California Collection Defense

How to Respond When SUED

A Step-by-Step Guide For When You Are Sued Over An Old Credit Card Debt

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Dear Reader,

Thanks for grabbing this e-book. My name is Ian Chowdhury, and I'm a California consumer attorney. I specialize in defending consumers against debt collection lawsuits and I'm fortunate to have had a lot of success in doing that. I can tell you for a fact, it is very possible for defendants to prevail against debt collection lawsuits.

However, not every consumer who gets sued has an attorney. If you are facing a collection lawsuit, I hope these pages help.

I've been there too. In 1998, just before I graduated from law school, I received a call from a debt collector. It wasn't the first time. When I picked up the phone, he lit into me about some credit card I had *already* arranged to pay off in installments.

Make sure you sign up for free access to helpful resources at my website: www.CaliforniaCollectionDefense.com where additional helpful resources as they become available.

I owed him nothing.

But, he claimed the deal I already made was not binding, and that they would sue me if I didn't cough up a fat lump sum. I feared a collection lawsuit might disqualify me from becoming an attorney, and I folded like a cheap suit. I paid him. I still kick myself for that.

I gave that schmuck my money, so I had to move to Gilroy the next month to get a cheaper apartment. Gilroy was two hours from my new job at a court in San Jose. *I drove four-hours a day for a year.*

I like to believe that, by now, I have deprived that debt collector of a lot more money than I ever paid him. But it's not enough. It'll *never* be enough. Help me stick it to him and his friends some more! *Grrr*.

Sincerely,

-Ian Chowdhury

2. Stop Feeling Guilty and Fight

Spike the Vampire, taking the proper attitude toward his oppressors

When defending people against debt collectors in court, one thing I hear all the time (and frankly am sick of hearing) is "it's nice that you care for consumers, but shouldn't people pay their debts?" Closely followed by the refrain that "we all pay for it when those deadbeats don't pay their debts." Many of my *clients* even say things like this, as they engage in a round or two of self-loathing. Time to set the record straight. Fighting back against a debt collector is not an antisocial act. It is socially responsible. It is downright altruistic. Maybe even heroic.

By putting up a good legal defense a consumer-defendant is also, in effect, taking up the battle on behalf of his or her neighbors. Institutional debt collectors sue *en masse*, and every person who competently resists such collection lawsuits, throws a wrench into the debt collection gears that prevents those institutions from pursuing multiple other cases against people who are less able to defend themselves. Debt collectors (or more accurately the monied interests *behind* the debt collectors) are a small force trying to oppress a large population — and that only works as long as the vast majority of the population refuses to defend itself or is unable to defend itself.

Some may ask, "hey, what about those of us who are not dead beats?" (Grrr).

To that, I say this: "Except for the few masters of the universe who own almost all of this planet's resources, we are *all* one small step away from losing everything to debt collectors, so you should probably be rooting for the consumer-defendants."

Think I'm exaggerating? Check out the sidebar. In the meantime, be like Spike.

In 2015 Oxfam published a report, concluding that the top eighty people on the Forbes billionaire list control as much wealth as the 3.5 billion people at the bottom of the economic food chain. ***Only forty years ago, 3.5 billion would have been the entire population of the planet, and now eighty people control as much of the world's resources as do 3.5 billion people!*** As a point of reference, we had about sixty people in the room for the debt defense roundtable (I didn't see any round tables incidentally).

When so few people control so much of the planet's resources, it doesn't take too much work to figure out that the vast majority of debt, can be traced upward to a very few powerful people and families who receive the ultimate benefit from all those obligations and payments. These very few people effectively claim ownership of the world's resources (including the labor of the world's people). The rest of us have nothing left but "indebtedness" — nothing more than an obligation to keep handing over the product of our labor (or, what is the same thing, the wages from that labor) so that it too may flow up the chain.

Imagine a world in which there were an even more exaggerated aggregation of wealth. What if 80 people owned everything? The rest of us would be legally indebted to the owning class simply, by existing on "their" planet while eating "their" food (albeit grown or produced by *our* labor).

Consumer credit and indebtedness through large financial institutions, is a tool to facilitate that system. When you are sued, you are pushed to the front-line. And when you are pushed to the front line, it is time to fight hard or get mowed down without a fight.

3. A Quick Primer on Lawsuits

Please Allow Me To Explain…

Unless you've been sued before or had some legal training, your idea of what a lawsuit is, might be a bit fuzzy. To be perfectly honest, I didn't really know until I went to law school (begging the question of why the hell I went to law school, but that's a story for another time).

So, here's the deal. There are criminal cases, and civil cases (often called lawsuits). Everybody understands about criminal cases because of television and movies. Collection cases, on the other hand are *civil* lawsuits.

A civil lawsuit starts when two parties are in some type of dispute ("*you owe me some money...*"), and one of the parties (the plaintiff) takes some papers to the court describing their side of the dispute and asking the court to assign a judge to resolve the dispute.

Before the judge is allowed to resolve the dispute, the plaintiff (or more likely the plaintiff's attorney) has to ensure that the other party (the defendant) is served with a copy of the court papers. Then the defendant has an opportunity to bring his or her own papers to court, telling his or her side of the story.

As you can imagine, things only get more complicated from that point on. In some cases, the parties eventually have to physically show up at court for a trial (or other procedure). In some lawsuits, it never goes that far.

In some cases the judge eventually resolves the lawsuit by declaring that one side or the other is the winner and writing a formal judgment saying who that winner is, and also saying how much money the loser owes to the winner.

Other times, the plaintiff might simply give up and abandon the case, dropping the matter without ever getting a judgment. From the defendant's point of view, that is *almost* as good as having the judge say that you won.

In yet other cases, the plaintiff might dismiss the case because the parties have come to an agreement, also called "settling" the case.

We were all raised to believe grown ups should cooperate with one another, but the first thing law students learn is that litigation is an *adversarial* process. While you are talking on the phone with opposing counsel to work out a payment plan, you can bet he or she is signaling a messenger to file for a default judgment.

Judgment: It's Your (De)Fault For Not Showing Your Face

Remember how I said you get to file some papers to tell your side of the dispute, and then some other things happen, and then the judge writes down a decision and calls it a "judgment"? Remember that?

Respond properly to let the judge know you want to be heard.

You might wonder what happens if you don't ever turn in the paperwork telling your side of the story.

That's a good question. Unfortunately, it has a non-good answer.

If you do not file a proper response within 30-days after being served with the lawsuit, then the other side is allowed to give some additional papers to the court explaining that you had 30-days to respond, but that you apparently decided not to weigh-in, and therefore the judge should pronounce judgment in favor of the plaintiff (and against you) for the full amount requested by the plaintiff.

This is called a "default judgment" with the word "default" meaning that the judgment is based only on the fact that you did not show up.

If the court pronounces a judgment in favor of the plaintiff, it doesn't matter whether it is a default judgment, or a judgment after a contested trial, the debt collector will make use of it to try and separate you from your money.

Enforcement of judgments is a topic too extensive for this little e-book, but suffice it to say that a collector who has a judgment against you, has certain legal powers to make it easier for that collector to separate you from your money. For example, a debt collector with a judgment can garnish your wages or possibly suck money right out of your bank account with no warning.

4. Roads Best Left Less Traveled

Before finally getting to the step-by-step of what you *should* do, let me intercept you before you do a couple of things that you probably shouldn't do.

- Don't go to the website for the California Judicial Counsel's form website and just dig in without research or guidance. The Judicial Counsel is the official governing body of California's courts, but the trouble is that there are *thousands* of forms available on that website, many of which "sound" like plausible options. It's like a well stocked armory. You could hurt yourself if you just walk in and start messing around. Chances are, you only need two of the forms in there (for now), and we'll learn about both of them soon enough!

- Be cautious about asking somebody at the court for help. Court staff are usually unwilling to give you any guidance. But if they *do* give you information, their main interest is to process you through the system as quickly and easily (for them) as possible, regardless of whether the end result is detrimental for you. I've even heard of some clerks telling people to just let the Plaintiff get a default judgment -- which is virtually always the worst possible choice!

Legal volunteers might be friendly, but stay on your toes, they can really screw up your case.

- Finally, you should not take at face-value the advice of every volunteer helper you encounter. Often their goal is to help people fill out forms in such a way that the forms do not get rejected by the clerk. But, that's a low bar. You could follow their guidance to a "t" and still shoot yourself in the foot.

5. *Woo Hoo*, Time to Fill Out Some *Forms*

Enough of the bad options. Let's move on. Ninety-nine percent of the time, here is the way to go:

1. Select the Judicial Counsel form, linked here, titled as "Answer – Contract" (form PLD-C-010).

2. Fill out the "Answer – Contract". I've made a video of how to do that, linked here, to save a thousand words, but here is the summary.

i) Copy the header information (court address, case number, etc.) directly from the papers that the plaintiff served on you;

ii) At item-1 fill-in the fact that the Answer is "2" pages;

iii) For item-2 fill-in your name exactly as it appears on the complaint;

iv) Check item-3-a to indicate you generally deny everything. If at all possible, do *not* check item 3-b nor fill-in anything at 3-b(1) nor 3-b(2) *(I am not suggesting you tell untruths, this is simply the best option if you can swing it in good faith, giving yourself the benefit of all doubts. See the sidebar.)*

v) Onto page 2, at item-4 fill-in a couple of "affirmative defenses." There are one-hundred-fifteen zillion possible affirmative defenses, and they vary depending on the circumstances. However, I usually just go with a few standard precautionary ones including these: **"Plaintiff's claims are barred by the statute of limitations"** and **"Plaintiff has failed to state a claim."** If you are being sued by a debt buyer (rather than an original creditor) you should always add **"Plaintiff does not have standing because it does not own any relevant account."** Does this tell you everything about affirmative defenses? Not by a long shot. You might even miss something important. But it's the best I can do in an e-book while keeping it short and useable. Its an 80-20 thing.

vi) Item 5 is marked "other" and people only get themselves into trouble with it. Leave it blank.

vii) Item 6, go ahead and check box 6-b, to potentially recover your court filing costs.

viii) Finally, print and sign your name. One more form to go…

To "generally deny" means to deny all plaintiff's material allegations in one fell swoop, by saying that he or she "generally denies each statement of the complaint" instead of denying one statement at a time.

In practice, most attorneys stretch the use of the general denial to where it has become a way of communicating the vague notion that the case is contested. After all, a party is usually not denying, for example, their identity, when they assert a general denial.

This ebook assumes that you will be checking the "general denial" box on the answer, and almost always that is the way to go and is consistent with modern practice. But there are exceptions.

For technical reasons, you do not want to rely on a general denial if a) you are being sued for $25,000 or more; and b) the plaintiff's complaint is signed under penalty of perjury (referred to as a "verified complaint").

If the case is for less than $25,000 you can usually rely on a general denial but, again for technical reasons, you should not rely on a general denial in a less-than-$25,000 case if a) the complaint is verified and b) the complaint is for a debt that is "assigned to a third party for collection". This would be an unusual combination, but I have seen it.

By the way, a "verification" that simply states the case was filed in the proper court, does not mean that the complaint as a whole is verified.

3. Next, grab another official looking Judicial Counsel form, this one is commonly referred to as the proof of service or Proof of Service by First Class Mail – Civil (form POS-030).

4. Fill out the proof of service. The top portion of the form is actually very similar to the "Answer – Contract" that we discussed on the preceding page. As for the rest of it, this particular form comes with it's own detailed instructions, so all you have to do is follow them and there is no point in me duplicating those instructions here! When you download the form, you'll notice that it is a two page form, but that the second page is actually just instructions (the instruction form is not *really* part of the form, even though it says "page 2" so ultimately you'll turn in the proof of service as a one page form).

The key thing to know about the proof of service, is that it has to be signed by *somebody other than you* (also they have to be over 18 and not a party to the lawsuit. If you are wondering what the *point* of the proof of service is, check out the side bar on this page.

5. You should have a set of two documents in front of you. The answer, signed by you, and the proof of service, signed by someone else. This is your set of originals, meaning that they have original signatures. Make three sets of copies, so that in total you will now have four sets (the original set and three sets of copies).

6. Give one set of copies to the person signing the proof of service for you. Tell them to mail those papers to the opposing attorney, via regular first class mail, as described on the instructions to the proof of service. (Trust me you really don't need to do certified mail for this particular task).

7. Take the original set and the two remaining copy sets to court, along with a method of payment. You are going to take these to the court clerk's office. Check the pertinent court website first to make sure you know where you are going and what the hours are. Take a method of payment.

8. When you get to the front of the line, give the court clerk the original set for "filing" (you'll have to pay a filing fee from about $200 - $400) and ask her to "conform stamp" one of the copy sets for your records. The second set is just in case you need it. Some courts want two sets. That's it. You should now be safe from default judgment, and you are off to a great start in your case.

What is the Proof of Service All About?

The clerk of the court will not accept any papers in your lawsuit unless those papers are accompanied by a proof of service (with a few exceptions). But why?

During the course of a lawsuit, the plaintiff and defendant submit various written requests to the judge, asking for various orders. This is not supposed to be done in secret, so anytime the plaintiff or defendant submits a document to the court, they are required to first "serve" (i.e., mail) a copy to the other side. That's what the proof of service refers to.

Somebody has to sign a proof of service under penalty of perjury, saying that they mailed the papers to the other side.

Why can't you sign the proof of service yourself? Because, in theory, there will be less lying going on about whether papers were really served if the parties are not allowed to sign the proof of service. Well, it's a nice theory anyway.

The Proof of Service Paradox

The server has to sign a proof of service saying that he or she already served a certain document, but the server also has to enclose a copy of the proof of service swearing that he or she served the very envelope in which the proof of service is enclosed. Flux capacitor, anyone?

Here is the solution to the paradox: In step-6, I told you the wrong way to serve stuff. It's okay, everybody does it that way. But here is what technically is supposed to happen: The server fills out the proof of service, but does not sign it (yet). He or she then encloses a copy of the not-signed proof of service along with the document being served. Only after serving the document, along with the copy of the unsigned proof of service, does the server finally sign the proof of service, swearing to have accomplished service. Hardly anybody does it the correct way, but now you know how to!

6. I’m Here If You Need Help

I hope you get some use from this little ebook, and that it saves you hours of time that you might otherwise have spent trying to verify whether you were taking the right steps.

If you need help, I am available for very low price telephone consultations. For consumers facing debt collection lawsuits I only charge my rate for 15-minutes, when I give you a half-hour consultation

You can only schedule time at this special rate, by scheduling through website, which is at www.CaliforniaCollectionDefense.com.

I also provide full representation to some clients who want an attorney to handle *everything*, so they don’t have to stress about it. To explore this option, I am available for free 15-minute appointments during which I explain my procedures, and ask about your case.

-Ian

This ebook is provided for free by California consumer attorney, Ian Chowdhury through His website www.CaliforniaCollectionDefense.com

It is the intent of the author that the information and material in this book be helpful to consumers who are facing collection lawsuits, and give them a head start in gathering the information they need to respond to a lawsuit, if they are not able to retain an attorney to do it for them.

Consumers are encouraged to hire an attorney if that is possible for them. Consumers who need to represent themselves are encouraged to do additional research as necessary. The author makes no claim that the information here is complete or comprehensive or that it applies to every instance of collection defense – its sole purpose is to be useful, not comprehensive.

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