

PDF CHEATSHEET SETTING UP THE COUNTER AFFIDAVIT

1. **The beginning of the Counter Affidavit shows our credibility and reliability to be accepted as properly sworn to:**

AFFIDAVIT OF _____

STATE OF _____)

COUNTY OF _____) *

Pursuant to 28 U.S.C § 1746, DOROTHY DEBTOR having been duly sworn and upon oath, verifies, certifies, and declares under penalty of perjury, I swear as follows:

If you can't get to a notary, this is the perfect start here above under Federal Law.

28 U.S. Code § 1746 - **Unsworn declarations under penalty of perjury** Where, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(2)If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).]
(Signature)".

2. **Then we announce the information about the lawsuit, the Plaintiff and the law firm and your immediate dispute so it is quite clear you do not owe the debt to the Plaintiff (this has nothing to do with whether you owe the debt to anyone else as you are not being sued by anyone else):**

Midland Credit Management, Inc. (MCM) and its law firm has filed a lawsuit in District Court against me at Case # 24 -GC. I dispute I owe this debt to MCM as stated in the lawsuit as there is no proof of their ownership of a debt SPECIFIC to me.

3. **We let the court know we have read the complaint, so the court knows we sign our affidavit after reviewing everything and we announce our case and defense to the lawsuit and why:**

The lawsuit does not meet the required Burden of Proof to show I owe a debt to this Plaintiff. I have looked over the lawsuit paperwork they gave me, and I see no evidence that MCM obtained my specific debt or that I owe the amount to MCM they claim I do.

The lawsuit is just a fill in the blanks complaint with nothing specific to me owing a debt to MCM. I have not received any assignment or proof MCM has a right to sue me on this debt.

4. **We detail our issues with the complaint pleadings and paperwork of the Plaintiff for either not meeting the necessary burden of proof or cite a violation of the law by the other side (We reiterate our issues with the reason the lawsuit fails to show the Plaintiff has standing to sue:**

The Plaintiff does not have standing to sue me as the attached affidavit paperwork is from different states and mentions nothing about any assignment of any “**debt**” of mine with any specific account number inside any assignment.

(In some cases) The MCM Affidavit from Minnesota was signed under oath well before the MCM lawsuit was filed. Yet, the Affidavit calls me a “defendant” and MCM a “plaintiff” over three months before the lawsuit was filed. This is false and impossible.

In violation of Federal law, the lawsuit states to anyone reading it “PLEASE UNDERSTAND THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.” I did not consent to the fact that I am being pursued by a debt collector be exposed to the public. Also, this can be considered a collection communication under 1692g as there is no requirement to put this mini-Miranda in the lawsuit.

5. **Is there a Specific Account Stated Statute covering the use of affidavits any your required response to a collection Affidavit? If so read it and use it to turn it on the other side. (see MI statute cited as an example below-review and put in your state statute):**

My Counter Affidavit here seeks a response within ten days of this filing with the Answer and \$3500 in attorney fees and costs and damages under the FDCPA if the response to this Affidavit is not forthcoming under MCL 600.2145.

6. **Important to say that if you are being pursued on a debt a company claims to own, why do they leave the word out of the complaint and in the Bill of Sale or Assignments attached to the lawsuit if they own a debt?:**

This is an Account Stated lawsuit with no proof that does not use the word “**debt**” in proving I owe something to a “**debt**” collector.

I believe the “account” is all that is left of any obligation I dispute with this Plaintiff. The “debt was securitized and placed in a secured trust. Otherwise, I would be sued on a “debt” if it was not already sold or transferred somewhere else.

(This section is especially important with creditor lawsuits-A creditor is he original creditor so why is there usually no reference to a “debt” and only that the Debtor owes an “account.” Usually, a creditor lawsuit is based upon an account or contract with the contract being either absent or represented by a copy of an unsigned contract. How can you be accused of violating terms and conditions of a contract you are not presented. Also, the contract they attached is created in a year, or sometimes years after you originated or signed the contract. So, look for the use of

the work “account” in a complaint where the Plaintiff should be suing on a “debt” as a Plaintiff.)

7. **Show how the lawsuit is wrongful and the effects or damages on you. Damages allow you to sue in Federal court (if you have them) under the FDCPA).**

Also, does your state have a good State Collection Statute? Cite that violation of the state statute if the statute applies and/or is a good one.

8. **Other things fact specific to you and your case to put in your Affidavit:**

Were there violations of law in the lawsuit against you under the FDCPA (which ones? Usually based upon being sued in the wrong district or wrong person sued-you are a Jr., and your Dad was the debtor, but you got sued with the same name.

Was your debt the result of an ID Theft? Say it and add the police report if you have one (you should)

Did you owe the debt but have not made a payment in a certain amount of years and the Statute of Limitations in your state shows you can not be sued legally in your state.

Did your spouse or partner create or sign up for the debt and passed away and they are claiming you owe the debt now.

Did they fail to provide you with your validation rights, or did you send a cease and desist letter and they violated that by continuing to collect the debt and communicate. The placing of the mini Miranda warning on the lawsuit could legally be a collection communication so you should be granted your validation rights by the plaintiff.

Did the law firm violate the law in pursuing you? That is an FDCPA lawsuit or third party lawsuit within the case and court you are being sued upon and in.