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Consumer FAQ

What is a Plaintiff?

A plaintiff is the party who files the lawsuit. If a creditor or debt buyer files a lawsuit against you, the creditor or debt buyer is the plaintiff.

What is a Defendant?

A defendant is the party who is sued by the plaintiff. If a creditor or debt buyer files a lawsuit against you, you are the defendant.

What is a Summons?

A Summons is your official notification that you have been sued. It tells you how and where to file your written response in order to defend the case. A Summons is usually accompanied by a Complaint.

What is a Complaint?

A Complaint explains why you have been sued. It contains the facts and the legal claims that are the basis for the lawsuit. In debt collection cases, the Complaint is often very short and may provide very little information.

What is an Answer?

An Answer is an official written response to a Complaint. In your Answer, you must write all the defenses that you want to raise in the case.

What is a Cross-Complaint?

A Cross-Complaint is a claim that you have against the plaintiff. The plaintiff may owe you money, or the plaintiff may have violated your rights or caused you some other kind of harm for which you want to recover money damages. You always have the right to file a Cross-Complaint against the plaintiff along with your Answer.

What should I do if I receive a Summons and Complaint?

DO NOT IGNORE IT. You should always respond to a Summons and Complaint. The correct way to respond is to file an Answer in the clerk's office at the address provided on the Summons. The clerk will not give you an Answer form and cannot help you to complete an Answer. For more detailed assistance filing your answer, contact one of our attorneys to obtain individualized advice about your case.

Is there a time limit for filing an Answer?

Yes. If you were served with the Summons and Complaint in person, you must file your Answer within 30 DAYS. "In person" means that a process server came to your home or place of business and gave the papers to you personally. If you were served with the Summons and Complaint in some other way, you have 40 DAYS to file your Answer.

What if the time for filing my Answer has already expired?

You should try to file an Answer anyway. As long as there is no default entered against you, the court will usually accept a late Answer.

What should I write in my Answer?

Your Answer should contain all the defenses that you want to raise in your case.

If you are rushed for time and do not know what to do, you can use a California Judicial Council form and mark the box for "general denial." You can always amend your Answer later. However, please note that if you want to raise a defense of improper service, you **MUST** do so in your initial Answer, or you will not be able to do so at all.

What will happen if I ignore the Summons?

If you ignore the Summons, the plaintiff will almost certainly ask the court to award a judgment against you. This kind of judgment is called a "default judgment." A default judgment usually awards the plaintiff everything that it asked for in the Complaint, plus interest and court costs.

The judgment will accumulate interest at the rate of 10% per year and is enforceable for ten years if not satisfied. The judgment also gives the plaintiff the right to try to collect money from you by freezing your bank account or garnishing your wages. You can avoid a default judgment by filing an Answer and appearing in court.

What happens after I file an Answer?

After you file an Answer, the court will notify you of your first court date. Your first court date could be anywhere from 1 month to 9 months after you file your Answer, depending on where you live. It is very important that you attend this court date. If you fail to attend the court date, the court will award a default judgment against you.

What is the “burden of proof”?

The “burden of proof” is the responsibility to provide evidence in support of a legal claim.

Who has the burden of proof in a debt collection case?

The plaintiff — the creditor or debt buyer — ALWAYS has the burden of proof in a debt collection case. This means that the plaintiff has to come up with evidence to prove to the court that (1) the plaintiff has the right to sue you; (2) the debt is yours; and (3) you owe the exact amount of money that the plaintiff claims you owe. You do not have to prove that you do not owe the money. Rather, the plaintiff has to prove that you DO owe the money.

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