

Motion to Compel Instructions

Introduction

The battle for discovery may be the 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 simply 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 law: 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. 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. 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.

Contents

In this package are two different sets of background documents—one from Arizona, one from Georgia. Each set has the discovery submitted by the debt defendant and the responses provided by the debt collector, and a “good faith” letter asking the debt collector to answer the rest of the discovery. There is one Motion to Compel (based on the Arizona discovery—but they're pretty generic), One Memorandum in Support of Motion to Compel (again, based on the Arizona discovery). I hope you'll see how the arguments are basically interchangeable. And these instructions.

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. 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 cannot be used at trial.

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. Most of my customers find it easiest to scan the discovery into the computer and then past the images onto your word processor. You may need to type them in. This is an important step, though. You need the documents together.

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 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.

Notice the way I did both a motion and a memorandum in support. 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.

Last Words for Now

We're in the early stages of this product, and there will be parts of it that may confuse you. Please bring those to my attention and let me work with you on developing the responses. It will help make your motion stronger, and it will make the product better for future users.

Good luck, and please let me know how it goes.

Sincerely,
Ken