

Chapter 4 APPEARANCE BY DEFENDANT

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THESE LBTN EXCERPTS ARE SEVERAL YEARS OLD AND SHOULD NOT BE RELIED UPON FOR ANYTHING OTHER THAN AS EXAMPLES OF WHAT LBTN CONTAINS AND HOW IT IS ORGANIZED AND WRITTEN.

§ 4.1 Vocabulary

Affirmative defense	fact pled by an answering defendant or cross-defendant in defense of a cause of action
Answer	a responsive pleading containing admissions and/or denials of the allegations set forth in a complaint or cross-complaint
Counter Civil Case Cover Sheet	Civil Case Cover Sheet filed by a defendant to indicate disagreement with the plaintiff's description of the case as complex or not complex, or to join in the plaintiff's description of the case as complex
Cross-complaint	a responsive pleading alleging a cause or causes of action against a cross-defendant
Demurrer	a responsive pleading in which a defendant or cross-defendant objects to a complaint or cross-complaint on various grounds, including that it fails to allege facts sufficient to state a cause of action; follows format of a motion
General Denial	a response whereby the defendant or cross-defendant denies all of the allegations in a complaint or cross-complaint
Motion to Dismiss	a motion requesting that an entire action be dismissed because it was filed in an inconvenient location
Motion to Quash Service	a motion requesting that the court void service of the summons and complaint based on the fact that the Court has no jurisdiction over the defendant
Motion to Strike	a motion requesting that all or part of a pleading be deleted
Responsive pleading	an answer, demurrer or cross-complaint filed in response to allegations of a complaint or other pleading
ROE(S)	fictitiously named cross-defendant(s) whose name(s) the cross-complainant does not know when preparing the cross-complaint

§ 4.2 Introduction

The defendant has 30 days from service of the Summons and Complaint to file and serve a response to the Complaint's allegations unless an extension of time is obtained from opposing counsel or granted by court order. The parties may stipulate once to an additional 15 days without leave of court. (C.R.C., Rule 3.110(d)) After that, extensions must be granted by the Court.

The defendant may respond to the Complaint in various ways, including an "Answer," a "Demurrer," a "Motion to Dismiss," a "Motion to Quash Service" or a "Motion to Strike." Each document serves a specific purpose.

- In an Answer, the defendant admits or denies the allegations of the Complaint and states allegations in his/her defense ("affirmative defenses"). Under certain circumstances, this can be done by way of a "General Denial", whereby all of the allegations are denied without specifically responding to each allegation. (See the General Denial form at the end of this Chapter.)
- In a Demurrer, the defendant alleges that the Complaint is defective in some manner, e.g., it states insufficient facts to state a cause of action (i.e., even if the plaintiff proves that every fact alleged is true, the plaintiff would not be entitled to relief) or it is ambiguous and unintelligible, and therefore the defendant cannot respond to it. In a Demurrer, the defendant asks that the plaintiff be ordered to amend the Complaint to cure the defects (if they are curable) or, alternatively, asks that the Complaint be dismissed (if the defects are not curable).
- In a Motion to Dismiss, the defendant requests that an entire action be dismissed because it was filed in an inconvenient location.
- In a Motion to Quash Service, the defendant claims that service of the Summons and Complaint should be voided because the court has no jurisdiction over the defendant.
- In a Motion to Strike, the defendant requests that the court strike a portion of, portions of, or the entire Complaint on any of various grounds, e.g., those portions are irrelevant, false or improper.

In addition to responding to the allegations of the Complaint, a defendant may decide to file a Cross-Complaint. In a Cross-Complaint, the defendant may sue one or more of: the plaintiff, another party to the action, or a person or entity not yet in the action, for damages arising out of the subject matter of the lawsuit (e.g., the accident).

This section deals with the Answer and the Cross-Complaint. The Demurrer and Motion to Strike are discussed in Chapter 6, Motions, as they follow the same format as do Motions. The other motions mentioned above would follow the same format.

§ 4.3 The “Answer”

The defendant may respond to the Complaint by filing an Answer admitting or denying some or all of the allegations of the Complaint, and alleging facts not mentioned in the Complaint supporting the defense (“affirmative defenses”). The Judicial Council has prepared form Answers, copies of which are at the end of this Chapter. We only recommend their use for the simplest cases. The Answer is very easy to prepare.

The Caption

- 1▶ Beginning at line 1, enter the preparing attorney’s name, state bar number, office address or, if none, residence address, telephone number, fax number and email address (if available). (Note: The inclusion of a fax number or email address does not constitute consent to service by that method.)
- 2▶ Enter “Attorney for Defendant” at line 5 with the name of the defendant in all caps one space below.
- 3▶ Lines 8 and 9 are the same as the Complaint; the title of the action is the same as the Complaint; and the case number is the same as the (conformed) Complaint.
- 4▶ The title of the document and footer is “ANSWER TO COMPLAINT FOR _____” and is typed in all caps.
- 5▶ The department and name of the judge to which the case is assigned is typed below the title of the document.

The Body

- 6▶ The introductory clause begins on the next numbered line at least two spaces below the caption, is typed in all caps, and is usually “DEFENDANT (NAME) ANSWERS PLAINTIFF’S COMPLAINT AS FOLLOWS:.”
- 7▶ Separately answered causes of action have separate centered headings typed in all caps as in the Complaint.
- 8▶ Type the body in numbered standard paragraph form described in § 1.2.2.

Affirmative Defenses

- 9▶ Affirmative defenses have headings like causes of action, centered in all caps, sometimes each having an introductory clause.
- 10▶ The paragraphs of the affirmative defenses are numbered consecutively following the last answering paragraph.

Answer to Complaint

1▶	1	DEBORAH SMITH, ESQ. (SBN 1134685)		
	2	2222 West Flower Street		
	3	Suite 101		
	4	Los Angeles, California 90234-5130		
	5	Telephone: (213) 205-1234		
	6	Facsimile: (213) 205-1235		
	7	Email: D.Smith@smithlawyerslaw.com		
2▶	8	Attorney for Defendant		
	9	JAMES A. WRONGDOER		
	10			
3▶	11	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
	12	FOR THE COUNTY OF LOS ANGELES		
	13			
3▶	14	FRED A. WRONGED,)	3▶ Case No. C 126447
	15	Plaintiff,)	4▶ ANSWER TO COMPLAINT FOR
	16	vs.)	PERSONAL INJURY
	17	JAMES A. WRONGDOER, and DOES 1)	5▶ Dept. 83
	18	through 10, inclusive,)	Judge: Honorable June Justice
	19	Defendants.)	
	20	_____)	
	21			
6▶	22	DEFENDANT, JAMES A. WRONGDOER, ANSWERS PLAINTIFF'S COMPLAINT		
	23	FOR PERSONAL INJURY AS FOLLOWS:		
7▶	24	<u>ANSWER TO FIRST CAUSE OF ACTION</u>		
8▶	25	1. Defendant denies paragraphs 1 through 6 of Plaintiff's First Cause of Action.		
	26	<u>ANSWER TO SECOND CAUSE OF ACTION</u>		
	27	2. Defendant denies paragraphs 7 through 15 of Plaintiff's Second Cause of Action.		
9▶	28	<u>FIRST AFFIRMATIVE DEFENSE</u>		
	29	For a first, separate, and distinct affirmative defense, Defendant alleges:		
10▶	30	3. The events, injuries, losses, and damages complained of occurred more than one year		
	31	prior to the date of filing the Complaint herein, and the action is thus barred by the applicable [...]		
	32	///		
	33	-1-		
4▶	34	ANSWER TO COMPLAINT FOR PERSONAL INJURY		

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§ 4.5 The “Cross-Complaint”

Sometimes after reviewing the facts of a case, the defendant’s attorney discovers that the defendant has a cause of action arising out of the subject matter of the Complaint against any combination of the plaintiff, another party to the action, or perhaps against another person or entity not yet a party to the action. The defendant’s attorney would then file, in addition to filing an Answer to the Complaint, a pleading called a “Cross-Complaint.”

The Cross-Complaint is the only pleading whereby the defendant can bring a case against another party or another person or entity. The parties to a Cross-Complaint are the party who sues, the “cross-complainant,” and the party who is sued, the “cross-defendant.” C.C.P. § 428.10 *et seq.*, governs the filing and service of Cross-Complaints.

A cross-defendant may respond to the Cross-Complaint in the same manner as a response to a Complaint (Demurrer, Cross-Complaint, Answer, etc.) within 30 days of service. (C.C.P. § 432.10) The parties may stipulate to an additional 15 days without leave of court.

The filing and service procedures for the Cross-Complaint depend upon whether the cross-defendant is already a party to the action, or needs to be brought into the action. These procedures will be dealt with more fully later in this section, but for now, here are a couple of situations where a Cross-Complaint would be filed.

Assume that the facts as we presented them in our scenario are completely one-sided in claiming that the accident was solely the defendant’s fault. Suppose that Mr. Wrongdoer’s attorney, Deborah Smith, discovers from talking to a witness that: Wronged’s car had been parked in a no-parking zone, Wronged was in the process of entering the traffic lane from that no-parking zone, he did not signal, and he cut off the defendant. Suppose also that Wrongdoer’s car was damaged, and Wrongdoer suffered physical injury. Ms. Smith would most likely cross-complain against the plaintiff for all of the damages Wrongdoer suffered in the accident. This would be a Cross-Complaint against a party already in the case.

On the other hand, assume the facts presented in our scenario are correct, but additional facts come to light. Suppose the accident occurred because the defendant’s brakes failed. Suppose further that just before the accident, the defendant picked up his car from Jim’s Auto Repair Shop, where a new brake system was installed. Upon discovering these facts, Ms. Smith may decide to file a Cross-Complaint against Jim’s Auto Repair Shop for the damages her client suffered in the accident, and to recover any amounts he ends up having to pay the plaintiff. This would also be done by way of a Cross-Complaint, but Jim’s Auto Repair Shop would have to be brought into the action.

A Cross-Complaint against a party who filed a Complaint against the cross-complainant, e.g., Wronged, must be filed at the same time as the Answer, unless leave of court is obtained. One may file a Cross-Complaint against anyone but the plaintiff at any time before the court sets a trial date. (C.C.P. § 428.50)

Cross-Complaint for Damages

1▶	1	DEBORAH SMITH, ESQ. (SBN 1134685)	
	2	2222 West Flower Street	
	2	Suite 101	
	3	Los Angeles, California 90234-5130	
	3	Telephone: (213) 205-1234	
	4	Facsimile: (213) 205-1235	
	4	Email: D.Smith@smithlawyerslaw.com	
2▶	5	Attorney for Defendant/Cross-Complainant	
	5	JAMES A. WRONGDOER	
	6		
	7		
3▶	8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
	9	FOR THE COUNTY OF LOS ANGELES	
	10		
4▶	11	FRED A. WRONGED,	5▶ Case No. C 126447
	12	Plaintiff,	6▶ CROSS-COMPLAINT FOR DAMAGES
	13	vs.	1. Negligence
	14	JAMES A. WRONGDOER, et al.,	2. Implied Warranty
	15	Defendants.	3. Express Warranty
	16		4. Implied Indemnity
	17	JAMES A. WRONGDOER,	7▶ Dept: 83
	18	Cross-Complainant,	Judge: Honorable June Justice
	19	vs.	
	20	JIM'S AUTO REPAIR SHOP, a California	
	21	corporation, and ROES 1 through 10,	
	22	inclusive,	
	23	Cross-Defendants.	
8▶	24	DEFENDANT/CROSS-COMPLAINANT, JAMES A. WRONGDOER, ALLEGES:	
9▶	25	<u>FIRST CAUSE OF ACTION</u>	
	26	<u>NEGLIGENCE</u>	
	27	BY CROSS-COMPLAINANT JAMES A. WRONGDOER	
	28	AGAINST JIM'S AUTO REPAIR SHOP AND ROES 1-5, INCLUSIVE	
10▶	28	1. <i>[The paragraphs of the First Cause of Action would start here, e.g., 1 - 10.]</i>	
6▶		-1-	
		CROSS-COMPLAINT FOR DAMAGES	

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Exhibits to Cross-Complaint

Sometimes exhibits are attached to the Cross-Complaint. If so, they should be placed behind the last page of the Cross-Complaint (i.e., right after the signature page or, if applicable, right after the Verification), and should be marked and tabbed as discussed in “Exhibits to Complaint,” § 1.2.5.

“Verification”

If the Cross-Complaint is going to be verified, the Verification form should be prepared as in “The Verification,” § 1.2.7, and should be signed by the client and returned.

§ 4.6 Filing and Service of the Cross-Complaint

The next step depends upon whether the Cross-Complaint is against a party or a non-party. If it is against a party, you do not need to bring the Cross-Defendant into the action, and can follow the steps immediately below. If it is against a non-party, you need to bring that party into the action by way of a Summons, so skip to § 4.6.2, “Filing and Service When Cross-Complaint Names a Non-Party as Cross-Defendant.”

§ 4.6.1 Filing and Service When Cross-Complaint Names a Party as Cross-Defendant

[This section is only applicable if the cross-defendant is already a party to the action.]

- A Cross-Complaint against a party who filed a Complaint or Cross-Complaint against the cross-complainant must be filed at the same time as the Answer to that pleading, unless leave of court is obtained. (C.C.P. § 428.50)
- See § 4.4 for filing and service instructions.

Summons -- Cross-Complaint

SUM-110

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**SUMMONS
Cross-Complaint
(CITACION JUDICIAL-CONTRADEMANDA)**

**NOTICE TO CROSS-DEFENDANT:
(AVISO AL CONTRA-DEMANDADO):**

1➤ JIM'S AUTO REPAIR SHOP, a California corporation; ROES 1-10, inclusive

**YOU ARE BEING SUED BY CROSS-COMPLAINANT:
(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):**

2➤ JAMES A. WRONGDOER

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), o uniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

3➤ LOS ANGELES SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90234

4➤ SHORT NAME OF CASE (from Complaint): (Nombre de Caso):
Wronged v. Wrongdoer

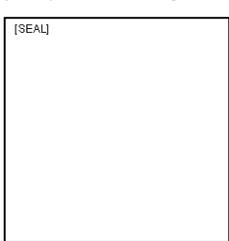
5➤ CASE NUMBER: (Número del Caso):
C 126447

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):

6➤ DEBORAH SMITH, ESQ. (213) 205-1234
222 West Flower Street, Suite 101
Los Angeles, California 90234

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual cross-defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

other (specify):
4. by personal delivery on (date):