

**Information or instructions: Defendants answer and affirmative defense in a sworn account matter**

# PREVIEW

1. The affirmative defense in the form that follows contains a corporate and an individual verification. The verifications must be attached to the answer in order to comply with TRCP 93.
2. Included in the answer is an affirmative defense that the sworn account is not true and correct and that the defendant was sued in an incorrect legal capacity. Typically, creditors may sue a defendant in both an individual and corporate capacity.
3. This affirmative defense is used to contest the individual liability claim asserted by plaintiff.
4. **PLEASE DO NOT COPY** Texas Rules of Civil Procedure 18, Suits on Account, has been amended. The old rule required the defendant's answer to specifically state that the claim was not just, true, or correct and that all just and lawful offsets, payments and credits have not been allowed.
5. The new rule deletes that requirement and brings the answer on a sworn account under the standard rules for pleading and practice.
6. Suits on a sworn account are now covered by Texas Rule of Civil Procedure 93, which has been amended to add subsection 10, providing for "a denial of an account which is the foundation of the plaintiff's action, and supported by affidavit . . ." In other words, if you desire to deny the sworn account, the answer must be verified under Texas Rule of Civil Procedure 93.
7. The following form illustrates the denial.

# THIS DOCUMENT

**Form: Answer and affirmative defense**

**CAUSE NUMBER \_\_\_\_\_**

**[Name],  
PLAINTIFF**

**IN THE [Type of Court] COURT**

**[Court number]**

**vs.**

**[Name],  
DEFENDANT**

**OF [NAME], COUNTY, TEXAS**

# THANK YOU

**DEFENDANT'S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, [Name] in the above styled and numbered cause, files this original answer to the

Plaintiff's petition, and would respectfully show the court the following:

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1. Subject to such stipulations and admissions as may hereinafter be made, Defendant asserts a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and Defendant respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

2. In the alternative, without limiting or waiving the above general denial, Defendant denies Plaintiff's sworn account on the ground that Defendant did not order the goods or services referred to in Plaintiff's Petition.

3. In the alternative, without limiting or waiving the above general denial, Defendant states that Defendant [Name of individual] does not have the legal capacity to be sued for the debts of Defendant [Name of corporation], if any, nor is Defendant [Name of individual] liable to Plaintiff in the capacity in which Plaintiff has sued this Defendant.

4. In the alternative, without limiting or waiving the above general denial, Defendant states that Defendant [Name of individual] did not sign the [specify instrument, e.g., note or contract] referred to in Plaintiff's Petition as an individual for purposes of individual liability and therefore he is not liable for the moneys, if any, that are allegedly owed. Pursuant to Rule 93 of the Texas Rules of Civil Procedure, Articles III and IV of this answer constitute a sworn denial of execution of the [specify instrument] with respect to Defendant [Name of individual] in [his or her] capacity as an individual for personal liability.

5. Pleading further, and in the alternative, without limiting or waiving the above general denial, Defendant states that Defendant [Name of individual] never represented to Plaintiff that [he or she] was acting or would act in an individual capacity. Plaintiff was aware of or should have been aware of the fact that Defendant's authority was limited to acting on the behalf of the corporation.

**PREVIEW**

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**THANK YOU**

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Accordingly, Plaintiff should be estopped and prevented from asserting that Defendant [Name of individual] is liable in [his or her] individual capacity.

**PREVIEW**

**PRAYER**

The above answer is respectfully submitted to the Court and Jury by Defendant, who asks that Plaintiff take nothing, that Defendant be allowed to recover costs of suit, and that the Court award this Defendant such other and further relief as the Court may deem proper under the circumstances.

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Respectfully Submitted,

\_\_\_\_\_  
[Law Firm Name]

By \_\_\_\_\_

\_\_\_\_\_  
[Attorney's Name]

**THIS DOCUMENT**

Attorney for Defendant  
[Attorney's Address]  
[Telephone Number]  
[Facsimile Number]  
[Bar Card Number]

**AFFIDAVIT**

State of Texas  
County of \_\_\_\_\_

BEFORE ME, a notary public in and for County, Texas, on this day personally appeared [Name], to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first sworn upon oath, says that [he or she] is [party designation] in the above-referenced case, and has the authority to make this affidavit. Affiant further states that [he or she] has read the foregoing and that the pleading is in every statement and allegation true and correct.

**THANK YOU**

[Include any other facts to support the affidavit]

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Affiant

# PREVIEW

Subscribed and sworn to before me on \_\_\_\_\_ by

\_\_\_\_\_

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:

# PLEASE DO NOT COPY

[or Notary's Stamp]

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on \_\_\_\_\_.

Attorney for: [Other attorney's client's name]

Attorney's name: [Other attorney's name]

Attorney's address: [Other attorney's address]

# THIS DOCUMENT

Type of Service:

\_\_\_ U.S. Mail, Certified Return Receipt Request No. \_\_\_\_\_.

\_\_\_ U.S. Mail, First Class.

\_\_\_ Hand delivery by [name of delivery service]: \_\_\_\_\_.

\_\_\_ Facsimile transmission to \_\_\_\_\_ [fax number] before 5 p.m.

\_\_\_\_\_  
[Attorney's signature]

# THANK YOU

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Information or instructions: ~~Corporate verification for affirmative defense~~

**PREVIEW**

1. The corporate verification in the form that follows is used by the officers of the corporation to swear to the truthfulness of the statements contained in the pleading.
2. The verification is attached to pleadings in order to comply with TAR 93.

**Form: Corporate verification for affirmative defense**

State of Texas  
County of \_\_\_\_\_

BEFORE ME, a Notary Public in and for [Suit County] County, Texas, on this day personally appear [Name] who being by me duly sworn in [his or her] oath deposed and said that [he or she] is the duly authorized agent of [Name], Defendant in the above entitled and numbered cause; that [he or she] has read the above and foregoing Defendant's Original Answer; and that the Answer is, in every statement and allegation thereof, true and correct to [his or her] own personal knowledge.

[Include any other facts to support the affidavit]

\_\_\_\_\_  
[Capacity i.e. President

**THIS DOCUMENT**  
[Name of Corporation]

State of Texas  
County of \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_ by  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of officer  
**THANK YOU**  
\_\_\_\_\_  
Notary's typed or printed name

My commission expires:  
\_\_\_\_\_  
[or Notary's Stamp]

The individual verification is used to show that the individual believes that the statements contained in the pleading are true and correct.

**PREVIEW**

**Form: Individual verification**

State of Texas

County of \_\_\_\_\_

BEFORE ME, a Notary Public in and for [County] County, Texas, on this day personally appeared [Name], to me well known to be a credible person of lawful age and qualified in all respects to make this Affidavit, who being first sworn on oath, says that [he or she] is the Defendant in the foregoing Defendant's Original Answer, and that [he or she] has read the foregoing Answer, and that the Answer is in every statement and allegation thereof true and correct to [his or her] own personal knowledge.

**PLEASE DO NOT COPY**

Subscribed and sworn to before me on \_\_\_\_\_ by

\_\_\_\_\_.

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

**THIS DOCUMENT**

My commission expires:

\_\_\_\_\_  
[or Notary's Stamp]

**THANK YOU**

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