

IN THE [NAME OF COURT]

[JUDICIAL DISTRICT/CIRCUIT], STATE OF [STATE]

[PLAINTIFF'S FULL NAME],

Plaintiff,

v.

[DEFENDANT'S FULL NAME],

Defendant.

Case No.: _____

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S

MOTION TO DISMISS

Plaintiff [Plaintiff's Full Name], by and through undersigned counsel, respectfully submits this Memorandum of Law in Opposition to Defendant's Motion to Dismiss (the 'Motion') and states as follows:

I. PRELIMINARY STATEMENT

Defendant's Motion to Dismiss should be denied. The Complaint adequately pleads each and every element of Plaintiff's claims, providing Defendant with more than sufficient notice of the nature and basis of the claims asserted. Contrary to Defendant's contentions, Plaintiff has alleged specific, detailed facts demonstrating that [brief summary of the claims and why they are adequately pled]. Defendant's arguments misconstrue the applicable legal standards and the well-pleaded facts of the Complaint.

II. STATEMENT OF FACTS

The following facts are alleged in the Complaint and are assumed to be true for purposes of this Motion. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1. [State the key facts as alleged in your Complaint in numbered paragraphs, including dates, parties, and specific conduct. Reference specific paragraphs of the Complaint, e.g., '(Compl. ¶ 12).']
2. [Continue with additional facts, organized chronologically or by claim.]
3. [Include any facts that directly contradict or undermine Defendant's characterization of the Complaint.]

III. LEGAL STANDARD

On a Rule 12(b)(6) motion, the court must 'accept as true all of the factual allegations contained in the complaint.' *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). A complaint need only allege 'enough facts to state a claim to relief that is plausible on its face.' *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does not require probability; it requires only that the allegations permit 'the reasonable inference that the defendant is liable for the misconduct alleged.' *Ashcroft*

v. Iqbal, 556 U.S. 662, 678 (2009). The court must draw all reasonable inferences in the plaintiff's favor. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).

IV. ARGUMENT

A. The Complaint States a Valid Claim for [First Cause of Action]

Defendant contends that [summarize Defendant's argument on the first claim]. Defendant is wrong for at least the following reasons:

1. The Complaint Adequately Pleads [Element One]

[Provide detailed argument explaining how the allegations in the Complaint satisfy this element. Quote directly from the Complaint (with paragraph citations) and cite supporting case law. Example: 'The Complaint expressly alleges that on [date], Defendant [specific act]. (Compl. ¶ [X].) These allegations directly satisfy the [element] requirement. See [case citation] (holding that similar allegations were sufficient to survive dismissal).']

2. The Complaint Adequately Pleads [Element Two]

[Continue with argument for each element, directly responding to each of Defendant's specific arguments.]

B. Defendant's Affirmative Defense of [Defense] Is Inapplicable

[If Defendant raised an affirmative defense such as statute of limitations or lack of standing, address it here. Example: 'Defendant's statute of limitations argument fails because the Complaint was timely filed within the applicable [X]-year limitations period. Plaintiff's cause of action did not accrue until [date], when Plaintiff first discovered, or in the exercise of reasonable diligence

could have discovered, the harm caused by Defendant's conduct. See [cite tolling doctrine]. The Complaint was filed on [date], well within the limitations period.']

C. In the Alternative, Plaintiff Should Be Granted Leave to Amend

Should the Court find any deficiency in the Complaint, Plaintiff respectfully requests leave to file an amended complaint. Under Rule 15(a)(2), courts should 'freely give leave [to amend] when justice so requires.' Leave to amend should be denied only upon a showing of 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.' Foman v. Davis, 371 U.S. 178, 182 (1962). None of those factors are present here. This case is in its earliest stages, no discovery has been taken, and Defendant will suffer no prejudice from permitting an amendment.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's Motion to Dismiss in its entirety. In the alternative, should the Court grant any portion of the Motion, Plaintiff respectfully requests leave to file an amended complaint.

Respectfully submitted,

By: _____

[Attorney's Full Name], Esq.

State Bar No. [XXXXXX]

[Law Firm Name]

[Address, City, State, Zip]

Tel: [Phone] | Fax: [Fax]

Email: [Email]

Attorney for Plaintiff [Plaintiff's Name]

Dated: _____