

COLLECTION LAWSUIT DEFENSE HACKS

So, you got the lawsuit. There is more here to help you in both your defense but more importantly, create the Counter Affidavit to support your case and show the Court any false filing by the collector and make a case for you to win-this settles cases.

CHIPS AND BRICKS

Tear the pages apart and separate any Exhibits from the Complaint pages:

CHECKLIST:

1. Look at the Summons:

Was there a previous lawsuit against you but the law firm has told the court on a subsequent filing that there was not like below.

Civil Case

This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

A chance to show the court they misrepresented themselves and **chip for you.**

Check Date of Summons Expiration date. Were you served before or after the Expiration date.

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 10-23-20	Expiration date 1-24-21	Court clerk K
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19) **SUMMONS**

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105

See the Address of yours or the address you were served at.

If not your address, and you have not lived there over a year (my date or time) you may have an FDCPA lawsuit against the collector, creditor, collection agency or all three. **Chip and a Brick.**

2. The Collection Complaint:

Look at the Pages of the lawsuit. Put a T on the right of each paragraph or F on the left that is false.

COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence as alleged in the Complaint.

NOW COMES the above named Plaintiff, by and through its attorneys, Stenger & Stenger, P.C., and for its Complaint states as follows:

JURISDICTIONAL ALLEGATIONS

- T
1. Defendant(s) opened a CITI MASTERCARD account with Citibank, N.A..
 2. Upon information and belief, Defendant _____ resides at _____, Macomb County, Michigan. F
 3. The amount in controversy, exclusive of costs, is less than \$25,000.00. T

CLAIM FOR RELIEF

4. Defendant's CITI MASTERCARD account, account number *****2018, with Citibank, N.A. was opened on April 12, 2004. An agreement ("Agreement") was delivered to Defendant. F

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. CT028804

Check Date of when the lawsuit states the account was opened up. Look at the cardholder agreement attached to the lawsuit. If the date of the credit card agreement has a date newer (it will) that the lawsuit account number date opened and is unsigned (it won't be signed by you), then you have **another chip** and more in the Counter Affidavit.

Check the account number. Does it match? If not, **Brick and a Chip.**

3. Matching the Elements of the claims they are making:

Check to see if the lawsuit states it is an account stated lawsuit:

8. The account has become stated between the parties.

F

Then, it must match the elements of an Account Stated Statute in your district.

Two States Account Stated Claims.

MICHIGAN ELEMENTS OF AN ACCOUNT STATED CLAIM

An account stated is formed when either (1) the parties expressly agree upon the sum due or (2) the party receiving the account does not object within a reasonable time, in which case the receiving party's assent is inferred.

FLORIDA ELEMENTS

It is not founded upon the original individual items of the account, but rather, is based on the balance, which is agreed upon between the parties, either expressly or implied by the lack of objection. See *Farley v. Chase Bank U.S.A., N.A.*, 37 So. 3d 936 (Fla. 4th DCA 2010). "Proof of an account stated requires an express or implied agreement between the parties that a specified balance is correct and due and an express or implied promise to pay this balance."

If the allegations of the lawsuit do not match up with the elements to be proved to win the case, the Plaintiff collector loses-**A Chip and a Brick.**

4. Counter Affidavit is Key

All this above and below has to go in your Counter Affidavit. By Rule, I always file an Objection Account Stated Affidavit even if no Affidavit is filed by the Plaintiff collector-it is chance to state your case to the Court. **Make your Chip and Your Brick.**

5. Look at and use their Exhibits against them:

Did you sign anything they attached? Regarding the loan agreement, if it is a computer or electronic signature on the documents, ask yourself if you actually signed the document like that.

What are rules in your jurisdiction as to how an electronic signature was allowed to be put on documents for it to be allowed?.

Look in the body of the loan agreement. Is there an Arbitration clause that does not allow filing of the lawsuit they filed against you as they did and they ignored that.

A Motion to Compel Arbitration puts you in a forum with less protections legally and evidentiarily. Not advisable.

I would not advise filing a motion to compel arbitration but just a motion to dismiss depending on your court rules.

Filing a Motion to Compel Arbitration just puts you into a different and more expensive mess. A motion to dismiss puts all that burden on the collector and they will voluntarily dismiss generally if you first give them a heads up you are filing the motion first.

6. Is there a choice of law provision in the loan agreement:
Looks something like this:

in accordance with applicable law.

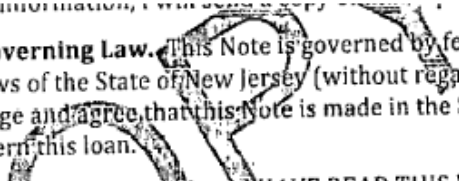
L. ADDITIONAL AGREEMENTS:

1. I understand that you are located in California and that this Credit Agreement will be entered into in the same state. CONSEQUENTLY, THE PROVISIONS OF THIS CREDIT AGREEMENT WILL BE GOVERNED BY FEDERAL LAW AND THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICT OF LAW RULES.

2. The proceeds of this loan will be used only for my educational purposes of

inaccurate information, I will be held responsible for

14. **Governing Law.** This Note is governed by federal law and, to the extent not preempted by federal law, the laws of the State of New Jersey (without regard to internal principles of conflict of laws). You acknowledge and agree that this Note is made in the State of New Jersey and the laws of the State of New Jersey govern this loan.



PLEASE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT

The *choice of law provision* state in the agreement might have a more lenient statute of limitations rule that is shorter than in the state you are in. Either way, why is the case in your jurisdiction if it is not the same as the choice of law, state? **Chip.**

Clean Hands. It is part of the contract and to not honor a section of the contract is a breach by the Plaintiff just as they are claiming you are breaching the contract. They can't sue you for something they are doing themselves. **Chip.**

7. **Assignment Clause:** This is a common clause in loan agreements below:

demands and notices in connection with the delivery, acceptance, performance or enforcement of this Note.

11. **Assignment.** I may not assign any of my obligations under this Note without your written permission. You do not have to give me your permission. I agree you may assign or transfer this Note, or any of your rights hereunder, to another person or entity without notice or consent from me. Upstart Network, Inc. (the "Registrar") acting solely for this purpose as my irrevocably appointed agent, shall maintain at the Registrar's offices located in the United States a copy of each assignment of, or participation in, this Note delivered to it and a register (the "Register") for the recordation of the names and addresses of the original owner and assignees and participants, and the amounts of principal and interest owing to each from time to time pursuant to the terms of this Agreement. The Register may be in electronic form. I agree that the entries in the Register shall be conclusive, and I, the Registrar, you and all of assignees and participants shall treat each person whose name is recorded in the Register pursuant to these terms as the owner of such principal and interest payments for all purposes of this Note, notwithstanding notice to the contrary. The name of the owner in the Register shall be available to me upon written request to the Registrar as provided in Section 12, at any reasonable time and from time to time upon reasonable prior notice. This Section intended to result in this Note being at all times in "registered form" within the meaning of U.S. Treasury Regulations Section 1.871-14(c) and Sections 163(f), 871(h) and 881(c) of the Internal Revenue Code of 1986, as amended, and shall be interpreted and applied in a manner consistent therewith. Any fees and expenses of the Registrar for its services shall be charged to the registered owner of the loan and not to me. The Registrar acting solely for this purpose as my irrevocably appointed agent shall be entitled to be delivered and to receive on my behalf IRS Forms W-8 and W-9 and any successor forms or similar tax forms. Notwithstanding anything to the contrary herein, this Note and rights thereunder may be assigned, participated or otherwise transferred in whole or in part only by registration of such assignment, participation or transfer in the Register. Any assignment, participation or transfer of this Note or any rights thereunder shall be registered in the Register only upon delivery to the Registrar of a duly executed assignment or similar agreement in a form reasonably acceptable to the Registrar.

Contact the registrar as stated here in the Assignment clause if something like this is in your case and ask for the assignment history. The last assignor is probably not the same as the Plaintiff in your lawsuit that is claiming to own the debt in its documents.

Go to Podcast+ at www.collectionstopper.com for a letter I have written that you may use as a template to request all of the Assignments from the registrar. **That's a Brick.**

8. Are there any Account Statements that collector says that shows you used the card?.

Do the statements show a record either you paying any payments or buying anything? If not, no account stated case in some states unless they you're your agreement you used the card and owe something.

Also, look at the Account Statements. Is the address they sent the statements too same as in the lawsuit/summons. Wrong or old address that does not mesh up. **That's a chip.**

Also, copies of these things have been not kept for many years. Is the statement not aligned or cut off or seemingly cut and pasted together. It is a thing that happens. **Compare your own copies of the statements for that month and year to the ones they have attached to the lawsuit.** You will be surprised. Check it out.

9. **Affidavit of the Collector.** Big Chips

Do the same T and F as you did in the complaint with the paragraphs of the Affidavit. Does their Affidavit leave owners or assignees like secured trusts out of the information in the Affidavit.

Does the Affiant swear under oath that you are a “Defendant” and collector is a “Plaintiff” weeks or months before the lawsuit it is supporting is filed. Happens every time. So, that is false-under oath.

Look up the name of the Affiant signing under oath and her signature. You will be surprised what you find-a lot of these affiants don't work for the company.

Does the Affiant really have **personal knowledge** if she leaves parts of the lawsuit or other information attached to the lawsuit out of the information in the Affidavit. No knowledge is personal unless she looked at the real thing.

Date filed vs date requirements of your state Account Stated Statute. Collectors always violates the rule.



10. **Look at Assignments or Bills of Sale.** Are they truthful and also include your debt proof accompanying each transfer of the debt.

These companies are commonly wrong about what they are selling and there is rarely the proper form of bill of sale or assignment required under your state's assignment law.

Write out a chain of title. Here is something to look at creating. With the first missing link, you win. A Brick.

Using Dates create something like this.

Missing Assignor from Creditor to First assignor or not assignment  Next

assignee (is debt traveling with assignment  Square deal dan collector (no assignment or bad date)  Plaintiff.

11. **Look at Sale docs or Bill of Sales:** Will say sold without warranty or collectability representation and also pursuant to a Major Purchase Agreement that is never attached. It is not sold to anyone without that. Without the Major Purchase Agreement, no case. **A Brick and a Chip.**

Look at this Bill of Sale:

BILL OF SALE

For value received and pursuant to the terms and conditions of the Purchase and Sale Agreement dated April 3, 2018, Upstart Pass-Through Trust, Series 2021-ST6, as "Initial Seller", and on behalf of Additional Sellers as "Servicer") hereby assigns effective as of March 28, 2022 (the "Closing Date") all rights, title and interest in and to those certain charged-off loans and all related receivables, judgments or evidences of debt described in Schedule I attached hereto and made part hereof for all purposes to Velocity Investments, LLC ("Purchaser").

UPSTART NETWORK, INC., as [INITIAL SELLER] [SERVICER] on behalf of Upstart Pass-Through Trust, Series 2021-ST6

By: Sanjay Datta Date: 3/24/2022 Title: CFO



Just map out who owns that debt, who assigned it and who serviced it. Just a mess but this gets by most courts if you don't

point it out. Also, who signed it and where is proof of authority to sign the document-that's a rule in some states, have to show affidavit of authority. **More chips.**