

**Information & Instructions: Answers**

**PREVIEW**

1. The purpose of an answer is to prevent the plaintiff-creditor from obtaining a default judgment against the debtor. An answer may be used to afford counsel time to reach an agreed to settlement or to properly present and preserve viable defenses, if any, to the plaintiff's collection lawsuit.

2. The following types of defenses and counterclaims should be considered in representing the debtor:

a. accord and satisfaction;

b. ambiguous written document;

c. bankruptcy;

d. capacity (lack of capacity due to incompetency), or an individual not liable for a corporate debt

e. consideration (failure of consideration);

f. Consumer Credit Code, federal and state debt protection statutes;

g. deceptive trade practice occurrence;

h. fraud or misrepresentation;

i. holder in due course;

j. illegal contract, such as:

i. breach of federal or state statute;

ii. improper and inadequate disclosures given;

iii. impossible performance; and

iv. usury.

k. laches;

l. merger or modification of contract;

m. minority (age) of debtor;

n. mutual mistake of material fact;

o. rescission;

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**THANK YOU**

p. statute of frauds;

q. undue influence; and

r. unilateral mistake.

3. Counsel should make certain that affirmative defenses are properly raised and pleaded.

4. A common defense in collection matters is that the plaintiff did not give the defendant the proper amount of credits, offsets or reductions which were due to the defendant from the plaintiff.

a. In the event the defendant has a claim against the plaintiff, the attorney should file both an answer which states an affirmative defense and a counterclaim against the plaintiff.

b. Allege in the counterclaim that all offsets, credits, claims, etc. have not been allowed to the defendant.

5. Procedure

a. The procedure is to substantiate and verify the proper defense, obtain the proper pleading instruments, and file them with the court.

b. A copy of the answer should be sent to opposing counsel.

Form: Defendant's original answer

**THIS DOCUMENT**

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

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

**THANK YOU**

Defendant [name], by and through [his or her] attorney, in the above styled and numbered cause, files this answer to the Plaintiff's petition and would show the court as follows:

### 1. General Denial

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

## **2. Alternative Pleadings**

Pleading further, and in the alternative, if such be necessary and without limiting or waiving the above general denial, Defendant state the specific grounds for any affirmative defenses as to why the sworn account is not due and owing and list which offsets and credits have not been allowed.

## **3. Lack of capacity**

Pleading further, and in the alternative, if such be necessary and 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 liable to Plaintiff in the capacity in which Plaintiff has sued Defendant.

## **4. Defendant did not sign for liability**

Pleading further, and in the alternative, if such be necessary and without limiting or waiving the above general denial, Defendant states that Defendant did not sign the [identify] referred to in Plaintiff's Petition as an individual for purposes of individual liability and therefore Defendant is not liable for those monies, if any, that are owed. Pursuant to Rule 93 of the Texas Rules of Civil Procedure, this Answer constitute a sworn denial of execution of that [describe the document] with respect to this Defendant, [name], in Defendant's capacity as an individual for personal liability.

## **5. No representation for corporate debt]**

Pleading further, and in the alternative, if necessary and without limiting or waiving the above general denial, Defendant states that Defendant has not represented to Plaintiff that Defendant was

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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 merely acting on the behalf of the corporation.

Accordingly, Plaintiff should be estopped and prevented from asserting that Defendant is liable in an individual capacity.

### PRAYER

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

Respectfully Submitted,

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

By

**THIS DOCUMENT**

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

Attorney for Plaintiff

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

### 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 \_\_\_\_\_.  
**THANK YOU**

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

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

Attorney's address [Other attorney's address]

Type of Service:

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\_\_\_ 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.

**PREVIEW**

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

**Form: Affidavit of individual defendant**

**AFFIDAVIT OF INDIVIDUAL DEFENDANT**

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

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BEFORE ME, a Notary Public in and for [County], Texas, on this day personally appeared [name of Affiant], 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, that [he or she] has read the foregoing Answer, and that the Answer is in every statement and allegation true and correct to [his or her] own personal knowledge.

**THIS DOCUMENT**

\_\_\_\_\_  
Affiant's Signature

Affiant on oath swears that the statements are true and correct based on his or her personal knowledge and Affiant has:

State of Texas  
County of [County Name]

Subscribed and sworn to before me on \_\_\_\_\_ by [Name]

**THANK YOU**

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

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

My commission expires:

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

Form: Affidavit of authorized agent of corporate defendant

**PREVIEW**

**AFFIDAVIT OF AUTHORIZED AGENT OF CORPORATE DEFENDANT**

The State of Texas

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

BEFORE ME, a Notary Public in and for [County], State of Texas, on this day personally appeared [name of Affiant], who being by me duly sworn, on [his or her] oath deposed and stated that [he or she] is the duly authorized agent of [name of corporation], 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 true and correct to [his or her] own personal knowledge.

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\_\_\_\_\_  
Affiant's Signature

Affiant on oath swears that the statements are true and correct based on his or her personal knowledge and Affiant has:

State of Texas

County of [County Name]

Subscribed and sworn to before me on \_\_\_\_\_ by [Name]

**THIS DOCUMENT**

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

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

My commission expires:

**THANK YOU**  
[for Notary's Stamp]

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