

California

- **Contract (written), “account stated” and “open book account”** - four years, Cal. Civ. Proc. Code § 337.
- **Contract (oral)** - two years, Cal. Civ. Proc. Code § 339.
- **Sale of goods** - four years, Cal. Com. Code § 2-725.

Cases Interpreting Statute of Limitations

An action on “an account stated based upon an account in writing” is subject to the four year limitations period of CCP § 337 even where there is no acknowledgement of the account in writing, but where there is “assent to an account” either express or implied. An action for a defaulted credit card account which included the last billing statement was such an account stated subject to the four year limitations period, even where the creditor did not produce an agreement signed by the debtor. *Shubin v. Midland Credit Mgmt.*, 2008 U.S. Dist. LEXIS 123810 (C.D. Cal. Nov. 24, 2008).

An account stated claim arises when there are "(1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due." *Zinn v. Fred R. Bright Co.*, 271 Cal. App. 2d 597, 600, 76 Cal. Rptr. 663 (1969).

"When a statement is rendered to a debtor and no reply is made in a reasonable time, the law implies an agreement that the account is correct as rendered." *Maggio Inc. v. Neal*, 196 Cal. App. 3d 745, 753, 241 Cal. Rptr. 883 (1987).

Under California law, a four-year statute of limitations applies to actions for breach of contract, account stated, and open book account. Ordinarily, a cause of action for breach of contract accrues on the failure of the promisor to do the thing contracted for at the time and in the manner contracted, e.g. failure to pay for transactions made on a credit card account by the date and time set forth in the billing statement. Actions to recover on an account stated or a book account accrue on the date of the last item or entry in the account. *Profl Collection Consultants v. Lauron*, 214 Cal. Rptr. 3d 419, 425, 426 (Ct. App. 2017).

Borrowing Statute - Cal. Civ. Proc. Code § 361.

When a cause of action has arisen in another State, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this State, except in favor of one who has been a citizen of this State, and who has held the cause of action from the time it accrued.

Cases Interpreting the Borrowing Statute

“Section 361 thus creates a general rule that when a cause of action has arisen in another jurisdiction but cannot be maintained against a particular defendant in that jurisdiction because of the lapse of time, the action cannot be maintained against that defendant in a California court. The statute contains an exception, however, for a plaintiff ‘who has been a citizen of this State, and who has held the cause of action from the time it accrued.’ Past cases establish that this

exception applies only where the plaintiff was a California citizen at the time the cause of action accrued, and does not extend to a plaintiff who became a citizen of California after the cause of action accrued but before the lawsuit in question was filed.” *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 85 (Cal. 2010).

“By its terms section 361 applies whenever a cause of action arises in another state and would be stale in that state, unless the holder of the cause of action is a California citizen who has held the cause from the time of accrual.” *Giest v. Sequoia Ventures, Inc.*, 83 Cal. App. 4th 300, 303 (Cal. App. 1st Dist. 2000).

In *Resurgence Financial, LLC v. Chambers*, 173 Cal. App. 4th Supp. 1, 6 (Cal. Super. Ct. 2009), where a credit card agreement included a Delaware choice of law provision, the court imported Delaware’s three year limitations period to find that a Florida state court debt collection action was barred and violated the federal Fair Debt Collection Practices Act and the Florida Consumer Credit Protection Act. The decision did not involve consideration of § 361 and relied on *McCorriston v. L.W.T., Inc.*, 536 F. Supp. 2d 1268 (M.D. Fla. 2008).

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