



Superior Court-Alameda County Self-Help Services

DEFENDANT'S GUIDE TO DEBT COLLECTION CASES

Have you been served with some court documents saying that you are being sued for a debt that you may or may not owe? This handout provides general information regarding your options. You need to decide which option is best for you. As the party being sued, you are considered the Defendant. The party who is suing you is considered the Plaintiff.

As the Defendant, you have options, some of which are listed below and discussed in more detail later in this handout:

- 1. Settle the matter outside of court.**
- 2. Don't do anything.**
- 3. Challenge the complaint and/or the Court's jurisdiction.**
- 4. File an Answer.**

You may have other options not discussed in this handout. Which option(s) are best for you depend on your individual situation. The Self-Help Center cannot tell you which option(s) to choose. For legal advice on what you should do, please call the Alameda County Bar Association at (510) 302-2222 for a referral to a private attorney or East Bay Community Law Center at (510) 548-4040 for an appointment if you qualify. You may also contact Legal Access Alameda (LAA) at (510) 485-9933 for their Community Legal Assistance Saturday Program (CLASP) on the 1st Saturday of each month from 10:00 a.m. – 12:00 p.m. for legal advice.

- 1. Settle the Matter Outside of Court.** This may be an option if:
 - You agree with amount and fees and costs listed in the Complaint.
 - The Plaintiff is willing to work with you to to lower the amount and/or set up a payment plan.
 - You have all or at least some money that you can give to the Plaintiff to settle the case and/or dismiss the case.

If you and the Plaintiff agree, you may enter into a settlement agreement and/or have the case dismissed. If you have a settlement agreement, make sure you follow through with your obligations so that you can have your case dismissed. If you do not abide by the agreement, the Plaintiff may be able to get a judgment against you without a trial.

If the case is dismissed, then you may not need to go to trial, which saves time and money, depending on your settlement agreement and whether your case is dismissed. You will also not get a judgment against you, which would affect your credit even more than late payments and will stay on your credit report until it is paid in full.

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To dismiss a case, the Plaintiff needs to complete and file a Request for Dismissal (CIV-110). Be sure to indicate whether the dismissal is with prejudice, which means the Plaintiff cannot sue you again for the same debt, or without prejudice, which means the Plaintiff can.

2. **Do Nothing**. This may be an option if:

- You don't have any money to pay or negotiate with the Plaintiff.
- The Plaintiff is unwilling to talk or work with you to settle the case.
- You agree with the entire complaint, including the amount requested, and don't have any affirmative defenses (legal reasons) for not paying.
- You want to minimize the attorney fees and costs that you may have to pay if you file an Answer and then lose at trial.
- You are currently paying more than 10% in interest on the amount of debt owed, which is the current legal rate of interest on judgments.

If you do not file an Answer, a default judgment may be entered against you for the full amount the Plaintiff requested in the complaint, which may include costs and attorneys fees. A default means that you did not timely file an Answer or appear in the case in any way. The Plaintiff can then start collecting against you, including garnishing your wages, 30 days after judgment is entered. Your credit may be negatively affected because of the judgment, even if you pay the amount in full. The judgment may stay on your credit report for at least 7 years.

3. **Challenge the Complaint and/or the Court's Jurisdiction**, or authority, to hear the case. This may be an option if:

- The complaint does not state enough facts to show that you should be legally liable, even if all the facts are true. For example, there was no agreement.
- You don't live in California and don't have sufficient ties, or minimum contact, with California, this Court may lack personal jurisdiction.
- The complaint was filed in the wrong venue, or location, because none of the defendants live in this county nor did the incident occur in this county.
- There is already a pending court case and/or a court order or judgment between you and the Plaintiff on the same issues.

If any of the above applies, you may have grounds to challenge the complaint and/or the Court's jurisdiction. To do so, you must file a Motion to Quash or Strike, Demurrer, and/or other appropriate motions within **30 days** after you are served with the complaint and then go to a hearing. There is no form to do this, so you must draft your papers on pleading paper. Your motion must be in the correct format and refer to the applicable laws. If you are successful in challenging the sufficiency of the complaint or the Court's jurisdiction, the Court may dismiss the case or some of the allegations against you.

Please note, even if the case is dismissed, the Plaintiff may be able to revise the complaint, file the case again, and/or re-serve the complaint on you at a later date.

4. **File An Answer.** This may be an option if:

- You disagree with or do not have enough information regarding the allegations in the complaint.
- You have affirmative defenses that legally justify your actions. Affirmative defenses are reasons that make it legal for you to do what you did or did not do. For a list of common affirmative defenses in a breach of contract case, please refer to the “Filing an Answer” packet.

Please note, not being able to pay is not an affirmative defense!

- You want to delay the process and prevent the Plaintiff from obtaining a default judgment against you, so you have more time to seek legal advice and/or assistance.
- The other party is not willing to talk to you to settle the matter outside of court and you believe filing an Answer will make them more likely to talk to you.

You must file your Answer (PLD-C-010) with the appropriate court within **30 days** after you are served with the summons and complaint. Filing fees for the Answer range from \$225 to \$435 depending on the amount demanded in the complaint. If you are unable to afford the filing fees, you may ask for a fee waiver (FW-001) if you qualify. Please refer to the “Filing an Answer” packet for more instructions on what you need to do and for the blank forms. Even if you file an Answer, you and the Plaintiff may still work toward and reach a settlement.

Filing an Answer is only the beginning! The litigation process can be long and complicated. You will most likely need to go to hearings, prepare and respond to more paperwork, and maybe go to trial. Please see our flowchart on the court process.

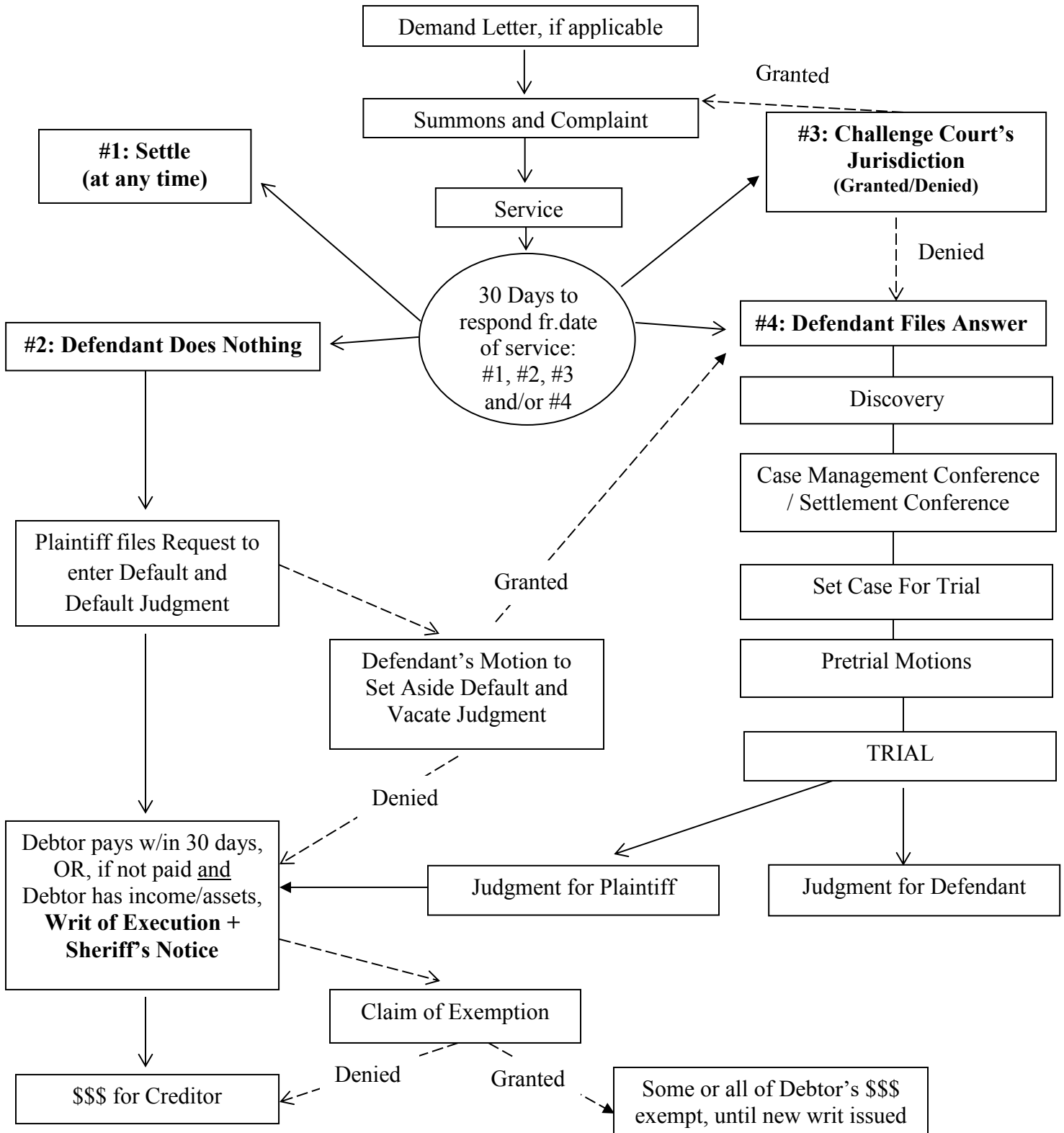
If you lose at trial, you may be responsible for attorney fees and costs for the other side, depending on your original agreement.

Note: if you file an Answer (PLD-C-010), you may also waive your rights to challenge the Court’s ability to hear your case and/or to challenge the sufficiency of the complaint. If you feel that you have sufficient grounds to make a challenge, you may want to consult with a private attorney before filing your Answer.



SELF-HELP SERVICES

Overview of a Debt Collections Case



WHAT IF I CAN'T AFFORD AN ATTORNEY?

If you cannot afford an attorney, you have a right to represent yourself. Unfortunately, there are very limited resources available to assist you with the litigation process. Here are a few resources:

1. **East Bay Community Law Center (EBCLC)** – (510) 548-4040 ext 206
<https://consumerjusticeclinic.squarespace.com/> Provides legal assistance and referrals to low-income residents of Alameda County at the Neighborhood Justice Clinic. Limited capacity depending on staffing.
2. **Bay Area Legal Aid (BALA)** – 1-800-551-5554 (general legal advice line)
<https://baylegal.org/what-we-do/stability/consumer-protections/>
Provides legal assistance and referrals to low-income residents of Alameda County.
3. **Centro Legal de la Raza** – (510) 437-1554 <https://www.centrolegal.org/>
Provides bilingual and bi-cultural assistance to residents of Alameda County.
Consumer protection clinic. By appointment only.
4. **Alameda County Bar Association (ACBA)/Legal Access Alameda (LAA)**– (510) 302-2222 opt 4 <http://www.legalaccessalameda.org/>
 - a. Bankruptcy Clinic. By appointment only.
 - b. Community Legal Assistance Saturday Program (CLASP) – Remote clinic 1st Saturday of each month. Call (510) 485-9933 between 10am-12pm 1st Saturday of the month.
 - c. Lawyer Referral Service – provides referrals to private attorneys
 - d. Lawyers in the Library – provides legal information and advice on legal issues.
5. **Housing and Economic Rights (HERA)** - (510) 271-8443
<https://www.heraca.org/> Provides legal assistance with debt collection, managing debt, and accessing credit.
6. **Consumer Credit Counseling Agencies** - Provides credit counseling for consumers. These organizations work with consumers and creditors in figuring out ways to manage the consumers' debts. For a list of nonprofit agencies, please visit the Department of Justice website at: www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111
7. **Alameda County Law Library** – (510) 208-4832 <https://lawlibrary.acgov.org/>
Provides legal information and resources, including sample pleadings, for self-represented litigants. Phone hours: M-F 9am-4pm.
8. **Nolo Press Books** – available at local bookstores.
Provides legal information and sample pleadings, for self-represented litigants.
9. **Judicial Council of California** – www.courts.ca.gov
Provides legal information and resources, including sample pleadings, for self-represented litigants.