

File a Lawsuit for a Breach of Contract

HOW TO :

File a lawsuit against a person or a company because they owe you money. These forms can be used if you lent someone money, you performed work for someone and they did not pay you or you gave money to a company and they did not give you the goods or services that they promised to give you.

WHEN TO USE:

You think a company or person owes you more than \$5,000.00.

- In order to file a lawsuit in Santa Clara County, the defendant must live here or the incident that you are suing about must have taken place here. There are special rules for suing corporation so please ask a Self-Service Center attorney.
- **Note:** If you think the person or company owes you \$5,000.00 or less you should use small claims court if possible. For small claims advice, please call: (408) 370-4440 x6 between 2:30-5:00; Monday – Friday.

Self Help Center Superior Court, County of Santa Clara at 99 Notre Dame Avenue, San Jose, CA 95113, 408-882-2926

A. Fill out the attached blank forms (type or print neatly in blue or black ink) using the attached sample forms as a guide:

- Civil case cover sheet (#982(b)(1))
- Complaint (#982.1(90))
- Summons (#SUM-100)
- Proof of Service (#POS-010)
- Causes of Action
 - i. Breach of Contract (#982.1 (21))
 - ii. Common Counts (#982.1(22))

B. How to File Your Papers – Follow these easy steps:

1. Make **2** copies of the Civil Case Cover Sheet, Complaint and Causes of Action and **3** copies of your Summons. You will need more copies if you have more than one defendant.
2. Bring the originals and the copies to the Clerk's office located at 191 North First Street or the Clerk's office at the South County Courthouse at 12425 Monterey Rd. San Martin, CA 95046 if that is where your case should be filed.
 - a. File your papers in the Clerk's office. If you are suing for \$10,000 dollars or less, your filing fee will be \$155.30, between \$10,000 and \$25,000 the fee is \$302.50 and if you are suing for more than \$25,000, your filing fee will be \$229.50.
 - b. ***If your income is low and you want to ask to not pay the filing fee,*** fill out and turn in an **Application for Waiver of Court Fees and Costs** packet (#982 (a)(17) and 982(a)(18)). You can get this packet from the Clerk's office or the Self-Service Center. Sample fee waiver forms are also available at the Self-Service Center. Turn your fee waiver request into the clerk's office along with your forms. Your fee waiver request will be forwarded to a judge who will decide if you qualify. If you do not qualify, you will have to pay the court fees within 10 days or your paperwork will be invalid.
 - c. The clerk will return three copies of your summons. However, only one will have the court's seal on it. **DO NOT SERVE THE COPY WITH SEAL TO THE PERSON YOU ARE SUING** (see the section on service below for instructions). The clerk will also give you information about Alternative Dispute Resolution and paperwork telling you and the defendant the date of your first court appearance. All of this

paperwork must be given to the the person you are suing when you serve them.

C. Serving the Papers

1. What papers do you serve:

a. You need to serve the other party:

- a copy of the summons (without the seal)
- a copy of the complaint
- a copy of the cause of action paperwork you used
- The "Notice to Litigants" form with the attached ADR information (The clerk will give you these forms when you file your papers)

2. Who can serve the paperwork:

a. **You CANNOT serve the papers yourself!!** You can hire a professional process server, or have any person 18 or over who is not involved with the case serve the paperwork for you. For purposes of this information sheet, the person you choose to serve the paperwork will be called the "server."

3. How does the server serve the paperwork:

a. **Personal Service** - The **best** way to serve your paperwork is through personal service. This means that your server finds the defendant (at home, work or play) and asks "Are you so-and-so?" If the person is the defendant, the server hands the papers to the defendant and says "You are being sued." Then the server simply leaves. The defendant **does not** need to sign anything to say they got your paperwork.

b. **Substitute Service** - The server may also serve the defendant through "**Substitute Service.**" This type of service is appropriate only when the person who is serving the papers is not able to find and serve the defendant named on the Summons after **three** attempts. There are two types of substitute service:

- "Home substitute service" - The server can **personally** give the paperwork to a person 18 or over who lives at the same address as the defendant, who is told what the papers are about, and (2) **mail a copy** of all of the paperwork to the defendant at the same address.
OR
- "Business substitute service" - The server can **personally** give the paperwork to the person in charge at the defendant's business address, and (2) mail a copy of all of the paperwork to the defendant at the same address.

c. **Mail Service** – The server CANNOT simply put the paperwork in the mail. If you choose to serve your paperwork by mail, the server must also send the defendant a form called a “Notice and Acknowledgment” (#982(a)(4)). In order for the service to be complete, the defendant must actually sign the form and return it to you. As you can imagine, defendants do not always return these forms, so often this type of service does not work.

d. **Service by Publication** - You can only use this method if you have tried very hard to find the person you want to serve but cannot. In order to serve by publication, you must get an order from the court. For further information about this type of service, please ask a Self-Service Center representative.

e. **Service to an out-of-state defendant** - If your defendant does not live in California, you can serve by registered certified mail with a return receipt requested.

4. **After Serving the Papers**

a. The server will fill out the Proof of Service (form #POS-010) for each Defendant served. Then you file the original “issued” Summons that has now been completed with the clerk at 191 North First Street, San Jose, CA.

5. How long do you have to serve the paperwork after you have filed it:

a. After filing the initial paperwork, you have 60 days to serve the paperwork and file the proof of service.

6. After you properly serve the paperwork:

a. The defendant has 30 days from the date they receive the paperwork to file an ANSWER. If they do not properly file an answer within 30 days (40 days if the server has served by registered or certified mail), you can take their “DEFAULT.” If this happens, please return to the Self-Service Center for further instructions.