

Understanding the Debt Lawsuit Petition

Knowing what they Want and why they Want it Starts with the Petition

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If you are being sued by a debt collector, the first step in defending yourself is knowing who is suing you and what you are being sued for. You'll want to know what facts the plaintiff thinks it can and needs to prove, and you'll want to look for initial weaknesses in the case. In all of these things, you will need to understand how to read the petition and understand what it is doing.

Below, you will find a sample petition. The petition (also called "complaint" in some jurisdictions – the terms refer to the same thing) is in black, and my comments about what the petition is doing is in red ink. You will see that every part of the petition has its purpose and function.

For purposes of this article, I will refer only to a few parts of the case, as these areas are often discussed in the teleconference calls and people have shown that they do not understand them. But if you look at the annotated sample petition, you will see much more. Knowing what things are called is an important part of the process of understanding what they are and do and an important first step in defending your rights.

Caption

The caption of the case is the part where it says "Debt Collector vs You" and also the name of the court and jurisdiction. Although it has come up, very rarely, that the named plaintiff may not, actually, be the plaintiff (see our article and video on assignment in the glossary), normally the person named as plaintiff is the plaintiff.

In plain English, that means that if First National Bank is named as plaintiff, that's the person suing you and not a debt buyer. If you have any reason to doubt that, you will want to use the discovery process to pry the truth loose.

And you are the defendant along with anyone else named as defendant in the caption.

The jurisdiction is also important, as this will either tell you that the court has dollar limits to its jurisdiction or not. At a minimum, you can use this part of the caption to find out whether the court does, indeed, have such limits. In general, if it does, the lower the limits, the less likely the court is to follow the rules of evidence rigorously. We usually want the highest court possible because it is critical to debt defense that the rules should be followed.

Title Heading of Suit

The title headings in a lawsuit are not formally treated as part of the lawsuit but are, instead, guidance. But what you need to know is that if you have different “counts” of the lawsuit there will be either more than one set of facts involved or, much more likely, more than one legal theory involved. If Count One is breach of contract, and Count Two is for Account Stated, you know you are being sued under two laws. In order to win your case, you will have to win on every count.

If you have no heading, or no heading that refers to counts, you are being sued based on one law (almost certainly), although it isn't *always* perfectly clear from the petition what that is.

Wherefore Clause

This is the part of the suit that says, “wherefore, plaintiff requests...” In other words, it's the part of the lawsuit that says what the plaintiff wants. If you want to know how much they're suing you for, this is the place to look.

The wherefore clause is usually the last paragraph of a count. If your suit has more than one count, it will have more than one wherefore clause, one at the end of each count. If it does not have more than one count, it will probably be the last paragraph of the petition.

You need to know what the debt collector is suing you for. This is where you find that.

Sample Petition for Money Owed

IN THE ASSOCIATE CIRCUIT COURT
OF THE COUNTY OF XXXXX
STATE OF XXXX

“Associate” means limited jurisdiction
County or city jurisdiction

DEBT COLLECTOR COMPANY, LLC,
ASSIGNEE OF CC COMPANY (Mastercard),
Plaintiff,

This is the “Caption,” This name is the
plaintiff [the lawyer signing is not
plaintiff, nor is Mastercard]

vs.

JOHN Q. PUBLIC,
Defendant.

COUNT ONE – SUIT ON MONEY OWED [Title. “Count One” indicates this claim has more than one legal basis. Lots of suits are brought on only one basis and don’t have “Count __” in them]

Comes Now Plaintiff and for its cause of action against the Defendant states as follows: [Intro, sometimes much longer]

1. Plaintiff is a limited liability company duly organized and existing under law and is the lawful assignee of this debt. [Paragraph allegations – you have to respond to each paragraph – this one identifies the plaintiff and alleges it was assigned the debt.]
2. That defendant is a resident of xx county, state of x. [paragraph establishing court’s jurisdiction over defendant, so important – don’t admit if wrong]
3. That defendant is in default under the terms of the documentation attached hereto, incorporated herein and marked Plaintiff’s Exhibits A and B in the amount of \$1,332.14. [This is ‘breach of contract’ language, often more involved than this, including claims of issuing cards or credit, etc.]
4. That plaintiff has performed all conditions on its part required to be performed. [Establishing right to remedy – plaintiff did not breach contract]
5. That demand for payment has been made and payment refused. [Formality, sometimes but not usually required, usually included though]

Wherefore, plaintiff prays judgment against defendant in the principal amount of \$1,332.14 together with interest of 39% per annum from December 7, 2005, and for costs and attorneys fees herein. [the “Wherefore clause.” Says what the plaintiff wants. Usually if it does not say “attorney’s fees,” they won’t be able to get them if they win]

COUNT TWO – ACCOUNT STATED [second claim, this one under law of account stated]

6. Plaintiff realleges and incorporates paragraphs 1-5 of this petition as if fully stated herein. ["reincorporation clause" – standard. You will simply reallege your previous responses in the same way]
7. Plaintiff had a regular billing arrangement with Defendant whereby each month Plaintiff would send Defendant an accounting of money due and owing either as a result of new charges made by Defendant or for charges based upon an existing balance. [necessary to show that bills, or "accounting," were a regular thing, expected by defendant]
8. Plaintiff sent Defendant a bill showing a charge of \$1,332.14 due immediately on X date.[the "new contract," because it was actually or "impliedly accepted"]
9. Defendant did not dispute this bill showing a balance of \$1,332.14 and accordingly accepted it. [Your supposed agreement]
10. Defendant did not pay the amount due and is thereby in violation of the law. [The "breach" of the contract created by accepting the accounting – note that new agreement does not have any terms other than the money allegedly owed]

Wherefore, plaintiff prays judgment against defendant in the amount of \$1,332.14 together with costs of this action and such other relief as this court deems appropriate under the law. [The "wherefore clause" for the account stated – note that it should not include attorney's fees or (probably) interest]

Collection Law Firm [law firm's signature, usually illegible. Both the named lawyer and the firm are representing plaintiff (but are NOT plaintiff) and would be on the hook for possible violations of FDCPA]

Collection lawyer,
Law Firm

Address

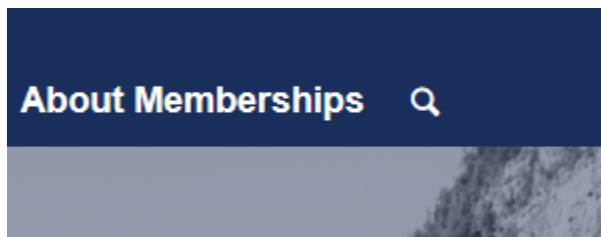
[There is usually some sort of affidavit to the effect that the defendant is not in active military service – if you are not, this is purely a formality. If you are in active military service, special rules apply to your case]

Your Legal Leg Up

[Your Legal Leg Up](#) is a website and business dedicated to helping people defend themselves from debt lawsuits without having to hire a lawyer. As you can see below, we have a number of products as well as memberships that should help you wherever you are in the process. In addition to that, our website is a resource for all. Many of the articles and materials are reserved for members, but many are available to everyone.

Finding Resources

Every page has a site search button in both the header and footer. It's a little magnifying glass icon that looks like this:



Click on the magnifying glass icon, and a small window opens. Put in a key word – a word you think relates to what you're looking for – and enter. You will get a page of results.

Product Information

Because much of this article involves taking action and creating legal document, we include an addendum of the products we have that can help. First, if you are at the beginning stages of your case and needing to answer (or otherwise respond to) the petition, our [First Response Kit](#) is designed to help with that. If you have already answered and need to start (or restart) conducting discovery, our [Discovery Pack](#) will help. The Discovery Pack is included within the First Response Kit, so don't get both. If you are trying to force the debt collector to respond to your discovery, you may want our [Motion to Compel Pack](#).

If they're filing a motion for summary judgment and you are not ready to file a motion for summary judgment yourself, our [Motion for Summary Judgment Defense Pack](#) could help. But if you want to respond to theirs and file one of your own, you will want our [Cross-Motion for Summary Judgment Pack](#). And if they haven't file a motion for summary judgment but you want to, that would be our [Motion for Summary Judgment Offense Pack](#). Don't get more than one of the MSJ packs.

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