property.
89. 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.
90. An actual controversy exists regarding Plaintiff’s right to prevent Defendants
from selling Michael Jackson’s personal property.
91. 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;
As to the fifth cause of action:

7. For compensatory damages according to proof;
8. For punitive damages;

As to the sixth cause of action:

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

As to the seventh cause of action:

10. For compensatory damages according to proof;
11. For punitive damages;

As to the eighth cause of action:

12. For declaratory relief;

As to all causes of action:

13. For such other and further relief as the court deems just and proper; and,
14. For costs of suit.

Dated: March 4, 2009

LAW OFFICES OF ALAN S. GUTMAN

By

Alan S. Gutman
Attorneys for Plaintiff
MJ PRODUCTIONS, INC.
Drafting the Complaint: Parties to Include

- 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).
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, since 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 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)).
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:
    - A few other narrow exceptions
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” & 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
Drafting the Complaint: Important Library Resources

- Library resources for how to draft complaint:
  - *Litigation by the Numbers*,
  - *Nolo Win Your Lawsuit*,
  - *Bender California Pretrial Civil Procedure*
  - CEB and Rutter pretrial civil procedure guides
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 a transitory action, must be filed in county where defendant, or some of group of defendants, reside(s) (Code Civ. Proc., § 395, subd. (a)).
    - If a local action, must be filed in county where property 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., Matthew Bender’s *California Pretrial Civil Procedure*, chapter 6.
Where to File the Complaint

• Each county also has rules determining which local court a case will be heard in.

• L.A. Superior Court filing court locator: 
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 LA 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 (consumer collection, unlawful detainer), 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 S/L 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 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?

• 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 guide, 6:611-687.5 (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 with regard to allegations in complaint.

• Generally have 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: Info. on Other Options

• 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 Guide on Civil Procedure Before Trial
  – Matthew Bender guide on California Pretrial Civil Procedure
  – CEB guide on California Civil Procedure Before Trial

*Motion procedure and practice generally is covered in the Civil Lawsuit Basics class, Making and Opposing Motions.
One Other Option: Demurrer

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

**DEMUR:**
*to object, challenge*

**DEMURRE:**
*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

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

Demurrers are complicated

More information on demurrers may be found in:

- Rutter Guide on Civil Procedure Before Trial
- Matthew Bender guide on California Pretrial Civil Procedure
- CEB guide on 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 guide on 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 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?