

## Answer to Debt Collection Suit Instructions, Example, Sample Form

You will need the complaint the plaintiff filed. We have included an example Answer from Kerry Timberland to help understand these instructions. Kerry is a made up person.

1. The Plaintiff must get a copy of your answer within 20 days after you were served the complaint.
2. At the top left corner of the Answer form you will see "\_\_\_\_\_, ss". This is where you write the county you live in. Put in the same county that is on the complaint that the plaintiff sent to you.
  - In the example, Kerry lives in Dorchester. Dorchester is in Suffolk County.
3. On the "\_\_\_\_ Division" line, write in where the court is located.
  - The Court is located in Dorchester so Kerry wrote in "Dorchester."
4. Write in the docket number on the "Docket no.\_\_\_\_\_" line. You can find this number on the complaint that the Plaintiff sent you.
  - Kerry's number was on the top right corner of the complaint so she copied it onto the answer as "2011-CV-3833"
5. The "\_\_\_\_\_plaintiff" line needs to say who is suing you. Copy the name listed on the complaint before the word "plaintiff".
  - The Bank of New Debt is suing Kerry so she wrote " Bank of New Debt" on the line before "plaintiff".
6. The "\_\_\_\_\_defendant" line needs to say who is being sued. Copy the name listed on the complaint before the word "defendant" on your answer. It is probably your name. If it is not, then write that you are not the Defendant as one of your defenses.
  - The Bank of New Debt is suing Kerry so she wrote her name on the line before "defendant".
7. To make a checkmark  $\checkmark$ , hold down the Alt key on your keyboard and type 251 at the same time.
8. **In the "Answer"** section you agree or disagree with each point the creditor made in their complaint. Not answering is the same as agreeing. If you do not answer a point, the court and the plaintiff read it as if you agree. If you do not agree, make sure you say you disagree, or you do not know:
  - i. Read each line of the complaint. Notice that each paragraph has a number.
  - ii. If you disagree with everything in the plaintiff's complaint check blank 1.
  - iii. If you do not agree or you do not know about some of the points in the plaintiff's complaint check blank 2. List the paragraph

numbers in the complaint that you disagree with or you do not know.

- iv. If you agree with any of the paragraphs in the plaintiff's complaint check box 3 and list the paragraph numbers you agree with.
- Kerry does not agree that she owes money to the Bank of New Debt or with the amount they say she owes. She checked the lines that state this. She does agree with line 1 of the complaint that states her name is Kerry Timberland.

## **9. The "Affirmative Defenses"**

**Section** is where you say the things that the Plaintiff did wrong. You will have to prove these things at trial. If you can prove them, it can help you lower or wipe out the debt you owe the Plaintiff. Check all that apply to you.

- Kerry took out a credit card from a local store. She has never heard of "Bank of New Debt" And she does not think they have the right to collect money from her. So, she checked the box that said that. She only owed \$350 to the store. But "Bank of New Debt" says she owes \$850. She does not know how the amount got so high. She does not think they have the right to charge so many late fees if that is how the amount got so high, so she "disputes" the debt. Kerry is on Social Security. Her income is fully protected, so she checked the line that said so.

## **10. In the "Counterclaim" section,** list any "causes of action" you have

against the Plaintiff. This is anything you want to sue them for. You will need to prove the things you say on the form when you go to trial. You will also need to fill out a "statement of damages" form saying how much money all of these damages equals. The court can provide you with this form.

- Kerry checked the lines where she thinks the plaintiff broke the law.

## **11.** Sign the answer.

## **12. In the "Certificate of Service" section,**

- i. Write today's date;
- ii. the address of the plaintiff; and
- iii. check either "hand delivery," or "first class mail".

## **13.** Make two copies of everything;

## **14.** Always keep a copy for yourself.

## **15.** You must give your answer to the plaintiff the same day you fill out the certificate of service. If the plaintiff's attorney's address is on the summons, send a copy of your answer to the attorney.

## **16.** Mail or deliver the original answer to the court clerk. You have five days from the day you gave a copy to the plaintiff to get the original to the court.

## **17.** After you file your answer, you should get a hearing date from the court.

# EXAMPLE ANSWER & COUNTERCLAIMS

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

District COURT

Dorchester DIVISION

Docket No. 2011-CV-3833

Bank of New Debt Plaintiff(s)

v.

Kerry Timberland Defendant(s).

## ANSWER & COUNTERCLAIMS

Defendant answers the Complaint as follows:

ANSWER: (Check all that apply)

1.  General Denial: I deny each of the Plaintiff's allegations in the Complaint.
2.  I deny or do not have sufficient information to respond to the following numbered paragraphs in the Plaintiff's Complaint: 2,3,4,5,6,
3.  I admit the information listed in paragraphs 1 of Plaintiff's Complaint.

## AFFIRMATIVE DEFENSES

4.  I received the Summons and Complaint, but it was not properly served. *An explanation of 'properly served' can be found by searching 'How will I know I am being sued or taken to court' at [www.Masslegalhelp.org](http://www.Masslegalhelp.org).*
5.  I do not owe this debt.
6.  I dispute the amount claimed to be owed.
7.  I have not entered into a contract with Plaintiff.
8.  I have not received adequate documentation to show that Plaintiff is the real party in interest to pursue this action. *Check if you think the Plaintiff does not own the debt and does not have the right to collect it.*
9.  I previously paid the debt in full.
10.  I previously paid an amount smaller than the amount presently claimed by the Plaintiff in full satisfaction of the debt, which the original creditor or its assignee accepted. *Check if the Plaintiff said if you pay an amount they would forgive the whole debt, and you paid that amount.*
11.  This debt is over six years old, and Plaintiff cannot sue to collect it.
12.  I am a victim of identity theft or mistaken identity or I did not agree to be responsible for this debt.
13.  I was too young or disabled to enter into a contract at the time of this transaction.
14.  This debt has been discharged in bankruptcy. *Check if you filed Bankruptcy after you got this debt and it was included in your case.*
15.  A court has already decided this claim in my favor (res judicata).
16.  I am a member of the military on active duty.
17.  My only source of income is Social Security, which is exempt from collection.
18.  The amount demanded is excessive (unjust enrichment and failure to mitigate damages). *Check if the amount is much higher than the amount you think you are obligated to pay.*
19.  The circumstances and terms of the contract underlying the debt are unconscionable. *Check if some part of the contract that obligates you to repay the debt is extremely unfair.*
20.  I relied on the Plaintiff's representations that the debt was paid and that no further payments were required (estoppel).
21.  Plaintiff has acted in bad faith and with unclean hands. *Check if the Plaintiff has acted wrong or in a way that tricked you.*
22.  The Massachusetts Division of Banks has no record of Plaintiff having a license to collect debt in this state. *Check if you looked at the [Division of Bank's](http://www.DivisionofBank.com) website for the Plaintiff and their name is not there.*

23. \_\_\_ Plaintiff is an out-of-state corporation not registered to transact business in Massachusetts. *Check if you looked at the [Secretary of State's](#) website for the Plaintiff and their name is not there.*
24. \_\_\_ I did not receive a copy of the Summons and Complaint.

### COUNTERCLAIMS

1.  Plaintiff has committed unfair or deceptive practices in violation of Mass. Gen. Laws Chapter 93A. *Look at the [Massachusetts Attorney General's](#) website to learn more about MGL 93(A) violations.*  
Explain: The Plaintiff told me if I paid them \$500 they would not sue me. I asked them for proof I owed them money and they said if I paid \$300 they would not sue me. Now they are suing me for much more money.
2. \_\_\_ Plaintiff did not file this lawsuit in the county where I live or where the contract was signed (15 U.S.C. § 1692i(2)).  
Explain: \_\_\_\_\_
3. \_\_\_ This debt is over six years old, and Plaintiff cannot sue to collect it. 15 U.S.C. § 1692e(5).  
Explain: \_\_\_\_\_
4.  Plaintiff did not send me a written validation notice within five days after first contacting me (15 U.S.C. § 1692g(a)). *The law requires a debt collector to send you a letter after they first contact you with certain information if they do not give you that information over the phone. See the information they are required to tell you [here](#).*  
Explain: The Plaintiff called me January 5, 6 and 8<sup>th</sup> 2012 and I have never received any notice or anything in the mail from the Plaintiff saying I have the right to dispute the debt.
5.  Plaintiff's attorney did not disclose that s/he was a debt collector and that any information I provided would be used to collect the debt when I talked to him or her (15 U.S.C. § 1692e(11), and the plaintiff is responsible for the misconduct of its agent).  
Explain: The attorney called me back after I called them on March 28, 2012 and they did not tell me they were a debt collector.
6. \_\_\_ Other Counterclaim(s): What law they broke: \_\_\_\_\_  
Explain: \_\_\_\_\_

*Check if you know of another thing the Plaintiff did wrong. You must write what law they broke and also explain what they did.*

The Defendant further states that other defenses and counterclaims may exist and will be added as they become known.

WHEREFORE, Defendant requests that this Court:

1. Enter judgment for the Defendant,
2. In the alternative, find that Defendant's counterclaims outweigh any debt the Defendant owes the Plaintiff,
3. Order such relief as the Court deems just and proper.

Respectfully submitted,

(Signhere) Kerry Timberland  
Your Name: Kerry Timberland

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for the Plaintiff  
(*check one*) in hand (  ) or by regular first class mail postage pre-paid (  ) at this address: Law Firm of  
Ted Roco for Bank of New Debt, 1 Kimble St, Boston, MA 02222 on  
(date) June 30, 2012.

Kerry Timberland  
Signature

June 30, 2012  
Date

**EXAMPLE**

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

DISTRICT COURT

\_\_\_\_\_ DIVISION

DOCKET No. \_\_\_\_\_

\_\_\_\_\_ *Plaintiff(s)*

v.

\_\_\_\_\_ *Defendant(s)*.

**ANSWER & COUNTERCLAIMS**

Defendant answers the Complaint as follows:

ANSWER: *(Check all that apply)*

1. \_\_\_ General Denial: I deny each of the Plaintiff's allegations in the Complaint.
2. \_\_\_ I deny or do not have sufficient information to respond to the following numbered paragraphs in the Plaintiff's Complaint: \_\_\_\_\_.
3. \_\_\_ I admit the information listed in paragraphs \_\_\_\_\_ of Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES**

4. \_\_\_ I received the Summons and Complaint, but it was not properly served.
5. \_\_\_ I do not owe this debt.
6. \_\_\_ I dispute the amount claimed to be owed.
7. \_\_\_ I have not entered into a contract with Plaintiff.
8. \_\_\_ I have not received adequate documentation to show that Plaintiff is the real party in interest to pursue this action.
9. \_\_\_ I previously paid the debt in full.
10. \_\_\_ I previously paid an amount smaller than the amount presently claimed by the Plaintiff in full satisfaction of the debt, which the original creditor or its assignee accepted.
11. \_\_\_ This debt is over six years old, and Plaintiff cannot sue to collect it.
12. \_\_\_ I am a victim of identity theft or mistaken identity or I did not agree to be responsible for this debt.
13. \_\_\_ I was too young or disabled to enter into a contract at the time of this transaction.
14. \_\_\_ This debt has been discharged in bankruptcy.
15. \_\_\_ A court has already decided this claim in my favor (res judicata).
16. \_\_\_ I am a member of the military on active duty.
17. \_\_\_ My only source of income is \_\_\_\_\_, which is exempt from collection.
18. \_\_\_ The amount demanded is excessive (unjust enrichment and failure to mitigate damages).
19. \_\_\_ The circumstances and terms of the contract underlying the debt are unconscionable.
20. \_\_\_ I relied on the Plaintiff's representations that the debt was paid and that no further payments were required (estoppel).
21. \_\_\_ Plaintiff has acted in bad faith and with unclean hands.
22. \_\_\_ The Massachusetts Division of Banks has no record of Plaintiff having a license to collect debt in this state.
23. \_\_\_ Plaintiff is an out-of-state corporation not registered to transact business in Massachusetts.
24. \_\_\_ I did not receive a copy of the Summons and Complaint.

COUNTERCLAIMS

- 1. \_\_\_ Plaintiff has committed unfair or deceptive practices in violation of Mass. Gen. Laws Chapter 93A.  
Explain: \_\_\_\_\_
- 2. \_\_\_ Plaintiff did not file this lawsuit in the county where I live or where the contract was signed (15 U.S.C. § 1692i(2)).  
Explain: \_\_\_\_\_
- 3. \_\_\_ This debt is over six years old, and Plaintiff cannot sue to collect it (15 U.S.C. § 1692e(5)).  
Explain: \_\_\_\_\_
- 4. \_\_\_ Plaintiff did not send me a written validation notice within five days after first contacting me (15 U.S.C. § 1692g(a)).  
Explain: \_\_\_\_\_
- 5. \_\_\_ Plaintiff's attorney did not disclose that s/he was a debt collector and that any information I provided would be used to collect the debt when I talked to him or her (15 U.S.C. § 1692e(11), and the plaintiff is responsible for the misconduct of its agent.  
Explain: \_\_\_\_\_
- 6. \_\_\_ Other Counterclaim(s): What law they broke: \_\_\_\_\_  
Explain: \_\_\_\_\_

\_\_\_\_\_The Defendant further states that other defenses and counterclaims may exist and will be added as they become known.

WHEREFORE, Defendant requests that this Court:

- 4. Enter judgment for the Defendant,
- 5. In the alternative, find that Defendant's counterclaims outweigh any debt the Defendant owes the Plaintiff,
- 6. Order such relief as the Court deems just and proper.

Respectfully submitted,

(Sign here) \_\_\_\_\_  
Your Name:

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for the Plaintiff (*check one*) in hand ( \_\_\_ ) or by regular first class mail postage pre-paid ( \_\_\_ ) at this address: \_\_\_\_\_ on (date)\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date