

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). 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 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

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 folders, 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

New 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.
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