

CHECK BOX ON HOW TO ANSWER A
TEMPLATE OR GENERAL DEBT COLLECTION LAWSUIT

Take the Lawsuit and break it down.

We are looking for information we can use in our defense against the Plaintiff Collector.

Summons

My status, Defendant or Plaintiff?

Plaintiff: A Debt Collector, Debt Buyer or Creditor. **Defendant:** You, the Debtor or anyone being sued in a lawsuit, counter claim or third-party lawsuit.

Look for the mini-Miranda Warning on the Summons. Not required to be there and under 15 USC 1692e (11) it is actually stated that

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, *except that this paragraph shall not apply to a formal pleading made in connection with a legal action.*

Mini Miranda on the Summons?

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____

The action remains is no longer pending.

This is an attempt to collect a debt, and any information obtained will be used for that purpose. This communication is from a debt collector.

Summons section completed by court clerk

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 10-3-23	Expiration date* 1-1-24	Court clerk [Signature]
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complaint.

4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue Date NOV. 17, 2022	Expiration Date* FEB. 16, 2023	Court clerk JULIE REAMER
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.
 MC 01 (9/19) SUMMONS
 MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105
 THIS IS A COMMUNICATION FROM A DEBT COLLECTOR, WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. CT035360

****Remember to place this in your Counter Affidavit and Answer and Affirmative Defenses.**

[] **District or State Court:** Court where you are being sued. Look to see that you are actually a resident and zip code. Are you a resident of the district you are being sued in?

[] If not located in the district court jurisdiction, this is immediately in the form of an objection in your lawsuit in your Affirmative Defenses and Answer.

[] Does your state require you to file a Motion for Change of Venue to the district you live in. Still a violation under the Fair Collection Practices Act (FDCPA and your local state statutes) and you can sue for money damages as that is a violation of 15 USC 1692i.

(a) **VENUE** Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

[] Served by Process Server: Check state rules or on your summons for how many days you have to respond to or Answer the lawsuit.

Process Server: Person serving the lawsuit on you. That person will be the beginning of the process. Don't sign anything, don't agree to anything and take note of whatever the person says to you. Does it seem like they read your lawsuit? They usually are paid by the Plaintiff that is suing you. It is a violation of the FDCPA under 1692c(b) for the collector to have the process server actively collect on the debt and communicate information about the collection of the lawsuit to a third person.

[] Served by Mail, or stuck on your door or a combination of both:

Check the summons warning for days you have to respond with your Answer or check your state's rule when being served by mail or Alternate Order of Service.

****Remember to place this in your Counter Affidavit and Answer and Affirmative Defenses. Look to See if you are required to file a Motion to Change Venue or you can place in your Affirmative Defenses or Answer. Here is an example of what I place in my Answer and AD's.**

PRELIMINARY STATEMENT IN THE ANSWER AS TO NO STATED CLAIM

OBJECTION TO JURISDICTION AND VENUE AS MS. LIVES IN OAKLAND

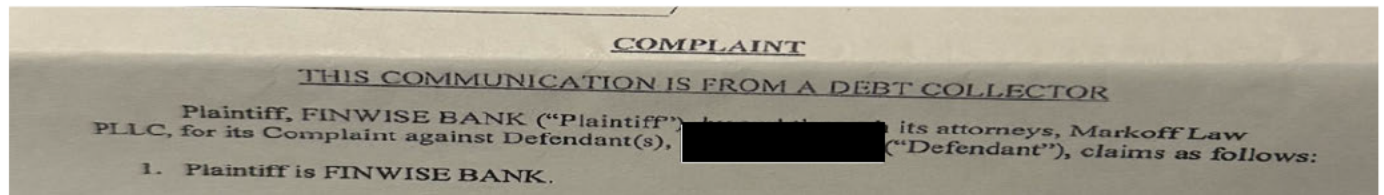
COUNTY HAS NEVER LIVED AT THE ADDRESS IN THE COMPLAINT

OR ON THE SUMMONS AND THIS VIOLATES 15 USC 1692i.

The Lawsuit or Complaint attached to the Summons:

[] Is the Mini-Miranda on the Complaint?

Examples of Debt Collectors placing the mini-Miranda on the lawsuit to look for are the following. This immediately makes the Plaintiff Creditor a *debt collector* and subject to the FDCPA. **See my videos on this.**



THEREFORE Plaintiff requests a judgment against Defendant for \$10,568.74 plus costs and judgment interest per MCL 600.6013(7).

Buckles & Buckles, P.L.C.

Betsy S. Wilshere (P76485)
Attorney for Plaintiff
P.O. Box 1150
Birmingham, MI 48012
(248) 647-5050

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collector.

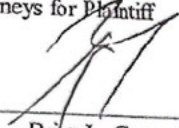
July 13, 2023
23-02093-0

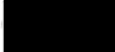
CLAIM FOR RELIEF

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. CT038833

STENGER & STENGER
Attorneys for Plaintiff

Dated: 01/16/2023

By: 
Brian L. Groen (P56673)
2618 E Paris Avenue SE
Grand Rapids, MI 49546
Court Inquiries Ph: (877) 988-2280
Defendant/Counsel Ph: (888) 906-9534

File No. 

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. CT038833

****Remember to place this information in the Counter Affidavit and Answer and Affirmative Defenses.**

Complaint: Lawsuit containing the allegations against you, the exhibits providing support of the claims or counts against you and what is alleged to be owed by you to the Plaintiff.

Answer: Your response to each allegation made against you in the lawsuit.

Counts: Collection lawsuits commonly sue under three theories or "Counts:" Account Stated, Breach of Contract and Unjust Enrichment. Each one can exist in its own lawsuit if written properly.

[] Tear apart the complaint and review what is true, false or unproven. Place notes on the side of each allegation to place into your Answer and Affirmative Defenses.

[] Does the Affidavit (like the complaint) fail to use the word "debt" and uses only "account."

[] Is the debt a securitized debt and not mentioned in the Affidavit.

[] Does the complaint rely upon an Affidavit instead of a copy of the signed contract but alleges you breached the terms and condition of the contract. It is not attached so how is this true.

[] If there is a loan agreement attached to the lawsuit, look for a governing or choice of law provision. If it says the case should be brought in a state you are not being sued in, that goes in your answer and counter affidavit and affirmative defenses.

Here is an example of what I do first with the lawsuit when tearing it down:

STATE OF MICHIGAN
IN THE DISTRICT COURT

CAPITAL ONE, N.A.

Plaintiff,

Case No.

vs.

Hon.

Defendant.

WEBER & OLCESE, P.L.C.
Geoffrey Werber (P67124)
Attorneys for Plaintiff
P.O. Box 3006
Birmingham, Michigan 48012
800/594-5018

COMPLAINT

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in this complaint.

NOW COMES Plaintiff, CAPITAL ONE, N.A. ("Plaintiff"), by and through its attorneys, Weber & Olcese, P.L.C., and for its Complaint against Defendant(s), _____ ("Defendant"), states as follows:

JURISDICTION

1. That pursuant to MCR 2.113(C)(2), there is no other pending or resolved civil action arising out of the transactions or occurrences alleged in this Complaint. T or F?
2. That Plaintiff is doing business in the City of Richmond, VA 23238. F.
3. That upon information and belief, Defendant is domiciled in the City of _____
48185-3175. T or F?
4. That the amount in controversy is \$7,055.34. T or F?

COUNT I

BREACH OF CONTRACT

5. That Plaintiff incorporates by reference Paragraphs 1 through 5. F.

6. That on or about April 25, 2019, Defendant entered into a contract with Plaintiff for goods sold and delivered and/or services rendered on open account. Account Number(s):

*****7107

F.
no proof.

7. That a copy of the contract is attached or, alternatively, the contract is in the possession of Defendant pursuant to MCR 2.113(C)(1)(b) (see attached Exhibits).

F. never
Real Contract
F

8. That the contract was entered into for valid consideration and lawful and proper purposes and is legally enforceable in all respects.

9. That Plaintiff has performed all of its obligations and fulfilled all of its conditions precedent under the terms of the contract.

What contract? Signed. F.

10. That Defendant has, without excuse, defaulted upon and materially breached the contract.

11. That as a result of Defendant's breach, Plaintiff has suffered damages in the sum of \$7,055.34 (see attached Exhibits).

F. => No Proof

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$7,055.34.

Statement.

F

COUNT II

ACCOUNT STATED

12. That Plaintiff incorporates by reference Paragraphs 1 through 12.

13. That Plaintiff and Defendant have consented to a sum as the credit balance due from one another on the account.

Account? No Debt F

14. That Defendant has received periodic billing statements from Plaintiff to which Defendant has made payment(s) towards and/or not objected to.

F

15. That Defendant's payments and/or failure to successfully question the state of the account within a reasonable amount of time constitutes an admission of correctness.

F

16. That Defendant has been given all set-offs, credits and/or allowances on the account and is indebted to Plaintiff in the amount of \$7,055.34(see attached Exhibits).

F

17. That a statement of the account and an affidavit verifying the account are attached to this Complaint and incorporated by reference (see attached Exhibits).

F.

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$7,055.34.

COUNT III

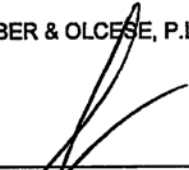
UNJUST ENRICHMENT

18. That Plaintiff incorporates by reference Paragraphs 1 through 18.
19. That, alternatively, Defendant has received a benefit from Plaintiff in the amount of \$7,055.34.
20. That Defendant has been unjustly enriched at the expense of Plaintiff.
21. That Defendant is required to make restitution to Plaintiff.
22. That it is inequitable for Defendant to retain the benefit.

F

WHEREFORE, Plaintiff expressly disclaims any and all attorneys' fee and prays that Judgment be entered in its favor and against Defendant in the amount of \$7,055.34.

Respectfully submitted,
WEBER & OLCESE, P.L.C.

By: 
 Michael Olcese (P46247)

****Take your notes and place this information in the Counter Affidavit and Answer and Affirmative Defenses.**

What Affirmative Defenses do you have:

Affirmative Defenses: All the defenses to the lawsuit in a separate document or pleading attached to the Answer. In most states, you have to bring these defenses at the beginning or lose the right to use them. So, Defendants will bring the "Kitchen Sink" amount of defenses. Have the Affidavit support the Answer and Affirmative Defenses.

Look at your State Rules on what Affirmative Defenses apply to the fact in your case. There will be a list for you to review in the state rules. Look for your Court Rules of the State you are in.

Is there a Plaintiff Affidavit attached to the lawsuit: This is a sworn statement of facts that are signed by an Affiant for the Plaintiff collector under oath. This is rarely true as there is always something false in the Affidavit that is sworn under oath.

Does their Affidavit have:

You listed as a Defendant and the debt collector listed as a Plaintiff BEFORE the lawsuit is filed. Look at the date the Affidavit is signed vs the Date of Filing of the Lawsuit with the Court.

Is the Defendant/Plaintiff listing in the Affidavit false and the Affiant has signed it under oath as true? Most states have a timing requirement where the gap between the filing of the lawsuit and the signing of the Affidavit has a limited amount of time or it is not allowed as proof.

Does the Affidavit of the Collect name all of the assignees and assignors or just flowery words like “previous possessor in interest” or something similar that does not name the previous owners? If so, that’s in your Affidavit to Counter that.

Is the Affidavit replacing an original contract? If no contract is attached, you can’t be in breach of the terms and conditions of the contract (see above lawsuit).

Does the Affidavit (like the complaint) fail to use the word “debt” and uses only “account.”

Is the debt a securitized debt and not mentioned in the Affidavit.

Does the Affidavit fail in any other way.

****Take your notes and place this information in the Counter Affidavit and Answer and Affirmative Defenses.**

Your Counter Affidavit: I do not file an Answer without some form of an Affidavit disputing owing the debt. This is also the road map for you to follow in defeating the Plaintiff collector at any stage of the process. Do not just say you dispute the amount owed. The focus should be on why the collector does not have the right to sue you.

Take all of the issues above and failings of the lawsuit, summons and affidavit and place in your Counter Affidavit. This helps create your Preliminary Statement.

Create a Preliminary Statement if allowed: Have a Preliminary Statement at the beginning of everything that you file with the Court. It is a brief synopsis of your defense or claim against the collector and why you do not owe the debt.

****Ammunition:** The debt collector/debt buyers exhibits that it attaches to their complaint is the best place to find your defenses, reasons to sue the collector and show that the Plaintiff has not met its Burden of Proof.