



## Answering Your Landlord's Complaint to Evict You

**Note:** Use these forms and instructions to answer a Complaint your landlord has filed against you in court to evict you. Your landlord may use a different title for the Complaint filed in court. It may be called a "Complaint for Possession" or an "Action for Possession" or a "Complaint for Eviction" or just a "Complaint." No matter what it is called, you can use this packet to write your Answer to a Complaint to evict you.

These instructions and forms may not be right for your case. They cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Print the forms in this packet single-sided, with writing on one side of the page. Do not change these forms. If you change the forms, you might lose language you need.

### What Forms Will I Need to Answer a Complaint to Evict Me?

You will need to fill in and file the following forms to answer the Complaint:

- Answer
- Judgment
- Affidavit of Inability to Pay (not included in this packet, so ask the clerk of court for this form if you cannot afford to pay the fee the court charges to file your Answer)

The **Answer** is for you to complete and sign. It tells the court if you admit or deny the information in the Complaint. The Answer also describes some defenses that may be true for you. Look on page 3 of this packet for more information on possible affirmative defenses. After you complete the Answer, you must send a copy of it to your landlord.

**Important:** This Answer form does not let you tell the court you have a counterclaim. A counterclaim is when you ask the court to order your landlord to pay you money for some reason.

For example, your landlord's Complaint may ask the court to evict you because you have not paid rent. But maybe you did not pay the rent because the landlord has not provided heat for two months, and you want the court to award you money for the landlord's failure to provide heat. In this example, your claim about the lack of heat would be a counterclaim. The law requires you to raise this counterclaim as part of the Answer that you file in response to the Complaint. If you do not ask the court for that money now in a written counterclaim as part of your Answer, you may not be allowed to ask for it later, even if you file a separate lawsuit against your landlord.

If you want to make a counterclaim against your landlord, do **NOT** use this form. Talk to a lawyer.

The **Judgment** is for the judge to fill in, except for the caption that you will fill in. It tells you the judge's decision. When the judge decides your case, the judge may choose to fill out the Judgment that is part of this packet or the judge may choose not to use this form and to write out his or her own Judgment.

The **Affidavit of Inability to Pay** is a form you can use to ask the court for permission to not pay the fees the court charges to file your Answer. This form is not included in this packet. If you cannot afford to pay the filing fee for the Answer, ask the clerk of court for an Affidavit of Inability to Pay. Courts may use different names for this form. The Affidavit will require you to provide information about your income and expenses. After you fill out the Affidavit and sign it, the clerk of court will give it to the judge to review. If the judge decides that you cannot afford the filing fee, the judge will allow you to file your Answer without paying the filing fee. If the judge decides that you can afford the filing fee, the judge will not allow you to file your Answer until you pay the filing fee.

**Important:** File your Affidavit of Inability to Pay early! You must file your Affidavit before you can file your Answer without paying the filing fee. In “How Long Do I Have to Answer” below, you can read about the time limit to file your answer. If you are filing an Affidavit of Inability to Pay, you need to allow the judge enough time to review your Affidavit. If the judge has not approved your Affidavit, the clerk of court may not accept your Answer for filing without payment of the fee, even if it is the last day you are allowed to file your Answer.



## What Words Do I Need to Know?

A **Plaintiff** is someone who files a lawsuit in court. If your landlord has filed a Complaint asking the court to make you move out, your landlord is the Plaintiff.

A **Defendant** is someone who is being sued. If you are being sued by a landlord to make you move out, you are the Defendant.

**Note:** Only the person named as a Defendant in the landlord’s Complaint is being sued. A landlord must name as a Defendant each adult tenant that the landlord is trying to evict. For example, if a husband and wife are tenants on the property, the landlord must name both the husband and the wife as Defendants in the Complaint if the landlord wants to evict them both. If the landlord files the Complaint against only the wife, the husband will not be evicted and cannot be made to move out (even if the landlord wins in court).

With an **Affirmative Defense** you tell the court that, whether or not you deny your landlord’s claims, there is a different reason that you are not responsible or only partly responsible for whatever the landlord is asking for. You must check the appropriate box(es) for any affirmative defense that applies to you. If you tell the court you have an affirmative defense, be prepared to support it with evidence and laws at your hearing. The law for each defense is written in the

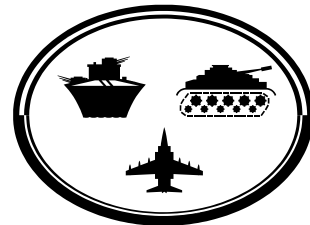
paragraph you may check for the defense. Evidence means witness testimony or other proof that what you are saying is true.

## **Who Can Use These Forms?**

You can use these forms if your landlord has filed a Complaint or an Action for Possession against you. A landlord files a Complaint to ask the court to evict you from your rental.

## **What if I am an Active Duty Servicemember?**

If you are on active duty in the military, the Servicemembers Civil Relief Act (SCRA) may apply to you and your dependents. Part of the SCRA may help protect you from being evicted while on active duty. Most parts of the SCRA do not apply automatically. You must take actions to say the SCRA applies to you. For more information, contact your nearest Armed Forces Legal Assistance (AFLA) office or commanding officer. To find an AFLA office near you, go to the AFLA website by typing “Armed Forces Legal Assistance” into an internet search engine such as [www.google.com](http://www.google.com) or [www.yahoo.com](http://www.yahoo.com).



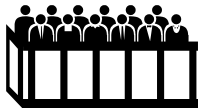
## **How Long Do I Have To Answer?**

You have 10 days to file your Answer to the Complaint with the clerk of court. When you count the 10 days, do not include Saturdays, Sundays, and holidays when the courthouse is closed. If you do not file your Answer within 10 days after you were served with the Complaint, your landlord can ask the court for a default judgment. If the court gives your landlord a default judgment, you will never have the opportunity to tell the judge your side of the story. Your landlord will win just because you did not file an Answer in time, and you will have to move out, or file an appeal of the default judgment.

## Where Should I File My Answer?

You need to file your Answer at the same court where your landlord filed the Complaint. You can find the name of the court at the top of the landlord's Complaint.

## Can I Have a Jury Trial?



You have a right to a jury trial, but you do not have to have one. If you tell the court that you want a jury trial, you may be required to pay for the costs of the jury trial. Costs of a jury trial include a stipend and travel expenses paid to each juror. Jury trials can be expensive. The State will not pay for the cost of the jury for you. It may also take longer to get a hearing if you request a jury trial. If you do not have a jury trial, a judge will decide your case. If you want a jury trial, print "I REQUEST A JURY TRIAL" under the word "Answer" on the first page of your Answer. If you write this, you are telling the court that you can and will pay the jury costs for the hearing. The court may ask you about this, especially if you have filed an Affidavit of Inability to Pay.

## How Do I Use These Forms?

### 1 Fill in the Forms

- Fill in all of the blanks in the Answer form.
- In paragraph number 1, admit the parts of the Complaint that are true;
- In paragraph number 2, deny the parts of the Complaint that are not true;
- In paragraph number 3, deny the parts of the Complaint that you do not know are true or not true.



**If the paragraphs in the Complaint are numbered**, you can list the paragraph numbers in the blanks instead of rewriting what is written in the Complaint. For example, in the blank in paragraph 1 of the Answer form, you could list “2, 5, 6, 8,” which would tell the court you admit those paragraphs in the Complaint are true. If a paragraph is only partly true, write what part you admit and explain why the rest of the paragraph is not true.

**If the paragraphs in the Complaint are not numbered**, you need to write what parts of the Complaint you are admitting, denying, or saying you do not know enough about. For example, suppose that the Complaint says you have lived in the rental since July 1 of 2009, you were late with the rent 20 times, and the landlord owns 10 apartment buildings. In your answer, you could admit you lived in the rental since July 1 of 2009, deny you were late with the rent 20 times, and say you do not know if the landlord owns 10 apartment buildings.

- Check the boxes on the Answer form for any affirmative defenses that are true. Look at page 3 of this packet to learn more about affirmative defenses.

**WARNING:** If you admit everything in the Complaint and do not have an affirmative defense, there will not be a hearing, and the judge will tell you to move out. By admitting everything, you are telling the judge that you agree with what the landlord has said in the Complaint. If you are both in agreement, there is no reason for the judge to hold a hearing to find out what is true.

- Sign the Answer.
- You must fill out and sign the top part of the Proof of Service in front of a notary. The notary will fill out the bottom part that begins with “SIGNED AND SWORN.”



- On the Judgment form, you will fill in only the caption. You need to use the same name of the court at the top of your landlord's Complaint. The judge will fill out the rest. The caption looks like this:

|   |   |
|---|---|
| <b>In the</b> (check <b>one</b> box and fill in the blanks for the court where you are filing):   |   |
| <input type="checkbox"/> <b>Justice Court of</b> _____ <b>County,</b><br><i>(county of court where you are filing)</i>                                      |   |
| <input type="checkbox"/> <b>City Court of</b> _____,<br><i>(city of court where you are filing)</i>   |   |
| <input type="checkbox"/> <b>Municipal Court of</b> _____,<br><i>(city of court where you are filing)</i>  |   |
| <input type="checkbox"/> _____ <b>Judicial District Court of</b> _____ <b>County,</b><br><i>(number of district) (county of court where you are filing)</i> |   |
| <b>State of Montana</b>   |   |
| _____,<br><i>(name of your landlord)</i><br>Plaintiff,<br>v.<br>_____<br><i>(your name)</i><br>Defendant(s).  | Cause No.: _____<br><br>Dept. No.: _____<br><i>(filled out by court)</i><br><br><b>Name of Form</b> |

**2 Make Copies**

- Make two copies of your completed Answer including any attachments.
- Make one copy of the Judgment.

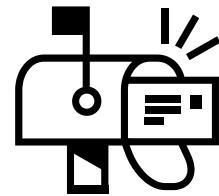
**3 File the Forms at the Courthouse**

- Go to the office of the court where your landlord filed the Complaint.
- If you cannot afford the fee for filing your Answer, ask the clerk of court for an Affidavit of Inability to Pay. This form may be called something different in your court.
- File your original Answer with the clerk.

- Ask the clerk to stamp your two copies of the Answer as “Filed.” One copy is for you to keep. Mail the other copy to the landlord that filed the Complaint. Be sure to take your copy of the Answer with you to your hearing.
- Give the Judgment to the clerk. Ask the clerk to lodge the Judgment in the file. Lodging means that the clerk will not officially file the document in your court file, but will just keep the Judgment inside the court file so the judge can look at it in the future. If the clerk will not lodge the Judgment, you will need to keep the Judgment in a safe place until your hearing. You will need to take the Judgment with you to the hearing so you can ask to give it to the judge then.

#### 4 **Mail your Answer**

- On the same day you file your Answer, mail a stamped copy of your Answer to the tenant who filed the Complaint. This should be the date in your proof of service. Use the address in the top left hand corner of the first page of the Complaint. Or the address may be somewhere else in the Complaint, usually the first or last page. If your past tenant has a lawyer, this will be the lawyer’s address.
- It is a good idea to have proof that you actually mailed your Answer to your landlord or your landlord’s attorney. You can get proof by using the United States Postal Service Certificate of Mailing. The post office charges more for the Certificate of Mailing than a regular letter. The post office receipt that you get from the post office is your proof that you actually mailed your Answer to the correct address on a certain date. Be sure to keep the post office receipt, and take it with you to your hearing.






## 5 Wait for an Order Setting Hearing

- Within 14 days after you file your Answer, the court will notify you in writing of the date and time of the hearing. If you do not hear from the court within this time, call the clerk of court and ask about the hearing date.
- If you want any witnesses to testify at your hearing, you may need to subpoena them before the hearing. A subpoena orders a person to come to court even if the person does not want to. Once you know the hearing date, you can ask the clerk of court for subpoena forms.

## 6 Go to Your Hearing

- Bring your stamped copy of your Answer and any other documents you filed with the court with you to your hearing. You will also need to bring the Judgment if the clerk would not let you lodge it when you filed your Answer.
- Arrive at the courthouse at least 15 minutes before your hearing will start. Dress like you were going to an important job interview. 
- Check with the clerk of court's office to find the right courtroom for your hearing. In some courts, you will have to check in with the clerk of court before going to your courtroom. After you have talked to the clerk of court, go to your courtroom and wait for the judge to say your name and case number. Remember to call the judge "Your Honor."
- If the clerk would not let you lodge the Judgment when you filed your Complaint, you may need to give it to the judge. At the beginning of the hearing, when the judge asks if you are ready, tell

the judge “Your Honor, I have a proposed judgment form for your consideration.” Then ask if the judge wants you to hand the Judgment form to him or her. The judge may or may not take the Judgment form from you. It is okay if the judge does not want the Judgment form.

- Be prepared to tell the judge your side of the case, including why you have not moved out and why you think you should not have to move out. Show the judge your papers and things that support what you say. Tell the judge if you have witnesses who will testify. The judge will expect you to bring your evidence and witnesses to the hearing. Evidence can be witness testimony, documents, photographs, or anything else that helps to prove your side of the story.

### **Where Can I Get More Information?**

The laws of Montana are called the Montana Code Annotated or “MCA.” The laws about actions for possession begin in the MCA at Title 70, Chapter 24, Part 4. An easier way to write one of those laws is § 70-24-401, MCA. If you own your own mobile home and are only renting the lot, the laws that apply begin in the MCA at Title 70, Chapter 33. An easier way to write one of those laws is § 70-33-101, MCA. The symbol § means section. The MCA can be found at your local library or on the Montana State Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Click on the “Laws” option near the top of the page on that website, and then click on “MCA.”

### **Where Can I Get Legal Help?**



These organizations may be able to help you:

- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Or you can contact a Reference Librarian at (800) 710-9827 or by email at [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov).

**Please take a short survey about these forms.**

When you are done with the forms, please take our online survey at this address:

[http://www.surveymonkey.com/s.aspx?sm=fCBbhbJj4MdOWw\\_2fjsCjlg\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=fCBbhbJj4MdOWw_2fjsCjlg_3d_3d)



Or you can access the survey on the “Forms” page of the State Law Library website, at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Your answers will help make the forms better. Thank you!

\_\_\_\_\_  
(your name)

\_\_\_\_\_  
(your mailing address)

\_\_\_\_\_  
(city) (state) (zip)

\_\_\_\_\_  
(your phone number)

**Defendant Pro Se**

**In the** (check **one** box and fill in the blank for the court where you are filing):

**Justice Court of** \_\_\_\_\_ **County,**  
(county of court where you are filing)

**City Court of** \_\_\_\_\_,  
(city of court where you are filing)

**Municipal Court of** \_\_\_\_\_,  
(city of court where you are filing)

\_\_\_\_\_ **Judicial District Court of** \_\_\_\_\_ **County,**  
(number of district) (county of court where you are filing)

**State of Montana**

|  |  |
|--|--|
| <p>_____,<br/>(name of your landlord)</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>_____,<br/>(your name)</p> <p style="text-align: right;">Defendant(s).</p> | <p>Cause No.: _____</p> <p>Dept. No.: _____<br/>(filled out by court)</p> <p style="text-align: center;"><b>Answer</b></p> |
|--|--|

I am a Defendant in this case. I answer the Plaintiff's Complaint in the paragraphs below:

1. I admit the following parts of the Complaint (*list the paragraph numbers or write the parts of the Complaint that are true*): \_\_\_\_\_

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2. I deny the following parts of the Complaint (*list the paragraph numbers or write the parts of the Complaint that are not true*): \_\_\_\_\_

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3. I deny the following parts of the Complaint because I do not have enough information to admit or deny them (*list the paragraph numbers or write the parts of the Complaint that you do not know about*): \_\_\_\_\_

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4. I deny everything I did not admit.

I also have the following defense(s) to the Complaint (*check and fill in the blanks for **any** box that is true*):

The Plaintiff knew the property was not fit to live in because of the following conditions (*write why the rental was not fit to live in*):

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The Plaintiff failed to maintain the property as required by the rental agreement or Section 70-24-303, MCA (Section 70-33-303, MCA for rental of a mobile home lot only).

The Plaintiff did not provide heat, running water, electricity, gas, or other needed services to the property as required by Section 70-24-303, MCA (Section 70-33-303, MCA for rental of a mobile home lot only).

The Plaintiff did not give me proper notice to move out (*check one box*).

The notice was not in writing as required under Section 70-24-422, MCA (Section 70-33-433, MCA for rental of a mobile home lot only).

OR

The notice did not give me the correct number of days to move out as required under the rental agreement or under Section 70-24-422, MCA (Section 70-33-433, MCA for rental of a mobile home lot only).

The Plaintiff filed the Complaint to get back at me for complaining about health and safety problems to an agency that enforces housing or building codes. I complained about (*describe the problem you complained about*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

I complained about the problem to (*write the name of the agency you told about the problem*): \_\_\_\_\_.

I complained about the problem to the agency on (*give the date you complained to the agency about the problem*): \_\_\_\_\_.

Section 70-24-431, MCA (Section 70-33-431, MCA for rental of a mobile home lot only) keeps a landlord from retaliating over my complaint by evicting me.

The Plaintiff filed the Complaint to get back at me for complaining to the Plaintiff about not maintaining the rental property. I complained about (*describe the problem you complained about*): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

I complained about the problem to the landlord on *(give the date you complained to the landlord about the problem)*: \_\_\_\_\_.

Section 70-24-431, MCA (Section 70-33-431, MCA for rental of a mobile home lot only) keeps a landlord from retaliating over my complaint by evicting me.

The Plaintiff stopped needed services to the rental property on purpose to get me to move out. Under Section 70-24-408, MCA (Section 70-33-406 for rental of a mobile home lot only), this action is illegal. The services that the Plaintiff stopped are *(describe the services your landlord kept from your rental)*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I have paid all of my rent, and do not currently owe Plaintiff anything.

The Plaintiff filed the Complaint before the deadline that the Plaintiff gave me to move out in the notice of termination or notice to vacate. Section 70-24-427(1), MCA (Section 70-33-427(1), MCA for rental of a mobile home lot only) requires that the tenancy be terminated before the Complaint is filed.

Other *(any other legal reason that the court should not evict you)*:  
\_\_\_\_\_  
\_\_\_\_\_.

## Request for Relief

I respectfully ask the Court:

1. That the Plaintiff take nothing by the Complaint; and

2. For any other relief that is proper, including awarding court costs to me, if I paid any court costs.

Date: \_\_\_\_\_  
(*mm/dd/yyyy*)

Signature: \_\_\_\_\_  
(*sign your name*)

Printed Name: \_\_\_\_\_  
(*print your name*)



**Proof of Service**

*(to be filled out and signed in front of a notary)*

STATE OF MONTANA

:SS

County of \_\_\_\_\_  
*(county where you sign this)*

I sent, or am sending as soon as I have filed my Answer, a full and complete copy of my Answer to the Plaintiff by first class mail, postage prepaid on

\_\_\_\_\_  
*(date you mailed or are mailing the Answer to your landlord)*

This is the address I am using to mail a copy of my Answer to the Plaintiff:

Name: \_\_\_\_\_  
*(Plaintiff's name)*

Address: \_\_\_\_\_  
*(Plaintiff's address)*

\_\_\_\_\_  
*(city) (state) (zip)*

Signature: \_\_\_\_\_  
*(sign your name)*

Printed Name: \_\_\_\_\_  
*(print your name)*

*(rest of form to be filled out by notary public)*

SIGNED AND SWORN to before me by \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Name *(printed)*: \_\_\_\_\_  
Notary Public for the State of Montana.  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**In the** (check **one** box and fill in the blank for the court where you are filing):

**Justice Court of** \_\_\_\_\_ **County,**  
(county of court where you are filing)

**City Court of** \_\_\_\_\_,  
(city of court where you are filing)

**Municipal Court of** \_\_\_\_\_,  
(city of court where you are filing)

\_\_\_\_\_ **Judicial District Court of** \_\_\_\_\_ **County,**  
(number of district) (county of court where you are filing)

**State of Montana**

|  |  |
|--|--|
| _____,<br>(name of your landlord)<br><br>Plaintiff,<br><br>vs.<br><br>_____,<br>(your name)<br><br>Defendant(s). | Cause No.: _____<br><br>Dept. No.: _____<br>(filled out by court)<br><br><b>Judgment</b> |
|--|--|

(Rest of form to be filled out by court.)

A Complaint for Action for Possession was filed in this case. A hearing was held on: \_\_\_\_\_. Defendant appeared in person, and Plaintiff:

- Appeared in person:
  - With counsel.
  - Without counsel.
- Did not appear.

Based on the testimony and evidence presented, the court makes the following:

**Findings of Fact:**

1 The Defendant(s) rented the Plaintiff’s property located at:

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*Street Address*

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*City* *State* *Zip Code*

2 Defendant(s) agreed to pay Plaintiff rent of \$ \_\_\_\_\_ per \_\_\_\_\_.

3 Plaintiff:

- Gave Defendant(s) written notice to vacate.
- Did not give Defendant(s) written notice to vacate.

4 Plaintiff gave Defendant(s) notice to vacate for the following reasons:

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5 Defendant(s) did not move out of the rental.

**Conclusions of Law:**

1 The rental agreement:

- Was properly terminated before Plaintiff filed the Complaint in this Court.

- Was not properly terminated before Plaintiff filed the Complaint in this Court.

**2** The Defendant(s):

- Owe(s) the Plaintiff unpaid rent in the amount of \$\_\_\_\_\_. Here is how this amount was calculated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

- Do(Does) not owe(s) Plaintiff unpaid rent. Here is why unpaid rent is not owed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

- Has(Have) a right to retain possession of the rental. Here is why Defendant(s) do(does) not have to move out:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

- Must move out and give up possession of the rental. Here is why Defendant(s) must move out:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Order:**

This Court orders that:

- The Defendant(s) must pay the Plaintiff \$\_\_\_\_\_, which is the amount of unpaid rent due. The Court awards judgment to Plaintiff in the sum of \$\_\_\_\_\_ along with costs of court in the

amount of \$\_\_\_\_\_ for a total judgment of \$\_\_\_\_\_ together with interest thereon at the rate of ten percent (10%) per annum from the date of this judgment until paid in full. Plaintiff is granted the right of execution on the judgment.

- The Defendant(s) does(do) not owe unpaid rent to Plaintiff.
- The Defendant(s) must move out of and surrender the rental property to the Plaintiff on or before \_\_\_\_\_, 20\_\_.
- The Defendant(s) retain(s) possession of the rental.
- The Plaintiff takes nothing by this lawsuit.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

This is a final judgment.

Signed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge