

## Motion to Compel Instructions

### Introduction

The battle for discovery may be the single most important battle fought by a pro se debt defendant. In general, the debt collectors do not have the materials they need or that you seek in discovery, and they often devote considerable efforts to hiding this fact. Sometimes they do not answer your requests at all, but more often they stonewall you with objections, most of which are absurd. The pro se defendant is left confused and frustrated.

It's hard to believe they can get away with this sort of behavior, but remember this rule about litigation: in general, people get away with whatever you don't actually make them pay for. That is just a feature of our “adversarial” system. The judge will not be watching and looking out for you. You must draw the court's attention to the discovery disputes and cause it to address them. If you don't, the debt collector will have a huge advantage.

You need to think of the motion to compel as extremely productive even though it does not lead immediately towards judgment. As I often say, if you can force the debt collector to spend time on your case, you will be going a long way towards making that case unprofitable for them. Motions to compel production are an excellent way for you to take advantage of this dynamic. The motion to compel process is frustrating for you, but expensive for them – your efforts will pay off.

Their objections are obviously rote, aren't they? It's clear that someone, possibly a paralegal, is simply cutting and pasting most of them. Taking it to the next level requires much more attorney effort—it's really the first time the lawyer has to do anything on your case. Make them fight you tooth and nail in order not to give you the materials you seek. Whether you win on the motion or not, you will be sapping their will to fight you.

But you will win on most of this, most of the time, and that will open the doors to a clearer, faster victory for you. And the motion to compel process also forces you to learn more about the specific laws of your case and gives you a much greater understanding of your lawsuit and the debt collection process.

The motion to compel process is annoying and time-consuming, there's a lot of repetition, and it requires a lot of your time to do. But these things are actually what makes it so beneficial to you. This motion to compel pack is designed to save you *some* of the time required and to spare you some of the effort you would otherwise have to spend to learn some of the basics. But it doesn't do everything for you, and that's okay because the work you do here will pay off big-time later

on, as you will understand the litigation process and your suit much better for the time you spend. Trust me on this.

## Preliminaries

As I often say, one of the first things you must do is get a copy of the rules of civil procedure and Local Rules that might relate to your case. In the discovery situation, you must know the rules regarding number and form of interrogatories, requests for production, and requests for admissions, *and the rules regarding discovery disputes*. These are usually covered both in the general rules of civil procedure for your jurisdiction and also the Local Rules, which you must get from the court you're in. **You need them both.**

## Instructions

Motions to compel are about forcing the other side to send you answers to your discovery questions. That is, you want them to provide an actual answer to an interrogatory (for example) rather than an objection. Remember that “I don't know” or “I no longer possess the document” *is* an answer. You may not like it, but it is an answer. On the other hand, a common trick of the debt collectors is to say “Objection, this, that and the other bogus objection, but, subject to that, plaintiff refers to \_\_, or attaches \_\_.” That is NOT an answer because it does not actually answer your question with all the responsive answers or materials. It leaves an objection as a “back door.” You must close all the doors.

Motions to compel are not the way for you to object to the quality of an answer or express disbelief of it. Motions to compel are designed to eliminate objections and force the other side to present evidence that you can use in court. Not possessing a document (the fact itself) can be a critical piece of evidence, and it's fine if that's the answer you get. “Objection, violates attorney-client privilege or seeks attorney work product” is not an answer, and you must eliminate it.

After you get the rules and create and serve your discovery, chances are the debt collector will serve some responses on you. They don't always, though. Sometimes they simply ignore them and leave you to decide what to do. It's a huge advantage to you if they do this, as that would constitute a “waiver” (letting go) of their objections, and your good-faith letter and motion to compel would be extremely simple. Usually they will reply with objections similar to the ones in the samples here. You need to put the questions and answers into one document as I have done so it will be easier for you and the court to understand them.

After getting the questions and answers together, you're simply going to go straight down the line noting what, if anything they gave you, and making the argument for the rest. Just as I did in the sample good faith letters. This will be your good-faith letter and the foundation for your motion to compel.

They will either respond to your good faith letter or not, and they often do not. That's because they don't want to spend time on the case and are hoping you will let it drop. If they respond, you will have to decide how much of their response to accept and how much to ignore. Your next step is the motion to compel, where you ask the court to force them to give you the materials they haven't (unless you agree they shouldn't have to). To do this, you take your good faith letter and put it into the form of the motion and (separately) the memorandum in support. You add case law where you need to (see the sample) and send it to the court.

Some motions to compel do not have any case law, but I think you will strengthen your standing with the court and the debt collector (for purposes of causing it to drop your case) if you do include some. And it will never hurt you to know what they have to prove and what evidence you may need to dispute their case. I therefore suggest you spend some time on this. You'll find some help on research in my materials at youtube. Plan to do a search: your jurisdiction, their type of case (“breach of contract”) (they usually name them in the petition) and “prima facie case”. The cases you find will tell you what the plaintiff must prove. You then show how the interrogatory or request relates to that.

## **The Actual Motion to Compel Process**

The motion to compel sequence, as I sometimes call it, goes like this, and be aware that you will probably need to prove to the court that you engaged in it.

1. You send discovery.
2. They respond or not – let’s say they don’t in this case.
3. You call and tell them the time for responding to your discovery is over. You either talk to the lawyer or not.
4. You send an email confirming your call telling them the time for responding to discovery has passed.
5. They respond. They may send materials as well, but they will object to almost everything.
6. You read their objections and form arguments against them.
7. You call the lawyer to discuss their objections and argue.
8. You reach the lawyer or not to discuss. If you do, argue. If you don’t, read the note on what to do if they lawyer won’t talk to you (below).
9. The lawyer may agree to give you some things, but it won’t be much.
10. You send an email reconfirming the call and what the lawyer agreed to give you.
11. You send a good faith letter giving them some reasonable amount of time to provide the discovery you demand – perhaps ten days. They won’t do it, but if they do, you redo steps 5-10 until they won’t give you anymore.
12. You file a motion to compel, attaching all the emails and letters you sent as proof you attempted to reconcile the dispute without involving the court.

## If the Lawyer Won't Talk to You

Sometimes debt collector lawyers won't talk to you when you call. If this happens to you, you should waste no time asking the court to MAKE them talk to you.

Check your Rules of Civil Procedure regarding motions to compel. They probably require the parties to "confer in good faith" or something like that "to resolve discovery disputes." Find that rule. Send an email to the debt collector's lawyer reminding them of that rule. Quote the language from the rule in your email and say that you need to confer regarding discovery. Ask them to give you some time to do so.

If they do that, then call as outlined above. If they do not agree, or if they do not respond, you should consider filing a motion for sanctions (punishment) for refusing to follow the rules. That motion will look something like this, but make it your own:

### **Motion for Sanctions for Failure to Follow Rules of Civil Procedure**

[caption]

Comes now defendant, [your name] and moves this Court for an Order sanctioning Plaintiff for its failure to follow the Rules of Civil Procedure relating to discovery.

Defendant has submitted her first sets of interrogatories and requests for production to plaintiff, and in response received [no answer, numerous objections]. According to Rule \_\_ [cite your state's rule], when there is a discovery dispute, the parties are required to confer in good faith to attempt to resolve it. Defendant attempted to do so on \_\_\_\_\_, see attached email, Exhibit \_\_, confirming defendant's efforts to confer and plaintiff's refusal to do so.

After submitting objections to all of defendant's discovery [or however many of your questions], Plaintiff has refused to follow the rules regarding informal negotiations. It is clearly violating the rules in an attempt to gain an unfair advantage. The court should not tolerate this.

Wherefore, Defendant requests that the Court either dismiss plaintiff's action with prejudice for its bad faith refusal to negotiate, or order it to comply immediately and submit forthwith a statement of several times it would be available to conduct such negotiations, along with instructions requiring it to negotiate in good faith to resolve the discovery disputes.

Respectfully,

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## **Motion and Memo**

Notice the way I did both a motion and a memorandum in support. A lot of jurisdictions require you to do both, and you probably should anyway. The Motion itself makes reference to the exhibits (discovery) and the general legal principles that give you a right to the discovery. Remember that the court does not have the discovery you served on the debt collector, and therefore you must attach all of it to either your memo or motion along with an affidavit saying what it is and that you served it. A sample affidavit is in the materials.

In general, the motion sets out your argument in broad form (see the sample), and the memorandum makes the specific arguments. I almost always asked for sanctions from the beginning, but the courts rarely give them. Instead, they order the other side to produce within a certain amount of time. When they don't (and debt collectors rarely will), you will be set up to ask for sanctions then and push for dismissal of the case. I believe that in pro se debt cases sanctions might be appropriate from the start, though, because the debt collectors know that their refusal to abide by the rules causes a lot of defendants either to give up or lose their rights as a result of confusion. That's a policy argument in favor of punishing them from the beginning.

The documents here are either in pdf format (actual documents provided, and these instructions) or in Open Office, which is a free word processor program that is compatible with Word. So you can open and modify in either Word (if you have it) or Open Office, which is available free over the internet.

## **Disclaimer**

You must be aware that I cannot provide you legal advice, and the documents I provide are designed for you to modify and adapt as your circumstances warrant. I do not guarantee that the documents as provided are appropriate for your case or court because the rules and case law for your case may vary. I do believe these documents will be a sound foundation for you to use, but you must verify all facts and arguments for yourself.