GUIDE TO RESPONDING TO UNVERIFIED COMPLAINTS IN DEBT COLLECTION LAWSUITS

NOTE: This instructional packet is not legal advice. You should not use this packet "as-is." Instead, you should modify this packet after you carefully consider the facts of your case. If you need specific legal advice, you should consult an attorney.

WHAT IS AN UNVERIFIED COMPLAINT IN A DEBT COLLECTION LAWSUIT?

A debt collection lawsuit is a lawsuit where someone (the plaintiff) is suing you (the defendant) for not paying a debt. The lawsuit starts with the filing of a complaint and service upon you of that complaint. The most typical type of complaint in a debt collection lawsuit is an unverified complaint. A verified complaint is one in which there is a statement after the attorney's or plaintiff's signature on the complaint which says that it is signed under penalty of perjury stating that the statements in the complaint are true. An unverified complaint does not contain this statement. If you have been served with a verified complaint, you can contact Public Counsel to seek assistance with a response. This guide is intended to assist you in responding to an unverified complaint in a debt collection lawsuit.

HOW LONG DO I HAVE TO FILE A RESPONSE TO THE COMPLAINT?

The amount of time you have to file a response depends on how the plaintiff served you with the summons and complaint.

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Personal Service.
If you were served with the summons and complaint in person—by someone coming to your home or place of business and handing the papers to you personally—you have **30 calendar days** AFTER the date you were served to file your response with the court.

- The 30 days include weekends and court holidays.
  - If the last day falls on a day that the court is closed, you have until the next day that the court is open to file your response.

Substituted Service.
If you were served with the Summons and Complaint by substituted service—by someone handing the papers to *another* person in your household or place of business or at an address you use as a mailing address and then sending you another copy in the mail—you have **40 calendar days** AFTER the date of the postmark on the envelope to file your response with the court.

- The 40 days include weekends and court holidays.
- Before you count on these extra 10 days, make sure the plaintiff's Proof of Service says you were substitute served and not personally served.
- If the last day falls on a day that the court is closed, you have until the next day that the court is open to file your response.

Getting More Time
If you are close to the deadline and need more time to respond, please check our guide titled "Requesting More Time to Respond to a Lawsuit."

"ORDER TO SHOW CAUSE HEARING/TRIAL DATE"
If you are served with this document, and it has a date about a year into the future, that is a hearing date for the Plaintiff. You still have to respond to the complaint within either 30 or 40 days, as described above. If you wait until the "ORDER TO SHOW CAUSE HEARING/TRIAL DATE" to respond, a default judgment may be entered against you.

WHAT IF I MISSED THE DEADLINE TO FILE A RESPONSE?

If you are beyond the time limit for responding to a complaint, you should try to file a response anyway. The court will usually accept a response after the deadline has passed, unless the plaintiff has already filed a "Request for Entry of Default." If a "Request for Entry of Default" has been filed, your response filing will be rejected and you can contact Public Counsel to seek assistance with that situation or see our guide titled "[How to Set Aside a Default]."

HOW DO I RESPOND TO THE COMPLAINT?

You may respond to the complaint with a general denial or a specific denial. A specific denial responds to each allegation in the complaint individually. A general denial contains a blanket statement that all

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allegations in the complaint are denied. As a general denial is much easier to prepare, this guide will address how to prepare and file a general denial.
For an example of a general denial, please see Appendix A. You can find a blank form of a general denial here: https://www.courts.ca.gov/documents/pld050.pdf.

WHAT AM I RESPONDING TO?

In the complaint there will be either a narrative description of the facts the plaintiff alleges created the debt they are suing to collect, or a form with certain boxes checked which indicate what the plaintiff is claiming. These are the causes of action. Complaints in debt collection lawsuits often use what are called "common counts" as the causes of action rather than breach of the original contract for the debt. Typical common counts you may see are "open book account," "account stated," "money lent" and/or "money paid, laid out, and expended to or for defendant at defendant's special instance and request." These common counts require the plaintiff to prove that documentation or actions were taken outside of the debt contract to create these other obligations. In the list of common defenses provided below, we include the defense that the plaintiff lacks evidence to prove these claims.

AFFIRMATIVE DEFENSES

In addition to denying the allegations in the complaint, you may raise affirmative defenses as part of the general denial. An affirmative defense is a reason why you should not have to pay some or all of what the plaintiff is asking for in the Complaint, even if everything the plaintiff says is true. You should include in your response **any** possible defense you might want the court to consider at trial, or you will lose the right to bring them up later.

Not being able to pay is not a defense and you should not write this in your response. If you do so, you may be admitting things that are not true or that the Plaintiff cannot prove.

The following is a list of common defenses that you may be able to raise in a debt collection lawsuit. For specific language regarding raising certain of the more common defenses, refer to Appendix A. We recommend that you review the list to see if any of the affirmative defenses may apply to you.

- **Failure to State a Claim.** Every lawsuit must have at least one cause of action. Each cause of action has certain elements that must be stated in the Complaint and proved at trial. Often complaints in debt collection lawsuits do not contain enough detail for you to determine what is being claimed. This defense addresses that situation.
- **Statute of Limitations**. A statute of limitations is a time limit that a creditor has to file a lawsuit against you. The plaintiff may have filed the lawsuit after the deadline to sue has already passed.
    - Making a partial payment on the debt (no matter how small) will restart the statute of limitations so be careful!

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- **Violation of Sections 337a and 425.30 of the California Code of Civil Procedure:** Due to a change in the law as of July 1, 2024, Plaintiffs may not sue on common counts (causes of action other than a breach of contract) for debts incurred after that date.
- **Lack of Standing.** Standing means that the person suing you has a legal relationship with you upon which they are suing. If the person suing you acquired alleges that they acquired the debt from someone else, they may lack standing to sue you if they cannot prove they validly acquired the alleged debt. In the alternative, it may be the case that the person named as the plaintiff sold the debt to someone else, but that other person is suing in the name of the alleged original creditor without having disclosed the sale of the alleged debt. If that is the case, the person that allegedly owns the debt may lack standing to sue you.
- **Violations of Truth in Lending Act/Offset**. Where the plaintiff is alleging any of the common counts in connection with a consumer debt they allege has been converted into another kind of debt, the original creditor was required to provide certain disclosures about the debt pursuant to the federal Truth in Lending Act and may pay a penalty for failing to do so. That penalty may reduce any judgment against you. Where the plaintiff is alleging a breach of contract, they also must have provided certain disclosures about the debt pursuant to the federal Truth in Lending Act and may pay a penalty for failing to do so.
- **Statute of Frauds**. In California, certain contracts are required to be in writing. If the plaintiff was required to have a written contract for the alleged debt, including under any common count, then it should not assert a claim for that debt if it does not have a written contract.
- **Extinguishment of Contract**. In California, if one party to the contract destroys it or modifies it without the other's consent, then they cannot make a claim on that contract.
- **Uncertain Terms of Agreement**. If the plaintiff cannot produce a valid contract for the debt they are seeking to collect, then there is no clear way to know what the terms are and they should not be permitted to enforce such an agreement.
- **Unconscionability**. Unconscionability means that there is something so unfair in the agreement that it should not be enforced, such as a shockingly high interest rate or fees.
- **Unjust Enrichment**. This means that under the circumstances of the claim, if the plaintiff was awarded the money they are seeking, then they would be receiving more than they are entitled to. For example, if a plaintiff buys a debt from someone else, they most likely bought the debt for much less than they are suing for.
- **Laches**. This defense asserts that the plaintiff waited so long from the time the debt was originally due until the time of filing the complaint that they have put you in a position where it is harder to defend yourself due to the passage of time. For example, you may no longer have access to evidence that could assist you in your defense or may not recall all that occurred in connection with the debt.
- **Estoppel**. This defense is used where the plaintiff or original creditor did or said something that should bar them from collecting the debt, such as promising that if you paid a certain amount, they would not bring a lawsuit to collect the whole debt.
- **Waiver**. This defense asserts that there may have been something the plaintiff or original creditor was supposed to do before having the right to sue you under a contract. For example, they may have been required to give written notice within a set time period.
- **Equity**. This defense asserts that as between you and the plaintiff, if the case was decided on fairness, then the plaintiff should not win. For example, when a creditor charges off a debt that they no longer think is collectible, they may get certain tax benefits as to that debt. It is arguable that it's unfair that the creditor gets to take that benefit and still collect the entire amount of the debt.

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- **Unclean Hands**. This defense means that the plaintiff or original creditor has done something wrong in connection with the debt and therefore should not now be able to collect that debt. For example, another defense listed here raises the question of whether plaintiff violated the Truth in Lending Act.
- **Violation of Fair Debt Collection Practices Act and/or Rosenthal Fair Debt Collection Practices Act and/or the California Business and Professions Code (§ 6077.5 et. seq.)**. The law protects you from being harassed or abused by a debt collector. Further, a debt collector may not use any false, deceptive, or misleading representations to collect a debt. If these violations have occurred, you can use them as a defense and potentially reduce the amount of money the Plaintiff is seeking by the amount of money that may be owed to you with respect to those violations.
- **Failure to Establish Open Book Account**. If the complaint alleges that the debt arose on an open book account owing to the plaintiff, they must prove that any applicable credit card debt was in fact converted into being an open book account and that the plaintiff held that open book account. If they cannot produce documentation showing each and every transaction that they allege created the debt, then they should not win their claim.
- **Failure to Establish Account Stated**. If the complaint alleges that the debt arose as an account stated owing to the plaintiff, they must prove that the applicable credit card debt was, by a new, written agreement, converted into an account stated and that the plaintiff is party to that agreement. If they cannot produce documentation showing a new contract was agreed to, then they should not win their claim.
- **Failure to Establish Money Lent**. This defense is raised on the belief that the plaintiff cannot produce documentation specifically showing that you requested that money from the plaintiff be lent to you.
- **Failure to Establish Money Paid, Laid Out, and Expended to or for Defendant at Defendant's Special Instance and Request**. This defense is raised on the belief that the plaintiff cannot produce documentation showing specific requests for money to be paid, laid out or expended at your special insistence of request.
- **Failure to Establish a Written Contract or a Breach of Contract**. If you are being sued on a breach of contract cause of action and no contract was attached to the complaint, or the contract attached does not bear the date alleged in the complaint as the date the contract was entered into, does not contain your name, does not contain an account number, and/or does not contain your signature, it may be unclear whether or not the Plaintiff has a valid contract upon which to sue you.
- **No Meeting of the Minds.** For someone to sue you on an agreement, you must have understood what you were agreeing to. If you are being sued on a common count like an account stated, and do not know what that is, you can use this defense because there was no mutual understanding on whatever agreement plaintiff is alleging. If you are being sued on a breach of contract and they have not provided a valid contract, there may also be no meeting of the minds.
- **Identity Theft**. Should be raised when someone stole your identity or forged your name. The plaintiff should be suing that person and not you.

HOW DO I FILE AND SERVE THE RESPONSE?

For instructions on how to file and serve your response, please see our guide: "Filing and Serving a Response."

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WHAT HAPPENS AFTER I FILE A RESPONSE?

After you file and serve a response to the complaint, the court will notify you of your first court date. If you fail to attend the court date, the court will award a judgment against you. You may contact Public Counsel before your hearing date to see if we can assist you at that time.

You may receive discovery requests in the form of "special interrogatories," requests for admissions" and "requests for the production of documents." If discovery requests were mailed to you, you generally have 35 days to send responses to the requests. If you fail to respond there may be consequences, including you having to pay the other side money. In particular, it is very important that you respond by the deadline if you receive requests for admission. If you do not respond, the court may order than anything the other side asked you in the requests for admission is true, and you may lose your case as a result. **Contact Public Counsel or another attorney immediately if you receive discovery requests.**

You may also be served with motions in the case. Contact Public Counsel or another attorney if you receive a motion to see if we can assist you at that time.

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APPENDIX A: SAMPLE GENERAL DENIAL

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
GENERAL DENIAL		CASE NUMBER:

If you want to file a general denial, you MUST use this form if the amount asked for in the complaint or the value of the property involved is $1,000 or less.
You MAY use this form for a general denial if
1. The complaint is not verified; ***or***
2. The complaint is verified and the case is a limited civil case (the amount in controversy is $35,000 or less),

BUT NOT if the complaint involves a claim for more than $1,000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 85–86, 90–100, 431.30, and 431.40.)

1. DEFENDANT (*name):*
   generally denies each and every allegation of plaintiff's complaint.
2. ☑ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint *(attach additional pages if necessary):*

   Failure to State a Claim: Defendant is informed and believes and thereon alleges that each and every purported cause of action contained in the complaint fails to state facts sufficient to constitute a cause of action. Plaintiff fails to allege any particular basis for their cause of action against Defendant.

   Statute of Limitations: Defendant is informed and believes and thereon alleges that the recovery for any injury or damage to Plaintiff is barred by the applicable statutes of limitations. Plaintiff fails to show a written agreement between Plaintiff and Defendant by which Defendant became indebted to Plaintiff within the last four years.

   Violation of Sections 337a and 425.30 of the California Code of Civil Procedure: Defendant is informed and believes and thereon alleges that Plaintiff is not allowed to sue on common counts for this alleged debt and thus Plaintiff has committed an unfair business act.

   (See Attachment 1 for additional Affirmative Defenses.)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10–426.40.)

The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

Form Adopted for Mandatory Use
Judicial Council of California
PLD-050 [Rev. January 1, 2024]

Code of Civil Procedure, §§ 431.30, 431.40
www.courts.ca.gov

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number):* 1

(This Attachment may be used with any Judicial Council form.)

ADDITIONAL AFFIRMATIVE DEFENSES TO EACH CAUSE OF ACTION:

Lack of Standing: Plaintiff is a debt buyer, Defendant does not have a business relationship with Plaintiff and is informed and believes and thereon alleges that Plaintiff lacks standing to bring this action. Plaintiff fails to include a valid assignment of any debt by an assignor to Plaintiff. Plaintiff fails to include an agreement between an assignor and Defendant. As Defendant never signed any agreement with Plaintiff regarding a debt, Plaintiff lacks standing to bring this action. / Lack of Standing: To the extent Plaintiff's attorney or another entity purchased this debt, Defendant does not have a business relationship with Plaintiff's attorney or any other entity that may have purchased this debt and is informed and believes and thereon alleges that Plaintiff's attorney or the other entity lacks standing to bring this action. Plaintiff's attorney or the other entity fails to include a valid assignment of any debt by an assignor to Plaintiff's attorney or another entity. Plaintiff's attorney or the other entity fails to include an agreement between an assignor and Defendant. As Defendant never signed any agreement with Plaintiff's attorney or any entity that may have purchased this debt regarding a debt, Plaintiff's attorney or the other entity lacks standing to bring this action.

Violations of the Truth in Lending Act/Offset: To the extent Plaintiff is alleging the alleged debt is based on credit card transactions, by converting such transactions into an "Open Book Account" or "Account Stated," Plaintiff has violated TILA by, amongst other ways, failing to provide advance notice of significant changes, failing to provide required disclosures for open-end and closed-end credit accounts, and failing to provide a notice of Defendant's right to rescind. As a result, Defendant is entitled to an offset pursuant to 15 USC § 1640(h). / Violations of the Truth in Lending Act/Offset: To the extent Plaintiff is alleging the alleged debt is based on credit card transactions, and to the extent that Plaintiff has amongst other things, failed to provide proper disclosures for open-end credit accounts, and failed to provide continuing disclosures where required, Plaintiff has violated TILA. As a result, Defendant is entitled to an offset pursuant to 15 USC § 1640(h).

Statute of Frauds: Defendant is informed and believes and thereon alleges that Plaintiff has no written contract from which those claimed rights emanate, and therefore, the claim for relief is barred by the statute of frauds.

Extinguishment of Contract: Defendant is informed and believes and thereon alleges that Plaintiff destroyed or materially altered the original contract and therefore all obligations as to that contract have been extinguished.

Uncertain Terms of Agreement: Defendant is informed and believes and thereon alleges that the terms of any agreement which Plaintiff seeks to enforce are insufficiently certain to support any recovery by it for the inducement of any breach thereof.

Unconscionability: Defendant is informed and believes and thereon alleges that the terms of any and all agreements upon which Plaintiff sues are unconscionable and unenforceable.

Unjust Enrichment: Defendant is informed and believes and thereon alleges that the relief sought in the Complaint would constitute an unjust enrichment of the Plaintiff to the detriment of Defendant.

Laches: The Complaint, in whole or in part, is barred by the doctrine of laches as Plaintiff unreasonably delayed in providing notice of and in commencing and prosecuting this action, causing unfair prejudice to Defendant.

(Continued on page 2)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number):* 1

(This Attachment may be used with any Judicial Council form.)

ADDITIONAL AFFIRMATIVE DEFENSES TO EACH CAUSE OF ACTION:

Estoppel: The Complaint, in whole or in part, is barred by the doctrine of estoppel.

Waiver: The Complaint, in whole or in part, is barred by the doctrine of waiver.

Equity: Defendant is informed and believes and thereon alleges that as between Plaintiff and Defendant, the equities do not favor Plaintiff and its claims should therefore be barred.

Unclean Hands: Defendant is informed and believes and thereon alleges that Plaintiff's prayer for equitable relief is barred by Plaintiff's unclean hands.

Violation of Fair Debt Collection Practices Act and/or Rosenthal Fair Debt Collection Practices Act and/or the California Business and Professions Code (§ 6077.5 et. seq.): Defendant is informed and believes and thereon alleges that Plaintiff has violated the FDCPA and/or Rosenthal Act and/or the California Business and Professions Code by, among other ways, falsely representing the character, amount, or legal status of a debt. Cal. Civ. Code § 1788.17; 15 U.S.C. § 1692e(2)(a). If Defendant shows Plaintiff violated the law, Plaintiff must repay any out-of-pocket expenses Defendant paid due to the violations and Plaintiff must also pay up to $1000 for each violation. These sums off-set Defendant's alleged debt, if any.

Failure to Establish Open Book Account: Defendant denies that an open book account ever existed between Defendant and Plaintiff or Defendant and the alleged original creditor. Defendant is informed and believes and thereon alleges that Plaintiff does not have and cannot provide a complete listing of each and every transaction on which Plaintiff bases its open book account cause of action much less in the amount alleged in the complaint.

Failure to Establish Account Stated: Defendant disputes an account stated ever existed between Defendant and Plaintiff or Defendant and the alleged original creditor. Defendant is informed and believes and thereon alleges that Plaintiff cannot produce evidence of an account stated much less in the amount alleged in the complaint.

Failure to Establish Money Lent: Defendant denies that Plaintiff lent Defendant Money at Defendant's Request. Defendant is informed and believes and thereon alleges that Plaintiff does not have and cannot provide any evidence of Defendant requesting money be lent and that Plaintiff thereby lent Defendant money as alleged in the complaint.

Failure to Establish Money Paid, Laid Out, and Expended to or for Defendant at Defendant's Special Instance and Request: Defendant denies that Plaintiff paid, laid out, and expended to or for Defendant at Defendant's special instance and request. Defendant is informed and believes and thereon alleges that Plaintiff does not have and cannot provide any evidence of this allegation in the complaint.

(Continued on page 3)

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number):* 1

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ADDITIONAL AFFIRMATIVE DEFENSES TO EACH CAUSE OF ACTION:

Failure to Establish a Written Contract or a Breach of Contract: Defendant is informed and believes and thereon alleges that Plaintiff cannot produce evidence of a contract between Defendant and Plaintiff, or a breach of any alleged contract. Defendant asserts that Plaintiff has failed to adequately allege the existence of the contract and failed to attach a copy of any alleged contract as an exhibit to the complaint. The document attached to Plaintiff's complaint as Exhibit _ does not contain Defendant's name, does not contain an account number, does not contain a date and does not contain Defendant's signature. Plaintiff failed to establish necessary elements of a contract or establish breach of contract.

No Meeting of the Minds: Defendant does not know what an "account stated," "open book account," "money lent," or "money paid, laid out" account is and could not have agreed to something that Defendant did not understand. Therefore there was no meeting of the minds. / No Meeting of the Minds: Defendant is informed and believes and thereon alleges that Plaintiff cannot produce evidence of a meeting of the minds necessary for the creation of a contract between Plaintiff and Defendant.

Identity Theft: Defendant is informed and believes and thereon alleges that any amount alleged to be owed to Plaintiff was the result of identity theft [and fraudulent charges which were timely reported to Plaintiff and disputed by Defendant]. Defendant is invoking [his/her] rights under Cal. Civ. Code. Section 1788.18 by providing[, once again,] notice of the theft of [his/her] identity in writing [and will separately forward a copy of [his/her] FTC affidavit of identity theft].

Additional Affirmative Defenses: Defendant presently has insufficient knowledge and information upon which to form a belief as to whether Defendant may have additional, as yet unstated, affirmative defenses available. Defendant expressly reserves the right to assert additional affirmative defenses in the event that discovery indicates such would be appropriate.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)