Your Legal Leg Up First Response Kit

An Introduction to Debt Litigation and What to Do

By Your Legal Leg Up

Your Legal Leg Up First Response Kit

In this report we take it that you have learned, one way or another, that you are being sued for a debt. If so, you are in a club containing many millions of people, but you probably feel all alone. What do you do? And how do you do it? Where do you turn, and who can help?

Since you're here, you know that WE can help. So what do you do? In this report we start with the assumption that you know you're being sued. We will give you a flow-chart presentation of the actions you should take or consider, and then we'll guide you towards the next actions.

The first question is, how did you find out you were being sued?

Served or Not?

"Service" is the way you receive knowledge of the suit against you. If it is proper and effective, it will give the court in which the case is filed power over you. If it is not proper or effective, it doesn't.

If you were served in person (by hand-delivery to you yourself), this is almost always effective service.

If you look online in your local court's records and find out about the suit, but no other thing has been done to let you know of the suit, it's almost certain that you have NOT been served properly.

Between these two extremes are a lot of gray areas, and it's your first opportunity and need to do some legal research. Different courts and places treat these gray areas differently.

Some Gray Areas

One gray area is how much the suit must be served on you yourself. For example, what if the summons is handed to someone related to you (but not to you)? If the person is an adult residing with you (i.e., a spouse or adult child), that is usually considered effective service. What if the child is 14? Or what if the person is not related to you or not residing with you in the place where service was attempted? Much less likely, but you need to research the question.

Another gray area is the mail. What if you weren't handed the suit, but it was mailed to you by first class mail? What if it was by certified mail? These are usually not effective, but in some jurisdictions (courts or places) they can be.

Another gray area is "leaving" the suit or "posting" it. What if the service processor simply drops the suit on your front porch or slides it under a screen door? These are usually not effective, but there are circumstances when they might be.

How do you Know?

The only way you can know is by finding out what is accepted in your court, in your state. You can start by googling "[your state] and process of service." Then look through the results to see where they take you. They will probably take you to your state's rules of civil procedure and some court decisions interpreting the rules. Take your time figuring this out because it is the first important question of your case and determines whether you will want to take further action on the case at all. If it looks like you were not served properly, you will want to go to our site and search for "motions to dismiss" and consider whether the situation suggests a motion to dismiss, no action, or some (other) action.

We cannot tell you whether you were properly served. First, that's because doing so would be giving you legal advice. More importantly, what constitutes effective service is mostly a question of state law civil procedure (and thus is not "debt law" but something more general, and it also varies from state to state – we are not familiar with all the various state approaches to the question.

If you were not served properly, you will probably want to challenge service. Our suggestion is that you find a lawyer to do this for you. Fortunately, challenging service is NOT debt law, and thus most lawyers could do this for you. Also, they can enter ONLY for the purpose of challenging service, so lawyers can handle this question for you relatively cheaply. If you think you might want to go this route, you can also get a lawyer to look at the facts and suggest whether you want to file such a motion. A lawyer in your state will probably know the ins and outs of local service rules right off the top of her head and will be able to give you instant feedback on the advisability of such a motion.

These materials do NOT contain sample motions to dismiss or instructions. Most people don't need them. If you do want to file a motion to dismiss, however, we offer a product on that.

Assuming you were Properly Served

Assuming you were properly served (but you should never do this without finding out for sure), you have four quick choices: First, do you do anything at all? And if you do, do you *Answer the petition*? Or do you *file a motion to dismiss*? Do you get a lawyer or go it alone?

Fight or Not?

To handle first things first, there's the question of whether you fight at all, or whether you do nothing and hope for the best. This is perhaps not quite as obvious as you might think. The whole point of default judgments, when they're accepted knowingly, is that defending costs more than it's worth sometimes, and sometimes it's better just to let the other side get its judgment. This is rarely the case for debt cases because debt collectors rarely have what they need to win – and they're on a thin line of profitability, so that if you fight, they're somewhat likely to give up themselves.

We frankly suggest that you fight. There's a chance you could lose, of course, but the price for fighting and losing (actually losing) is rarely more than the cost of just giving up. And debt defendants who fight (with our help, at least) rarely lose. If you want to settle, you'll do much better by starting out with a defense, remembering that no one ever settles "out of the goodness of their hearts." They'll settle at a price that makes them the most money, and if you fight, you drive that price down because you force the value of the litigation down.

Lawyer or Pro Se?

Debt law is different than most kinds of law. In most law, the plaintiff has a solid case – or at least they give it a lot of thought before taking the case up. The lawyers on both sides are energetic and knowledgeable. And the parties are usually roughly equal in social standing. None of these things generally pertains to debt law. The debt collectors bring suit without any thought at all – I'm convinced that for many the process is entirely automated, *but even if it isn't, the lawyers do not do independent analysis of the particular suit, ever*. It doesn't pay them to do this, and they don't. Meanwhile, of course the debt collectors have a lot more money than the people they're suing.

Lawyers who do not practice debt law very much don't know the way the game is played. Of course they know you don't have much money, but they think the debt collectors wouldn't bring a case unless they had made sure it was a good one. They assume the debt collection lawyer will pursue the case vigorously, whereas in fact they rarely ever do – there just isn't money enough to justify regular lawyering, and there are too many easy cases where people won't fight back. Thus the average lawyer has a completely incorrect view of your chances to win and the amount of effort the case will require. Because most cases the average lawyer sees are pretty even affairs, he's been taught to seek compromise. This will cause the average lawyer to suggest you settle your case with a debt collector as quickly as possible for any reasonable number – and that number might be 75% of what the debt collector seeks.

Similarly, a lawyer you hire to defend you will be likely to be watching the time she spends like a hawk. That's because she (ethically) has to try to keep your overall fees "reasonable" in light of the expected results. Thus your average lawyer starts with a bias towards settlement and doing very little work on your case.

You can do much, much better yourself in most cases. You understand that the chances of winning are good and that the debt collector probably hasn't done any back up work. You don't have to justify charging $150/hour for what you do on the case, you just have to make the experience cost-effective at whatever wage you make. And fighting will be worth a lot more per hour than you might think. Therefore, we almost always suggest that people seriously consider representing themselves in debt cases.

There are some caveats, though. Representing yourself can take work and will definitely require you to do some things you haven't done before. Most people find it fun, though. If the stakes are very high and losing would be extremely negative to you, you might want to look for a lawyer (and make very sure you get a good one, which will cost a lot). A good lawyer is the "gold standard" in litigation, of course, and if you have to have that, you'll have to find a way to afford one. But for most people in debt cases, this is not the situation. Whatever amount they're suing you for, they can only collect what you have, so having to have a lawyer is a somewhat unusual situation.

Answer or File a Motion to Dismiss?

In most cases, you will want to file an Answer, and this is why our First Response Kit provides a sample answer and information on that choice. But you might want to file a motion to dismiss because the suit is insufficiently clear, was brought in the wrong place, or doesn't follow the rules in some way. What you must not do, if you have been properly served, is fail to answer.

Answer

As we said above, most people will want to file an Answer. If you are a member, you can do a site search (of our site) for "Answering the petition" for much more information on this. There is also a sample Answer in the samples section of this report, and you'll see that in most cases answering is obvious and very simple. There is one caveat: if the petition against you is "verified" (meaning someone swore to the truth of the allegations and signed an affidavit), you may have to do a verified Answer. But this is quite rare in the debt law context. If it's your situation, you will want to discuss it with us at your teleconference.

Motion to Dismiss

Pro se defendants often place too much emphasis on motions to dismiss. Most debt cases are won or lost in the discovery stage of litigation, and motions to dismiss rarely work. But that is not a reason to ignore the possibility or rule it out. As I will say time and again in this report, there are certain things you can know and need to know – "probably" is not good enough. You need to know for sure.

Motions to dismiss are good to bring when the other side simply does not allege a legitimate lawsuit against you. In most states, this means they don't allege everything they would have to prove to establish their right to money from you. In debt cases this is fairly rare because the claims are so simple. Usually, they are suing you for one or both of these two claims: breach of contract; or account stated.

To prove breach of contract you must allege a contract, its breach, and "damages" (lost money).

To prove account stated, the law varies a little more by state, and if you're being sued for account stated, you must check your state's laws (google: your state name and "account stated" to get started). Generally, it will require that there was some sort of billing arrangement, a bill was sent, you "agreed" to it in some way (the states can really vary on what this requires), but didn't pay. If the petition against you lacks any of these elements, a motion to dismiss might be appropriate.

If the petition is vague and confusing, that might be a motion to dismiss (under your state's rules of civil procedure).

If you previously sent a request to verify and never got a response, that might be a good motion to dismiss (for debt collectors, because of the FDCPA).

If you're being sued out of your home jurisdiction, that might be a basis for a good motion to dismiss (because of court jurisdiction rules and, for debt collectors, the FDCPA)

If you're being sued for a very old debt, and it's clear in the petition that this is so, that might be a good motion to dismiss (because of the statute of limitations).

If your state requires debt collectors to be registered, and the debt collector suing you (check your secretary of state's office for this) is not registered, this might be a good basis for a motion for summary judgment.

Usually, none of these things apply and you will want to answer the petition. But if they apply, you should consider a motion to dismiss BEFORE answering, as answering might waive (lose) your right to file the motion. **NOTE**: If you're in Pennsylvania, do a site search for "silver bullet" or "preliminary objections" as the rules for Pennsylvania are different and better than most other states. Chances are good that you will have a right to file preliminary objections in PA, and you probably should do that.

These materials do NOT contain sample motions to dismiss or instructions. Most people don't need them. If you do want to file a motion to dismiss, however, we offer a product on that.

Discovery

Whether you file an Answer or Motion to Dismiss, you will also want to file discovery requests as soon as you can. Thus we include sample discovery that will probably be fairly close to what you need. If you are in Pennsylvania and filing preliminary objections, you cannot serve discovery. Otherwise, I suggest you do so at the same time you answer or file your motion (unless your motion is that the court lacks jurisdiction over you because it's the wrong court or you weren't served).

Discovery is provided for in your rules of civil procedure – you should have them and look at them.

Interrogatories

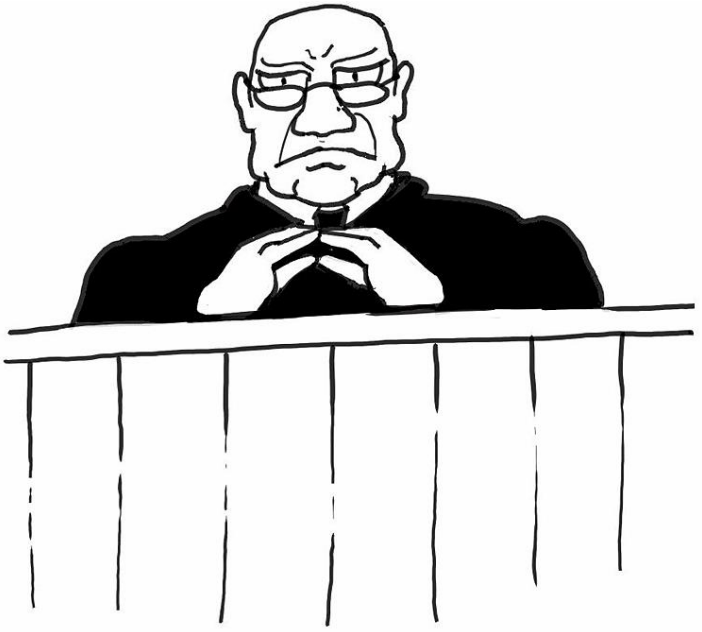
Interrogatories are a sort of question you ask the other side, which they must answer under oath. If you are a member, check out the discovery section of the document bank and member-only articles.

Requests for Documents

Requests for documents are the way you ask for and receive written materials or other things from the debt collector, and some of these things are critical for your defense.

Requests for Admissions

Requests for admissions are things you ask for the other side to admit so you don't have to waste time and effort discovering and proving them. They are mostly a trap for the careless, and we don't even suggest using them against an original creditor. Against a debt buyer they make more sense.



Appearances at Court

For most debt defendants, you won't be strictly required to file an Answer right off the bat – but we strongly suggest you do. Instead, you may have to show up in court on a specified day. Our strong suggestion is that whether you have to show up in court or not, you should have filed an answer (or motion to dismiss) and discovery before going to court. This is because even on that first day the judge may want to set a schedule for the case, including a trial date. Here's something to remember: *the debt collector and judge want the trial date early, but you want the trial date set for as far away as possible*. You need time to conduct discovery, and there may be motions you want to file. You also need to learn stuff, and you will get better over time.

The debt collector wants to prevent you from making him/her do any work on the case. And the judge just wants the case gone.

In order to persuade the court that you need time, you do your discovery before the first hearing. Then you can tell the judge you have started the discovery process and expect to need at least six months to complete it. In case the judge "wants to know" why it will take so long (of course the judge knows how long it takes, but they want the case to go away and will take any excuse to shorten the time), here's what you say. **MEMORIZE THIS before your first hearing**: "In [your state] a person gets __ days to respond to discovery [you need to check your rules to know exactly how many days, usually twenty or thirty]. If they do it without time extensions, that's __ days. If they object to any of my requests [and turn to the lawyer for the other side and say, "or will you say you won't object to anything?" (they never will say that)], then it will take at least a couple of weeks to negotiate informally, and then I'll probably need to file a motion to compel. That'll take me a week or so to do, and they'll have some time to respond, and then we'll have to set it for a hearing. Then the court will need time to rule. So that brings

us to about four months at a minimum. They'll get some time after that to produce answers. Then, I expect to file a motion for summary judgment. That will take me a couple of weeks to do, and they'll get __ days to respond [check your rules before you go in, usually 20-30 days], and then I'll get to respond to that, and then set another hearing. The court will need time to consider the motion and rule… thus we think a minimum of nine months is necessary before trial."

Being able to go through this time line will be money in your pocket. First, the court will probably set the trial date much further away than it would have. That immediately and automatically reduces the value of the case for the debt collector even as it strongly suggests they'll have a major fight on their hands (thus it dramatically increases their chances of dropping the suit). Secondly, you will impress the judge and the other side, causing the judge to take you much more seriously and increasing the worry of the debt collector. Finally, this is a real time-line, and memorizing it will help you understand the way time marches forward – despite all the days and months, time is always an issue, and you must not let days go by without action.

And it all depends on your having your discovery served on the other side before that first hearing.

In some courts, you don't have to file a written answer, you can just show up and say you deny their claims. Don't fall for this – it will get you in trouble. First, because it's exactly the opposite of answering and serving discovery, and it will make the judge and other side regard you and your case less seriously. But you are also vulnerable until you file a written answer.

Until you file an Answer, any time you miss any hearing, the case is subject to default (instant loss for you). Once you file an Answer or a Motion to Dismiss, the court can no longer give them a default judgment (until it rules on the motion to dismiss, and then you just have to Answer to protect yourself if the court denies your motion).

Next Steps

After you serve discovery, things become a little more fluid and don't always follow the same routine in litigation. There will almost certainly be a fight over your discovery, and there could be various motions. We have motions packs that could help you with that, and our membership is really invaluable in staying on top of things throughout the case. There could be settlement negotiations or various pretrial hearings, and then of course the trial itself, but none of these things will actually come up by surprise. You can feel your way through, but you must always strive to stay on top of things and not let the time get away from you.

Pro se defendants often think that just because they aren't hearing from the debt collector the case isn't moving toward the finish line. It's ALWAYS moving toward the finish line, and you will usually have things to do. I hope you will consider, if you haven't already done so, joining with us so we can help you along the way.

General Words of Wisdom

Remember, this lawsuit is "adversary." That is, the debt collector is your opponent – enemy if you will, although for them it will not be personal. Never trust them to do anything to help. Never depend on them to do so. Instead, be self-reliant, check the rules at all times and know, to the best of your ability, exactly what to do. Our membership is very, very helpful in this regard.

Remember that the judge is not your friend and is definitely *not* there to help you. Never depend on the judge to help you – and in fact watch out for the judge. They like to get rid of these cases, and if they say anything like, "you know you owe this money, don't you…" if you say "yes" and admit owing the money, the court will probably give a judgment to the debt collector on the spot. ***Never admit anything to the judge or the debt collector***. Don't fall for the fake sympathy or "common sense" of the judge. The debt collector must prove its case, and you have a right to make them prove it. Don't let the judge trick you out of that right – and they'll try.

Remember that "probably" is not good enough. If you CAN find out something for sure, you MUST find it out and not be satisfied with a "maybe." There are already enough gray areas in the law, but getting lazy will cause you to lose your case.

Debt collectors don't particularly respect you and may never take you seriously, but don't take that personally and don't take any of it personally. Don't try to be popular with judge or the other side. Instead, fight for your rights – that will be the only thing that matters. Use the methods we teach, make the debt collector pay for anything it gets, and get what you need to win. Usually, as it happens, if you do that the debt collector will eventually respect you (after the case is over) – for the very little that that is worth. The judge will respect and remember you if you fight (probably) too, but if you don't fight, you'll be forgotten and despised (in an impersonal way). FIGHT. Fight all the way. Your life is the only

thing that will be seriously affected by what happens, but winning or losing will have a major impact on you.

Winning is sweeter than you would believe.

Sample Answer, discovery, and information are below.

Sample Answer to Debt Petition

IN THE ASSOCIATE CIRCUIT COURT
OF THE COUNTY OF XXXXX
STATE OF XXXX

DEBT COLLECTOR COMPANY, LLC,
ASSIGNEE OF CC COMPANY (Mastercard),
Plaintiff,

vs.

JOHN Q. PUBLIC,
Defendant.

ANSWER AND COUNTERCLAIM

COMES NOW defendant, Joe Consumer, and states for his Answer as follows:

ANSWER COUNT I

1. Defendant is without knowledge of the corporate organization of plaintiff and accordingly denies. Defendant denies that any cause of action has accrued in favor of defendant.

2. Deny.

3. Deny.

4. Deny.

ANSWER COUNT II

1. Defendant incorporates by reference each response to allegations of Count I as if fully set forth herein.

2. Deny.

3. Deny.

AFFIRMATIVE DEFENSES TO COUNTS I AND II

1. Plaintiff is barred from bringing this action by the doctrine of unclean hands in that it has misused the judicial process as an improper collection device.

2. Plaintiff is seeking a debt that never was incurred, or was incurred by fraud, all in violation of the Your State Merchandising Practices Act and therefore should take nothing from this lawsuit.

3. The debt upon which Plaintiff is seeking to collect is beyond the statute of limitations in that it was incurred on May 6, 1922 and was defaulted with no further payments as of May 31, 1997.

Wherefore, Defendant prays that plaintiff's cause of action be dismissed with prejudice at plaintiff's costs, and that plaintiff be sent forth without remedy, and for such other, and further, relief as this court deems proper in all the circumstances.

Respectfully,

Joe Consumer

Certificate of Service

Comes now defendant, Joe Consumer, and certifies that he has served defendant a copy of this document by first class mail, postage prepaid, and by email at Heartless@Heartless.com, on this X day of Month, Year.

Signed/ Joe Consumer

Your Legal Leg Up Discovery Pack

This pack contains

- an introductory essay, which you need to read in order to understand the discovery process,
- a set of sample Interrogatories,
- a set of sample Requests for Production,
- a sample set of Requests for Admissions, and
- directions.

The Discovery Pack also comes with one free teleconference so you can get answers to questions about your case or the discovery process in real time. To get the teleconference, you will send me a contact or email saying you want it (and when, within a week). Contact me at: info@YourLegalLegUp.com. You will get to attend a regularly scheduled teleconference (others will be there, but you'll get your questions answered). When you contact us, we'll talk about the teleconference schedule and decide which one is right for you. This is NOT a personal consultation, but rather a teleconference that will be attended by members and other customers. I cannot schedule a private teleconference for individual customers.

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Directions

To use these samples of discovery, you should analyze your case and understand what the plaintiff is trying to show. These samples are designed for use whether the plaintiff is (apparently) an original creditor, debt buyer, or debt collector. That is because although they could apparently be one thing, they might in reality be something else, and you need to know. The only way you can know for sure is by asking questions in discovery.

Once you decide what the plaintiff is saying, and what sort of evidence they need to prove their case, you should consider whether you have a counterclaim, and if so, what sort of evidence you would need. With those things in mind, you can start looking at the samples and using the ones that might be appropriate and not the ones that would not be appropriate. YOU DO NOT WANT YOUR DISCOVERY TO LOOK LIKE A FORM YOU GOT FROM SOMEWHERE. You want to own your discovery, to understand it, and to make it look like (as it must) it came from you. You are responsible for what you send, and you need to understand it. This "personalization" that you must do will add work to the process, but it will pay off in a big way. Spend the time necessary to make the words and work your own.

You must find your state's rules of civil procedure relating to discovery – just google your state's name and "rules of civil procedure," and you should be able to find them. Then you must find your *court's* local rules. The court may have a website, or you may need to ask the court for them, but you need those rules.

Among other things, you need to know whether there are numerical limits to how many questions you get to ask. And if there are, you need to know what gets counted.

About Discovery

Discovery is an essential part of debt litigation that will support your case in several important ways. We suggest that you do so as soon as possible. From a practical point of view:

- Having served discovery before the court has its scheduling conference will cause the court to take you, and the case, much more seriously.
- In addition, doing discovery sets you apart from the average pro se defendant and suggests to the plaintiff that you intend to defend vigorously.
- Your doing discovery forces the plaintiff to expend resources on the lawsuit, and while they rarely worry they will lose the case, they DO worry about having to spend more money on the case.
- Your serving discovery on them early puts them on notice that they will have many opportunities to spend on the case.
- Finally, serving discovery early allows you to see the way the debt collector "plays the game." You will be amazed by how little they give you in response (and how many objections they make), and this knowledge will be of significant strategic advantage to you.

Legally, getting started on the discovery early gives you a chance to get information that will bolster your case and reveal weaknesses in their case.

General Rules of Discovery

While every state has its own statement of the rules of civil procedure which permit discovery (and you must get your state's rules immediately), they all require whatever discovery you do to reveal information that is "relevant" and "leads to the discovery of admissible evidence." That means that, while not everything you ask for has to be admissible in court as evidence by itself, it should be "reasonably calculated" to lead to such evidence. "Like what?" you may ask. Like asking for the names of witnesses, or asking for other facts that might lead to important facts.

Your discovery cannot be "unduly burdensome," which means that, while some information might be marginally relevant, asking for the debt collector's income tax statements for the previous ten years, for example, is excessive. And that goes for their requests of you, too.

Scheduling Your Case

I mentioned above that getting your discovery served before the court's "scheduling hearing." Here's why. At a scheduling hearing, the court is going to set a number of dates that will control the case's timing: when the trial is, when motions have to be made, how long you can conduct discovery, etc.

What you must remember is that the debt collector wants to make the trial date as soon as possible. And so does the judge. The debt collector wants it to be over fast because turn-over and lack of investment are critical to its profitability. The court just wants it over because it would rather do other

things involving more money and more interesting legal concepts. So both judge and debt collector will want to suggest an early trial.

You don't want that. Delaying the case, all by itself, reduces the value of that case to the plaintiff. And using the time gives you a meaningful chance of winning. Discovery is your key to extending the case. Why?

Discovery is Key because it Takes Time

Look at your rules of civil procedure and your court's Local Rules. You're going to see that a party gets usually about 30 days to respond to discovery. Debt collectors typically ask for, and receive, an extension of 30 more days. If there are objections (and there will be many), you are required to engage in "good faith" negotiations to settle the dispute. Those will take two weeks and won't solve the problem. Then you have to create a motion to compel (two weeks) and file it, serving a copy on the other side. They'll get to respond, and you get to respond to *that*. Then you have to set the motion for a hearing, which could take weeks, and then argue the motion. If you win, the court will give them ten days to answer your discovery.

Remember that time-line, because you'll need to remind the judge of it at the scheduling conference. There's no way to get all that done in less than six months. And if you want to file a motion for summary judgment, that adds another six weeks at a minimum. Mention these realities to the judge at the scheduling conference, and there's a good chance the trial won't be set for at least six months or more. And that is like money in your pocket.

The Discovery Packs – Note that information in brackets [] is a note to you. All documents must be individualized to apply to your case, and you should carefully consider whether each of these requests applies to your case, or whether you should include more or something else. In other words, use these samples to learn about the discovery process – and apply the lessons to your discovery.

More about Time

Conducting discovery is time consuming and often frustrating. The debt collectors routinely object to every single discovery request – this stonewalling is a well-established part of their play book. That all means that you will need to get started as early as possible and be prepared for dull, time-consuming and frustrating dispute. It is annoying and discouraging, so be prepared for this sort of battle.

On the bright side, discovery is often a key to victory for a pro se defendants. Obviously this is so to the extent that you can (eventually) get information that will help you win your case. But you should also welcome the debt collector's stonewalling tactics. In order to file a motion to compel, you are required to "negotiate in good faith" to attempt to resolve the discovery dispute first. This informal resolution process means that you must first call and speak to the lawyer about their objections. Plan to do that, to ask him or her all about all the objections as to each question, and plan to be sure to be thorough and specific. It could take hours of back and forth over days.

That's what you want. The lawyer you are talking to is either billing the company $200 per hour or wants to make that much (doing something besides talking to you). Your making them spend a lot of time on your discovery forces the debt collector to invest more heavily in your case, and while they rarely doubt they can win the case, they always worry about whether they can collect. The more you force them to spend on you, the more likely they will be looking for the exits. So take your time and do a good job. You really do need as much of this information as possible, and you can make the debt collector pay for its obstructive and dishonest objections.

Interrogatories

Sample Interrogatories for Consumer/Debtor

IN THE CIRCUIT COURT
OF THE COUNTY OF X
STATE OF x

Company suing,
Plaintiff,

vs.

Joe Consumer,
Defendant.

DEFENDANT'S FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFF

COMES NOW Defendant, pro se, and propounds the following interrogatories on Plaintiff, to be answered in accordance with [Your State Rules of Civil Procedure]:

DEFINITIONS

"You," "your" or "yours" means the Plaintiff and any employee, agent, sales representative, manager, officer, owner, independent contractor, assign or other person working for, hired by or acting on behalf of plaintiff.

"Identify" with respect to persons means state the name, address, position, social security number, last known home and business address and last known home and business telephone number for each such person listed.

"Identify" with respect to documents or things means describe the document or thing, state its current whereabouts, and identify each person who has possession, custody or control over each such document.

"The Original Creditor" means the original issuer of the credit that was allegedly extended to Defendant, and any employee, agent, sales representative, manager, officer, owner, independent contractor, assign or other person working for, hired by or acting on behalf of the Original Creditor.

"The Account Balance" or "Defendant's Account" means the debt you allege Defendant owes and upon which you have filed suit to collect.

INTERROGATORIES

1. Please identify each person who either answered, or who was consulted in providing answers to these interrogatories, and state which interrogatory was answered by each such person listed.

ANSWER:

2. Identify the alleged Original Creditor of Defendant's Account.

ANSWER:

3. Identify all persons or entities who have ever owned this debt and provide the dates of their ownership.

ANSWER:

4. Identify every document by which Defendant's Account was transferred to or acquired by you or any other person. This should include bills of sale, attachments to bills of sale, and complete assignment agreements relating to the transaction by which defendant's account was purchased or otherwise acquired.

ANSWER:

5. Identify each of your employees who has attempted to collect all or any part of the Account Balance from Defendant, describe what actions were taken by each such employee to collect, or attempt to collect the Account Balance from Defendant, and identify all documents created as a result of such attempt.

ANSWER:

6. Identify every individual employed by the Original Creditor who had direct or supervisory authority over Defendant's Account (or over the department responsible for collecting Defendant's Account) before it was assigned, transferred and/or sold to you.

ANSWER:

7. Identify any contract or other document within your possession or control that contains Defendant's signature on it.

ANSWER:

8. Identify all sources, including electronic media, you consulted or upon which you relied in generating any document attached to your petition.

ANSWER:

9. Do you contend that any document attached to your petition is an actual statement of account created by the original creditor (or a photocopy of such)? If your answer is "no," state how and by whom the document was generated. If your answer is “yes,” state how and in what form the document came into your possession.

10. For each individual identified in response to Interrogatory 9, describe the person's academic or business background and state the person's qualifications in knowledge, training or information regarding the authenticity or accuracy of the documents.

ANSWER:

11. Did you ever make any agreement to lend money or provide credit to Defendant? If your answer is yes, state:

a) The date of the agreement;

b) The place in which the agreement was made;

c) The terms of the agreement;

d) Identify all documents, notes and records which relate any terms of the agreement;

e) Identify all persons present at the time the agreement was made.

ANSWER:

12. State the total amount of *principal* that you contend Defendant borrowed from the Original Creditor, give the date and amount on which each principal sum was borrowed, and identify the goods and/or services that Defendant purchased with the credit that was given.

ANSWER:

13. State the amount of *interest* that was charged to Defendant pursuant to each principal sum that was borrowed, and describe the manner in which you calculated the interest.

ANSWER:

14. State the amount of each late fee, overlimit fee, membership fee, application fee, or any similar charge that was ever assessed against Defendant with respect to Defendant's Account and identify any statement of terms or conditions according to which the charge was assessed.

ANSWER:

15. State the amount of income your company generates from the collection of debts originally owed to others and identify what percentage of your company's income that is.

ANSWER:

16. Identify any part of your business not associated with the collection of debts originally owed to others and state what percentage of your income is generated by those parts of your business.

ANSWER:

17. Do you contend that your principle business is not the collection of debts? If your answer is "yes," then state all facts in support of that contention.

ANSWER:

18. State your net worth from the date of your answers to these interrogatories back to the date you first attempted to collect the alleged debt you are attempting to collect in this law suit.

ANSWER:

19. As of the date of your answers to these interrogatories, state the total amount of money you claim Defendant owes you, state the amount of that money that constitutes (1) principal, (2) interest, (3) attorney's fees, (4) late fees; (5) overlimit fees, (6) application fees, (7) membership fees and (8) court costs.

ANSWER:

20. With respect to your answer to Interrogatory 19, list every document that supports your calculation of these figures, identify every document that authorizes you to collect these amounts, give a detailed description of how you calculated these figures, and identify every individual who has personal knowledge of the accuracy of these figures and/or who has personal knowledge that the figures were accurately calculated or determined.

ANSWER:

21. What is total amount of money you have received in payment toward the Account Balance from any source? As to each payment made, specify the date it was made, by whom, and the amount.

ANSWER:

22. What is total amount of money any person has received in payment toward the Account Balance? As to each payment made, specify the date it was made, by whom, by whom received, and the amount.

ANSWER:

23. Identify any declarations, admissions (implied or express) or statements against interest made by Defendant or Defendant's agents or representatives relating to the subject matter of this litigation, and fully relate all details with regard to each such statement.

ANSWER:

24. Have you obtained any written or oral statements from any persons who have any knowledge of the subject matter of this action? If so, state as to each statement:

a) The name and address of the person making the statement;

b) The date said statements were made;

c) Whether the statements were written, oral or by recording device;

d) The name and address of the person who made the statements;

e) The name and address of the person in possession of the statements;

f) Please attach a copy of each such statement.

ANSWER:

25. If any person conducted any independent investigation into the authenticity of the debt you are alleging defendant owes plaintiff on behalf of plaintiff, identify that person, all matters investigated, and all findings or conclusions reached by such investigation.

ANSWER:

26. If any person conducted any independent investigation into the record keeping or business practices of [original creditor], identify that person, all matters investigated, and all findings or conclusions reached by such investigation.

ANSWER:

Respectfully submitted,

_____

John Q. Debtor

Requests for Production of Documents

[Caption of the Case]

DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

Comes now Defendant, pro se, and requests Plaintiff to produce the following documents, and otherwise respond to these requests for production of documents, within [the time provided under your State Rules]:

DEFINITIONS

"Document" means, without limitation, all of the following items in Defendant's possession, custody or control, whether printed, recorded, or reproduced by any other mechanical process or written or produced by hand: agreements, communications, correspondence, telegrams, memoranda, summaries of records of telephone conversations, summaries or records of personal conversations or interviews, video or audio tape recordings, diaries, graphs, reports, notebooks, note charts, plans, drawings, sketches, file vehicles, indexes, logs, summaries or records of meetings or conferences, summaries or reports of investigations and negotiations, opinions or reports of consultants, photographs, brochures, pamphlets, circulars, press releases, drafts, letters, including any marginal comments appearing on any of the documents, checks (cancelled or otherwise), minutes, and any and all other writings. The term "document" also includes all entries made into a computer (please produce a hard copy or disk containing all entries).

"You," "your" or "yours" means plaintiff, its owners, officers, managers, employees, agents, assigns and sales representatives.

"The Original Creditor" means the original issuer of the credit that was allegedly extended to Defendant, and any employee, agent, sales representative, manager, officer, owner, independent contractor, assign or other person working for, hired by or acting on behalf of the Original Creditor.

"The Account Balance" or "Defendant's Account" means the debt you allege Defendant owes and upon which you have filed suit to collect.

DOCUMENTS REQUESTED

1. Any and all account cards or ledger sheets showing debits, credits, and/or a running balance, prepared in connection with Defendant's Account.

2. Any and all written correspondence or notes of oral correspondence between you and Defendant or between you and any third party concerning Defendant's Account, including copies of any and all notices of default or demands for payment that you or anyone sent to Defendant.

3. Copies of all documents that you received from the Original Creditor in connection with Defendant's Account in the actual form you received them. [for debt buyers]

4. All documents showing or related to the assignment of Defendant's Account to you or to any intermediate person or entity, beginning with the first assignment by the Original Creditor and ending with the final assignment to you. This includes but is not limited to all bills of sale and attachments, all assignment contracts, financial records or statements of accounts, or any other document related to the account.

5. Any and all documents, not covered by another section of this request, that purport to bear Defendant's signature and relate to the subject matter of the petition.

6. Any and all documents that you consulted or relied upon in the preparation of the petition or answers to interrogatories.

7. Any document the person who signed the Affidavit attached to the Petition reviewed or relied on prior to signing the Affidavit. [If there was an affidavit related to the amount owed – not regarding the affidavit about military active duty].

8. Any document upon which the person who generated any documents attached to the petition reviewed or relied on prior to filing your lawsuit.

9. Copies of your federal and state income tax returns for 200x, 200x and 200x. [For use if you have a claim for damages under the FDCPA or for punitive damages under any other law.]

10. All documents supporting any calculation of damages against Defendant, including actual damages, attorney's fees, late fees, overlimit fees, membership fees, application fees, interest calculations and court costs.

11. A copy of any written demands for payment made to Defendant, including bills, collection letters, or other communications seeking payment.

12. A copy of any credit applications or credit investigations of Defendant concerning Defendant's Account.

13. Any document relating to the nature of your business, whether produced in connection with securities regulation, advertising or other promotion, or generated for any other purpose. [for debt buyers, with the purpose of showing "debt collector status"]

14. Any document showing or reflecting the nature of your business activities. [for debt buyers, with the purpose of showing "debt collector status"]

15. Any document showing or reflecting any purchase, sale, or any other transfer of any accounts for collection by any other party.

16. Any and all documents related to the transfer or assignment of defendant's account to you, including any and all assignment contracts, bills of sale and attachments thereto, or any other document, by any name, controlling or purporting to control the terms and conditions of the account to you, including your access to original creditor records, or any guaranties or refusal to guarantee the truth or accuracy of any records associated with defendant's account. [for debt buyers, with the purpose of showing "debt collector status"]

17. All documents identified or consulted in response to defendant's interrogatories served herewith and not otherwise produced.

18. Any document identified by your responses to Defendant's Interrogatories not already included in these requests.

Respectfully submitted,

Joe Consumer

Requests for Admissions

Sample Requests for Admissions for Consumer/Debtor

IN THE CIRCUIT COURT
OF THE COUNTY OF X
STATE OF x

Company suing you,
Plaintiff,

vs.

Joe Consumer,
Defendant.

DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSIONS DIRECTED TO PLAINTIFF

COMES NOW Defendant, pro se, and propounds the following requests for admissions on Plaintiff, to be answered in accordance with [Your State Rules of Civil Procedure]:

DEFINITIONS

"You," "your" or "yours" means the Plaintiff and any employee, agent, sales representative, manager, officer, owner, independent contractor, assign or other person working for, hired by or acting on behalf of plaintiff.

"The Original Creditor" means the original issuer of the credit that was allegedly extended to Defendant, and any employee, agent, sales representative, manager, officer, owner, independent contractor, assign or other person working for, hired by or acting on behalf of the Original Creditor.

"The Account Balance" or "Defendant's Account" means the debt you allege Defendant owes and upon which you have filed suit to collect.

REQUESTS

1. Admit that Plaintiff is a “debt collector” within the terms of the Fair Debt Collection Practices Act.

2. Admit that you have no personal knowledge of the billing practices of [original creditor].

3. Admit that you have no personal knowledge of the record keeping practices of [original creditor].

4. Admit that you have no personal knowledge of any amount purported to be owed by defendant to [original creditor].

5. Admit that you have no copy of any document bearing defendant's signature.

6. Admit that you have no copy of any document purporting to govern the terms and conditions of any alleged debt of defendant to [original creditor].

7. Admit that no person from plaintiff conducted any independent investigation into the authenticity of the debt you are alleging defendant owed plaintiff prior to purchasing the debt.

8. Admit that no person from plaintiff (including any law firm) conducted any independent investigation into the legitimacy of any debt alleged to be owing from defendant to plaintiff.

Respectfully,

Joe Consumer