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Before You Sue

7 Questions Every Business Owner Should Answer Before Filing a Lawsuit

Filing a business lawsuit is one of the most consequential decisions an owner or executive can make. The right case, pursued the right way, protects your business and recovers what you are owed. The wrong case—or even the right case handled poorly—can drain resources, distract leadership, and damage relationships for years. These are the questions I walk through with every prospective client before we decide whether to file.

1 What exactly did the other side do—and can you prove it?

Litigation runs on evidence, not grievances. Before filing, identify every document, email, text message, contract, and witness that supports your claim. If the critical facts live only in your memory and verbal conversations, your case has a proof problem. That does not mean it is hopeless—but it means your attorney needs to know early.

Why it matters: Judges and juries decide cases on admissible evidence. A strong narrative without documentation is a story, not a case.

2 What is your actual dollar damage—and can you calculate it?

California law requires you to prove damages with reasonable certainty. That means more than a gut feeling about lost revenue. Before filing, work with your attorney (and often a forensic accountant) to quantify what you lost: unpaid invoices, lost profits, cost of replacement, diminished business value. Speculative damages get dismissed.

Why it matters: Courts will not award damages you cannot calculate. Knowing your number also drives settlement strategy.

3 Is there a contract—and what does it actually say?

Many business disputes involve a written agreement. Before you sue, read it carefully—especially the attorney's fees clause, dispute resolution provision, choice of law, venue selection, limitation of liability, and any notice-and-cure requirements. An arbitration clause can redirect your entire strategy. A weak fee-shifting provision can change the economics.

Why it matters: The contract may dictate where you sue, how you sue, and what you can recover. Skipping this step leads to wasted motion.

4 Can the other side actually pay a judgment?

Winning a judgment is not the same as collecting money. Before you invest in litigation, assess collectability. Is the defendant an operating business with assets? An individual with real property? Or a shell entity with nothing to attach? Post-judgment enforcement is possible—but prevention is better than collection.

Why it matters: A $500,000 judgment against a dissolved LLC is worth exactly zero. Collectability analysis should happen before filing, not after.

5 Have you satisfied every prerequisite to filing?

Many claims require pre-suit steps: demand letters, contractual notice-and-cure periods, government tort claims (for public-entity defendants), or mandatory mediation. Skipping these creates grounds for demurrer or dismissal—and restarts the clock. Your attorney should map every prerequisite before drafting a complaint.

Why it matters: A technically deficient complaint wastes months and signals to opposing counsel that you may not be well-represented.

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6 What does your best realistic outcome look like—and your worst?

Litigation is not binary. Think in ranges: best case (full recovery plus fees), realistic middle case (partial settlement after discovery), and worst case (defense verdict plus opponent's fees if the contract shifts them). If the worst case threatens the business, consider whether pre-suit negotiation or alternative dispute resolution achieves a better risk-adjusted result.

Why it matters: The best litigators think like investors. Expected value—not just principle—should drive the decision.

7 Are you prepared for the time, cost, and distraction?

A straightforward breach-of-contract case in California Superior Court typically takes 12–18 months to trial. Complex commercial disputes can run two to three years. Discovery requires document production, depositions, and executive time. Budget not just legal fees but the opportunity cost of leadership attention diverted from running the business.

Why it matters: The most common regret business owners express is not the legal fees—it is the distraction. Go in with eyes open.

The Bottom Line

Litigation is a business decision, not an emotional one. The strongest position you can be in is knowing your facts, knowing your number, and knowing the other side's ability to pay—before you ever file. If you can answer these seven questions clearly, you are ready to have a serious conversation with a litigator.

Ready to Evaluate Your Case?

Kolmogorov Law, P.C. represents businesses in contract disputes, fraud, co-founder conflicts, trade secret matters, and complex commercial litigation across California.

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