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| ATTORNEY OR PARTY WITHOUT ATTORNEY<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO.:<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (name):<br><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:<br><br>Plaintiff:<br>Defendant: | BAR NUMBER:<br><br><br><br><br><br><br><br><br><br><br><b>FOR COURT USE ONLY</b><br><br><br><br><br><br><br><br><br><br><br>CASE NUMBER: |
| ANSWER—UNLAWFUL DETAINER  |  |

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT
  - (1)  defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(1).
  - (2)  defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):  Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3l (page 2).)

- a.  (Nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b.  (Nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (Nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):  
(Also, briefly state in item 3l the facts showing violation of the ordinance.)
- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.)

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3. AFFIRMATIVE DEFENSES (cont'd.)

- j.  Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- k.  Other affirmative defenses are stated in item 3l.
- l. Facts supporting affirmative defenses checked above (*identify facts for each item by its letter below or on form MC-025*):
  - Description of facts is on MC-025, titled as Attachment 3l.

4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (*date*):
- b.  The fair rental value of the premises alleged in the complaint is excessive (*explain below or on form MC-025*):
  - Explanation is on MC-025, titled as Attachment 4b.
- c.  Other (*specify below or on form MC-025 in attachment*):
  - Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.
- d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  Other (*specify below or on form MC-025*):
  - All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: \_\_\_\_\_

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400-6415)**

7. (*Must be completed in all cases.*) An **unlawful detainer assistant**  did not  did for compensation give advice or assistance with this form. (*If defendant has received any help or advice for pay from an unlawful detainer assistant, state*):

- a. assistant's name:
- b. telephone number:
- c. street address, city, and zip code:
- d. county of registration:
- e. registration number:
- f. expiration date:

(*Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.*)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

**VERIFICATION**

(*Use a different verification form if the verification is by an attorney or for a corporation or partnership.*)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DEFENDANT)



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**ATTACHMENT 3I**

\_\_\_ Defendant does not owe the rent and/or damages demanded because plaintiff has failed to provide defendant with a habitable dwelling as follows:

- \_\_\_ Damp/leaking ceiling/walls
- \_\_\_ Hole(s) in walls/floor/carpet
- \_\_\_ Falling plaster/peeling paint
- \_\_\_ Common areas unclean
- \_\_\_ Inadequate trash collection
- \_\_\_ Unsafe stairways/locks
- \_\_\_ Defective electrical/wiring
- \_\_\_ Missing/broken smoke detectors
- \_\_\_ Infestation of roaches/rodents/vermin
- \_\_\_ Lack of/inadequate heat
- \_\_\_ Lack of/inadequate hot water
- \_\_\_ Missing/torn window screens
- \_\_\_ Defective/leaking plumbing
- \_\_\_ Other: \_\_\_\_\_

\_\_\_ The defective conditions listed above have existed and have not been abated for 60 days after notice as set forth in Civil Code Section 1942.3. These uncorrected conditions create a rebuttable presumption that plaintiff breached the warranty of habitability.

\_\_\_ The defective conditions listed above have existed and have not been abated for 35 days after notice as set forth in Civil Code Section 1942.4. Thus, plaintiff's notice to pay was unlawful and violated Civil Code Section 1942.4(a).

\_\_\_ Within the notice period, the rent demanded was tendered but refused by the plaintiff.

\_\_\_ The notice to pay was not proper because:

- \_\_\_ It demanded more rent than defendant owed.
- \_\_\_ It was served before the rent was late.
- \_\_\_ It was not served properly.
- \_\_\_ It was not served.
- \_\_\_ It asked for rent for a period beyond one year.
- \_\_\_ It fails to comply with Code of Civil Procedure Section 1161(2) (where, when, how and whom to pay).

\_\_\_ Plaintiff's past acceptance of late rent waived the right to enforce timely payment; and/or since the defendant relied on plaintiff's failure to enforce timely payment, plaintiff is estopped from enforcing the rent timeliness provision unless notice is given that the said provision will be strictly enforced.

\_\_\_ Plaintiff filed this action in retaliation against defendant because defendant:

- \_\_\_ Complained to a government agency.
- \_\_\_ Suffered an injury on the property.
- \_\_\_ Other: \_\_\_\_\_
- \_\_\_ Requested repairs.
- \_\_\_ Prevailed in a prior unlawful detainer action.

\_\_\_ Plaintiff is acting arbitrarily and is discriminating against defendant in violation of the laws of California and the United States because of defendant's:

- \_\_\_ Race
- \_\_\_ Religion
- \_\_\_ Marital status
- \_\_\_ Children
- \_\_\_ Gender
- \_\_\_ Health status

Case Name: \_\_\_\_\_

Case No.: \_\_\_\_\_

1 \_\_\_ The Notice to Quit is defective because:

2 \_\_\_ It did not give defendant sixty days to  
move (Civil Code Section 1946.1).

3 \_\_\_ It did not unequivocally demand  
possession.

4 \_\_\_ It did not adequately describe the  
property.

\_\_\_ It did not give three days to cure the  
breach and/or was not in the alternative.

\_\_\_ It did not specify what defendant must  
do to cure the breach.

\_\_\_ It was not served properly.

\_\_\_ It was not served.

5 \_\_\_ Plaintiff accepted rent with actual and/or constructive knowledge of the alleged breach.  
6 Thus, plaintiff waived the breach and/or is estopped from evicting the defendant.

7 \_\_\_ Plaintiff accepted rent from defendant for a period of time after the notice expired. Thus,  
8 plaintiff has waived the breach.

9 \_\_\_ The complaint was filed before the expiration of the notice.

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CASE NAME:

CASE NUMBER:



6. b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

**DECLARATION OF MESSENGER**

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(NAME OF DECLARANT)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

## INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

*(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)*

### USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

### GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

*Complete the top section of the proof of service form as follows:*

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

*Complete items 1–6:*

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

**You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.**

# Next Steps



Follow these simple steps in order to successfully file your paperwork.



## **Print**

Print out your set of forms.



## **Review**

After you have completed your forms, bring them back to the Resource Center to have them reviewed. It is important to follow this step because our staff has been trained to review these forms and help you make any necessary changes or answer any other questions that you may have.



## **Copy**

Make (2) copies of your corrected originals and then you will be ready to file your paperwork.



## **Serve**

After copying, your Answer must be served on the plaintiff by regular mail. The person that performs the service must be at least 18 years of age and not a party to the case. Remember, YOU cannot mail this paperwork yourself. The person that mails the copy to the other party will fill out the proof of service form and sign it.



## **Finishing up**

Now you are ready to file your paperwork. Take the Answer along with the signed proof of service to the clerk's office within the court listed in your paperwork. If you are not able to pay some or all of your court fees you can also file a Request for a Fee Waiver form at this time.