

Attachment 4: Affirmative Defenses–Contract

Ambiguity – Plaintiff did not clearly state the amount or the issue(s) in this case, which makes it hard for me to respond. I ask the Court to allow me to add more defenses later if I need to.

Failure to Mitigate Damages – Plaintiff is not entitled to interest and/or attorneys’ fees when it allowed them to add up unnecessarily by:

___ refusing a reasonable settlement offered by Defendant.

___ failing to take prompt action to collect the alleged debt, to try to obtain a reasonable settlement with Defendant; and/or to file a lawsuit in Court to collect.

Common Counts Only – Plaintiff is not entitled to the amount demanded in the Complaint:

___ Plaintiff failed to give me credit for payments I made.

___ Plaintiff agreed to accept or accepted a lower amount to pay off the debt, but is now asking for more than the amount we agreed to.

___ Plaintiff failed to make payments under the insurance plan I purchased.

___ I am a victim of identity theft and do not owe the debt.

___ All or part of the transactions resulted from fraud, deceit or misrepresentation.

___ Other reason: _____

Breach of Contract by Plaintiff - Plaintiff failed to comply with the terms of the contract by:

___ changing the terms of the contract without my consent.

___ failing to give me credit for payments I made.

___ agreeing to change the original contract, but not honoring the new agreement.

___ failing to make payments under the insurance plan I purchased.

___ breaching the implied warranty of good faith and fair dealing by acting unreasonably, which denied me the benefits I had under the contract.

No Breach of Contract - I did what I was required to do under the contract except anything I was prevented or excused from doing, so I do not owe Plaintiff the money it is demanding.

Breach of Warranty – What I bought was under warranty but did not work as it was supposed to.

Tender of Payment – I offered the full payment I owed but the Plaintiff refused to accept it.

Accord and Satisfaction – Plaintiff and I already resolved our problem, so Plaintiff cannot sue me.

Substantial Compliance – I complied with most of the contract, except for a small part.

Failure to Disclose – Plaintiff did not disclose important information to me, so I could not comply with the contract or was unaware of what I had to do.

Unclean Hands – Plaintiff is attempting to benefit from its wrongdoing.

Unjust Enrichment – Plaintiff would receive more money than it deserves if it wins.

1 **Invalid/Illegal Contract** – The contract is invalid/illegal and cannot be enforced because:

2 ___ **identity theft** – I am a victim of identity theft and do not owe the debt.

3 ___ **fraud, deceit or misrepresentation** – All or part of the contract or transaction resulted
4 from fraud, deceit or misrepresentation by Plaintiff or another party.

5 ___ **lack of acceptance** - I did not agree to the contract or certain terms of the contract.

6 ___ **lack of consideration** - I did not receive any goods or services, received them late, or
7 received goods that were defective and/or services that were substandard.

8 ___ **rescission/return of goods/security- CC § 1691.** On or about _____, I returned to
9 Plaintiff what I received under the contract on condition that Plaintiff cancel my obligation.

10 ___ **incapacity** - I was under 18, mentally or physically incapacitated, or disabled, which
11 prevented me from having the legal capacity to enter into or understand the contract.

12 ___ **duress/undue influence** Plaintiff made me enter into the contract against my will by
13 taking unfair advantage of my mental state/incapacity or by using threats or force.

14 ___ **mistake** – There was a mistake made as to the terms that were agreed to by the parties.

15 ___ **impossibility or impracticability** - I could not comply with the contract because it was not
16 possible or practical to do so.

17 ___ **frustration of purpose** - Something unexpected occurred which totally destroyed the
18 items or goods, or prevented me from receiving them, so I should not have to pay for them.

19 ___ **translation of contract - Cal. Civ. Code § 1632** I negotiated the contract with Plaintiff or
20 its representative in ___ Spanish ___ Chinese ___ Tagalog ___ Vietnamese or ___ Korean. Plaintiff
21 violated this law by failing to give me copies of the contract in my language as required. I
22 revoke and cancel the contract and Plaintiff cannot collect any money from me.

23 **Excuse** – I have a legal reason why I did not have to comply with the contract.

24 ___ **prevented from performance - Cal. Civ. Code § 1511** - Plaintiff or someone else did or said
25 something that prevented me from complying with the contract.

26 ___ **anticipatory repudiation** – Before I had to make payment, Plaintiff told me it would not do
27 what it was supposed to do under the contract, so I did not have to pay anymore.

28 ___ **failure of condition precedent - Cal. Civ. Code § 1498** – Plaintiff did not comply with a
specific term or condition of the contract which it was required to do before I had to pay.

___ **cancellation** – The contract was already cancelled.

1 **Failure to State a Cause of Action** – Plaintiff failed to state an essential element for:

2 Breach of Contract: It is not the original creditor I had an account with and did not state
3 who the original owner of the account was
4 it is now the legal owner of this account and has the right to sue on it
5 It did not state the specific date the contract was entered into
6 It did not state the specific date the contract was breached/not complied with
7 Other: _____

8 Common Counts: It is not the original creditor I had an account with and did not state
9 who the original owner of the account was
10 it is now the legal owner of this account and has the right to sue on it
11 Other: _____

12 Therefore, Plaintiff's claim is invalid and Plaintiff is not entitled to collect the amount demanded.

13 **Statute of Limitations** – Plaintiff cannot proceed with this case or be awarded any money
14 because it filed and/or served its Complaint after the statute of limitations expired under:

15 **Cal. Code of Civ. Proc. § 337 subd. 1; subd. 2 (1),(2),(3)** – An action based on a written
16 contract (**subd. 1**); or an open book account or account stated (**subd. 2 (1),(2),(3)**) must be
17 filed within 4 years from the date of the last item, which is the date the last payment became
18 due, but was not paid, Plaintiff stopped extending credit and there was no more activity.

19 **Cal. Code of Civ. Proc. § 339** – An action based on an oral contract must be filed within 2
20 years of when the cause of action accrued (when the amount became due and not paid).

21 **Delaware Code Ann. Tit.10, § 8106** - An action based on a written contract must be filed
22 within 3 years of when the claim accrued (when the amount became due and was not paid)
23 because the original creditor of the account is incorporated in Delaware and the credit
24 card agreement between Defendant and the original creditor stated that Delaware law
25 applied. (*Resurgence Financial, LLC v. Chambers* (2009) 173 Cal.App.4th Supp. 1)

26 **Discharge by Bankruptcy** – **11 U.S.C. § 362(a)** I filed for bankruptcy, Case #: _____.

27 I ask the Court to stay/suspend Plaintiff's action against me until the bankruptcy case is over.

28 The bankruptcy Court ruled I do not have to pay this debt. I ask the Court to dismiss this case.

Public Policy – Plaintiff violated public policy by engaging in illegal conduct.

Waiver – Plaintiff gave up its right(s) under the contract. It cannot collect the amount demanded.

Standing- Plaintiff is not who I entered into a Contract with.

It did not state that it is the legal owner of this alleged debt and has the right to bring this
case to collect the debt.

It did not provide a copy of an agreement which shows it is the legal owner of this alleged
debt and has the right to bring this case to collect the debt.

Laches – Plaintiff failed to take legal action for a long time, which caused me to believe it was not
trying to collect this alleged debt. This caused me harm as it is now asking for much more money.

- 1 ___ **No Damage to Plaintiff** – Even if Plaintiff’s other allegations are true, Plaintiff did not suffer
- 2 damages (economic loss).
- 3 ___ **Mistaken Identity** – Plaintiff has sued the wrong person.
- 4 ___ **Parol Evidence Rule** – At the time the contract was entered into, it was intended to be the full
- 5 agreement between the parties. Plaintiff cannot now present evidence to change the agreement.
- 6 ___ **Res Judicata/Collateral Estoppel.** - Plaintiff cannot sue me. There was a judgment as to the facts
- 7 and/or legal issues in a prior case. I ask the Court to take judicial notice of Case # _____
- 8 ___ **Usury- CC §§ 1914.12-1, 1916.12-2** - Plaintiff charged a higher interest rate than the law allows.
- 9 ___ **Lack of Venue** – Plaintiff filed in the wrong court.
- 10 ___ **Lack of Jurisdiction** – The Court does not have power to hear this case.
- 11 ___ **Novation** – With Plaintiff’s consent or knowledge, I substituted someone else for myself in the
- 12 contract. I am no longer responsible for any debt related to the contract.
- 13 ___ **Statute of Frauds- CC § 1624(a)(1-7)** – The oral contract is unenforceable because it is required
- 14 to be in writing.
- 15 ___ **Vexatious Litigant- CC § 391.7** – Plaintiff has abused the court system by filing too many
- 16 frivolous lawsuits without an attorney and should be prohibited from filing another lawsuit.