

AFFIRMATIVE DEFENSES HANDOUT

These are possible affirmative defenses that can be raised in your Answer

- a. **Running of the Statute of Limitations.** The complaint and each cause of action are barred because they were filed after the time period allowed in Code of Civil Procedure sections 340, *et seq.*
- b. **Failure to State a Cause of Action.** The complaint does not contain facts sufficient to state a cause of action against this defendant.
- c. **Waiver.** Plaintiff or the person or entity that assigned the claim to plaintiff either told, or led this defendant to believe, that plaintiff would not sue this defendant.
- d. **Estoppel.** Plaintiff or the person or entity that assigned the claim to plaintiff acted in such a way as to cause this defendant to believe that plaintiff would not file suit, and defendant relied on those actions or representations.
- e. **Unclean Hands.** Plaintiff or the person or entity that assigned the claim to plaintiff acted in a dishonest or fraudulent manner with respect to the dispute at issue in this case.
- f. **Laches.** Plaintiff or the person or entity that assigned the claim to plaintiff waited too long to file this lawsuit, making it difficult or impossible for defendant to find witnesses or evidence to defend the case.
- g. **Failure to Mitigate Damages.** Plaintiff or the person or entity that assigned the claim to plaintiff failed to take reasonable steps to minimize or prevent the damages plaintiff claims to have suffered.
- h. **Unjust Enrichment.** Granting plaintiff's demand in the complaint would result in the plaintiff receiving more money than he/she/it is entitled to.
- i. **Prevention of Performance.** Plaintiff or the person or entity that assigned the claim to plaintiff prevented this defendant from performing his/her obligations under the contract.
- j. **Act of God.** A natural occurrence, such as an earthquake, flood or storm, prevented this defendant from performing his/her obligations under the contract.
- k. **Discharge by Bankruptcy.** Any obligation plaintiff claims this defendant owes was discharged by bankruptcy on *(date)* _____, in case number _____.
- l. **Statute of Frauds.** The contract described in the complaint was not in writing, and the law requires that such a contract be in writing.

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- m. **Parole Evidence Rule.** The complaint includes references to alleged agreements made outside the written contract, which violates the parole evidence rule.
- n. **Failure of Condition Precedent.** This defendant was excused from having to perform his/her obligations under the contract because certain conditions that were required to occur first never occurred.
- o. **Attorneys' Fees Not Recoverable.** Plaintiff or the person or entity that assigned the claim to plaintiff is not entitled to reimbursement of attorneys' fees because the contract did not include such a provision, and there is no law that otherwise allows them. (California Code of Civil Procedure section 1021).
- p. **Improper Notice of Breach.** Plaintiff or the person or entity that assigned the claim to plaintiff failed to give proper notice to this defendant of the claimed breach prior to filing this lawsuit. Notice was required, and failure to give notice deprived this defendant of the opportunity to timely correct the breach.
- q. **Offset.** This defendant is entitled to a credit for money owed by plaintiff or the person or entity that assigned the claim to plaintiff.
- r. **Usury.** Plaintiff or the person or entity that assigned the claim to plaintiff is charging higher interest than the law allows.
- s. **Accord and Satisfaction.** This defendant reached an agreement with plaintiff or the person or entity that assigned the claim to plaintiff to pay a different amount than what the complaint in this case asks for and this defendant paid that agreed upon amount.
- t. **Contract Void as Against Public Policy.** The money loaned by plaintiff or the person or entity that assigned the claim to plaintiff was given in violation of the law. Allowing plaintiff to recover the amount of money being sued for would hurt the public interest by encouraging and rewarding illegal conduct.
- Other: _____

