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Answering a Collections Complaint

If you are served with a Summons and a Complaint, you are being sued in a civil action. You are the defendant in this action, and you must answer (respond to) the Complaint within the time stated in the summons (generally 21 days), or a default judgment can be entered against you. This means the judge may grant a judgment for the plaintiff based on the claims (called allegations) in the Complaint without hearing from you. Michigan Court Rule 2.110(B) says, in part, that a party must file and serve an Answer (responsive pleading) to a Complaint in order to prevent the entry of a default judgment. (Quoted from the Michigan Court Website: <http://courts.michigan.gov/scao/selfhelp/general/answers.htm>).

Important Terms to Know

Plaintiff: The person or company who is filing the complaint against you.

Defendant: The person who is being sued in the collections case (you).

Complaint: A civil case begins with a Complaint. It is the initial paperwork that starts a lawsuit and that sets forth the claims made by the plaintiff against the defendant. The Complaint also contains the plaintiff's demand for relief (request for payment of the

debt) and asks for a judgment. The Complaint includes a brief statement of the facts of the plaintiff's case.

Answer: The defendant must file an Answer which is the written response to the Complaint. The defendant may deny any of the plaintiff's allegations, offer any defenses, and make any counterclaims against the plaintiff, cross-claims against other defendants, or third-party claims against other parties not involved in the lawsuit. Failure to file an Answer will result in a Default Judgment (see below).

Pleadings: All of the documents of a lawsuit, e.g. Complaint or Answer, which are filed with the court, are called pleadings.

Counterclaim: In addition to answering the claims of the plaintiff, the defendant's Answer may state a claim against the plaintiff (called a counterclaim) seeking money or some other order against the plaintiff.

Judgment: The written decision or order of the Court determining who wins the lawsuit is called the judgment. A money judgment means one party must pay money to another. A judgment gives the plaintiff the right to use various means to collect money, e.g. garnishment and execution.

Default Judgment: A default judgment is a court order stating that the plaintiff won the case because the defendant did not appear in court and did not file an Answer, or did not take other required procedural steps.

Affirmative Defense: An affirmative defense is a "legal" defense that does not deny the truth of the allegations against the defendant but gives some other reason (such as incapacity, payment of the debt, or expiration of the statute of limitations) why the

defendant cannot be held liable. The defendant bears the burden of proof as to affirmative defenses and these **must be stated in the Answer.**

Statute of Limitations: A law establishing a period of time from the start of a legal claim (e.g. nonpayment of a debt) within which the plaintiff must start a lawsuit by filing a Complaint and Summons. In Michigan, the statute of limitations for a collection action is 6 years from the date of the original agreement **or** the date of the last payment.

Different legal claims have different time periods.

Summons: The Summons is a separate document which always accompanies the complaint. The Summons announces you are being sued and gives you a time period to respond.

Account Stated: A statement, in writing, between a creditor (the person to whom money is owed) and a debtor (the person who owes) that a particular amount is owed to the creditor as of a certain date. Often the account stated is a bill, invoice or a summary of invoices, signed by the customer or sent to the customer who pays part or all of it without protest. In order for there to be an account stated, there must be a: (1) prior transaction between the parties which establishes a debtor-creditor relationship; (2) an express or implied agreement between the parties as to the amount due; and (3) an express or implied promise from the debtor to pay the amount due. Creditors often bring suit “on an account stated” for the advantage it gives them in the lawsuit. The defendant must give specific facts in the answer which dispute the account stated.

Affidavit: An affidavit is a statement of facts which is sworn to (or affirmed) before an officer who has authority to administer an oath (e.g. a notary public). The person making the signed statement (affiant) takes an oath that the contents are, to the best of his or

her knowledge, true. It is also signed by a notary or some other judicial officer that can administer oaths, affirming that the person signing the affidavit was under oath when doing so.

General Rules of Pleading

When preparing an Answer, you must follow the general rules of pleading set forth in Michigan Court Rule 2.111. This rule states what must be in an Answer. At a minimum, as to each claim/allegation in the Complaint, you must state whether you admit or deny that claim/allegation, or whether you lack the knowledge or information sufficient to form a belief as to the truth of the claim/allegation. Each response must be numbered and must match the corresponding number in the Complaint. For example, paragraph 1 in your Answer must be a response to paragraph 1 in the Complaint. You must respond to each numbered allegation in the complaint. (Quoted from the Michigan Court Website: <http://courts.michigan.gov/scao/selfhelp/general/answers.htm>).

Writing Your Answer

If you do not want to handwrite your Answer, a sample form is included at the end of this pamphlet that you can use and fill out. You can use additional blank sheets of paper if your responses won't all fit on this form. Make sure you fill out the "caption" on the top of the page, indicating the court and the name of the parties and clearly write ANSWER below that information. The Complaint you received will have numbered paragraphs; you need to read each one and make a response. The responses you make should be one of the following:

- admit that the information is correct;
- or deny that the information is correct for the reason it is untrue;

- or state that you lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation and you request the plaintiff prove it.

If you deny it, you should state why you disagree. After you have responded to each paragraph of the Complaint, you should add numbered paragraphs of your own explaining any reasons that you do not believe that you owe the amount that is claimed. In other words, you need to write out any defenses to the claim, even if you already stated them when responding to the numbered paragraphs in the complaint. Some (but not all) common defenses are listed below.

Here are a few examples of responses to a Complaint illustrating how you might prepare an Answer to a Complaint that has been served on you.

- If the Complaint states something that is true, e.g. that you are a resident of the City of Lansing and State of Michigan, then for your response, you can state: Admitted.
- If the Complaint states something that is not true, e.g. that you used a Visa card to make charges, and you did not, then you should state: Denied.
- If the Complaint states something that you are unable to admit or deny, for your response you should state: Defendant lacks sufficient information and neither admits nor denies, but leaves the Plaintiff to its proofs.

It is important to remember that your Answer must contest (deny) at least some of the statements in the Complaint or there will be no issue and the Court will have to give the Plaintiff what it is asking for and award a judgment to the Plaintiff.

At the end of your Answer you should include a statement similar to the following:

“Defendant, having answered the Complaint of the Plaintiff, respectfully requests this Honorable Court dismiss the Plaintiff’s Complaint and award no damages or costs against the Defendant.”

Defenses to the Complaint

You may have some defenses to the plaintiff’s claim as to why you don’t owe the money being requested. When preparing an Answer, there is a requirement that any defense that you have to the defendant’s allegations in the complaint must be stated in your Answer. You may assert as many defenses as you have to the complaint.. Generally, a defense that is not asserted in the Answer or by a motion is waived—you cannot bring it up later. It is important to note that the inability to pay is NOT a defense. The following are some (but not all) common defenses in collection cases:

- I paid the bill and I have the receipt to prove it
- The company released the debt
- The company discharged the debt
- The company charged me twice
- A different person with my same name actually owes this debt – Mistaken identity
- Statute of Limitations – it is too late for this person or company to bring this claim

There are some defenses that also must be stated in a party's answer otherwise they will be waived and you cannot bring them up later. These are called affirmative defenses. Under a separate and distinct heading in the Answer, a party must state the facts constituting an affirmative defense. Notice that some of the affirmative defenses are the same as above. If your defense is one of the following, make sure to label it an affirmative defense. Some examples of affirmative defenses are:

- the existence of an agreement to arbitrate
- payment, release, discharge or satisfaction of the debt
- fraud
- duress
- statute of limitations
- immunity granted by law
- want or failure of consideration
- or that an instrument or transaction is void, voidable, or cannot be recovered on by reason of statute or nondelivery;

You can also assert a counterclaim in your Answer. A counterclaim is not a defense to the claims asserted by the plaintiff, it is a separate claim you have against the plaintiff seeking money from them or some other order. A counterclaim may be combined with the Answer, but it must be clearly designated as such in your Answer. Under a separate and distinct heading, the defendant (you) must state the facts constituting a counterclaim. The counterclaim must be a statement of the facts on which you rely and must state the reasons you are asking the court for money and the amount, or some other order against the plaintiff.

Account Stated

An account stated is an agreement between a creditor and a debtor (you) that a stated amount is owed to the creditor as of a certain date. This agreement can be expressly laid out in a bill, credit card statement, invoice, or series of invoices. It becomes “stated” where you have not made any objections to the existence or amount of the debt. It can also be expressly stated if you have signed a document agreeing to

pay an amount of money to the creditor. If you have made regular payments on the debt without protest, then the agreement can also be implied by the circumstances. Often, in the Complaint, one of the causes (usually referred to as “counts” in the complaint) you will often see is “account stated” together with a statement that an account “has become stated between the parties.” It is one type of claim that the creditor can make against you.

In stating an account, two things are necessary:

- Both parties must have seen and acknowledged that there was an agreement for money owed to the creditor. Usually, there are prior or ongoing transactions between the creditor and debtor.
- Both parties must also agree that the amount owed is the correct amount.

(The above is taken from the website:

<http://caveatemptorblog.com/2007/06/28/account-stated/>)

If the creditor wants to recover the amount due on an account stated, the creditor, or an agent, must make an affidavit of the amount due. A copy of the affidavit must be served upon you with a copy of the Complaint. This affidavit will be evidence to the court that you owe the creditor the money. With this type of claim, in addition to your answer, you **must** file an affidavit denying that you owe the money. It is important to note that the creditor **must** file the affidavit within 10 days of filing the complaint. If the affidavit is filed later than 10 days, you may be able to get the Complaint dismissed. Even though you have a valid defense to the Complaint and affidavit you received, you should still file your own affidavit with the Answer. The affidavit must be signed by you in front of the notary or a court clerk.

Filing Your Answer and Serving Your Response

Your Answer must be filed in the court that issued your Summons. This is the same court where the Complaint was filed. There is no fee for filing an Answer. You will need to mail or take the original to the Courthouse to be filed with the District Court Civil Clerk. It must be at the courthouse and filed with the clerk within 21 days after the day that you receive it. This is 21 consecutive calendar days total, not 21 business days. However, if the last day is a Saturday or Sunday when the Court is closed, you have until the close of business of the following Monday to get the papers to the Court. If it is a legal holiday, you have until the end of the next business day. Make sure that you have at least three copies of your Answer and any attachments. The original must be filed with the District Court Civil Clerk, keep one copy for your records, and mail one to the plaintiff or his attorney if he has one. Mailing a copy to the plaintiff or plaintiff's attorney is called service. After you have filed your Answer, you must serve it on each plaintiff named in the Complaint. Once your answer is filed the Court will notify of any proceedings that come next.

If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call 1-800-347-5297 (372-5959 for the Lansing area).

The Legal Hotline is a program of Elder Law of Michigan, INC., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.