

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ALABAMA

\_\_\_\_\_

Plaintiff,

VS.

\_\_\_\_\_

Defendant.

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CIVIL ACTION NO.:

CV-\_\_\_\_\_

**ANSWER**

COMES NOW the defendant, \_\_\_\_\_, in the above-styled case, by and through counsel, and answers plaintiff's complaint as follows:

1. Defendant denies paragraphs \_\_\_\_\_ of the Complaint and demands strict proof thereof.
2. Defendant admits paragraphs \_\_\_\_\_ of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

(Contributory Negligence)

\_\_\_\_\_The Plaintiff's injuries and damages, if any, were proximately caused by the Plaintiff's own negligence.

**SECOND AFFIRMATIVE DEFENSE**

(Assumption of Risk)

The Plaintiff is barred from recovering for his/her injuries and damages, if any, because the Plaintiff assumed the risk of the activity in which Plaintiff was engaged when Plaintiff was injured.

THIRD AFFIRMATIVE DEFENSE

(Unavoidable Accident)

The Plaintiff's injuries and damages, if any, were proximately caused by an unavoidable accident, which was due to the fault of neither the Plaintiff nor the Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Last Clear Chance)

\_\_\_\_\_The Plaintiff failed to take advantage of the last clear chance to avoid the collision of which the Plaintiff complains, and Plaintiff is therefore barred from recovering anything from Defendant.

FIFTH AFFIRMATIVE DEFENSE

(Collateral Estoppel)

\_\_\_\_\_The issue of liability [or other specified use] was previously decided adversely to the Plaintiff [or to \_\_\_\_\_, a person in privity with Plaintiff], by the \_\_\_\_\_ [Circuit, U.S. District, etc.] Court [of \_\_\_\_\_ County, State of \_\_\_\_\_, or for the \_\_\_\_\_ District of \_\_\_\_\_, etc.], in a case styled \_\_\_\_\_ v. \_\_\_\_\_, Case number \_\_\_\_\_. A certified copy of the opinion and judgment [or verdict and judgment, or pleadings and judgment, etc.] is/are marked Exhibit "A" and is/are attached hereto and is/are incorporated herein by reference.

SEVENTH AFFIRMATIVE DEFENSE

(Res Judicata)

The Plaintiff's cause of action as stated in the Complaint [or in Count(s) \_\_\_\_\_ of the Complaint] is/are barred by the judgment of the \_\_\_\_\_ [Circuit, U.S. District, etc.] Court [of \_\_\_\_\_ County, State of \_\_\_\_\_, or for the \_\_\_\_\_ District of \_\_\_\_\_, etc.], in a case styled \_\_\_\_\_ v. \_\_\_\_\_, Case number \_\_\_\_\_. A certified copy of the opinion and judgment [or verdict and judgment, or pleadings and judgment, etc.] is/are marked Exhibit "A" and appended hereto and incorporated herein by reference.

EIGHTH AFFIRMATIVE DEFENSE

(Arbitration and Award)

Plaintiff's cause of action is barred by an arbitration and award which Plaintiff agreed to participate in and be bound by in the document appended hereto as Exhibit A, which is incorporated herein by reference, and pursuant to which an arbitration hearing was held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the Honorable \_\_\_\_\_, as arbitrator, who on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, made an arbitration award in favor of Defendant. A copy of said arbitration award is appended hereto as Exhibit B and which is incorporated herein by reference.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Plaintiff's cause of action is barred by the Statute of Limitations set out in § \_\_\_\_\_ of the Code of Alabama, 1975 [or \_\_\_\_\_ U.S.C. § \_\_\_\_\_].

TENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

The Plaintiff's cause of action as set out in the Complaint [or Count(s) \_\_\_\_\_ of the Complaint] is/are barred by the Statute of Frauds set out in § 8-9-2 [or § 7-2-201] of the Code of Alabama, 1975, in that [specify how the Plaintiff's cause is barred under the applicable subsection of the Statute of Frauds].

#### ELEVENTH AFFIRMATIVE DEFENSE

(Foreign Corporation's Failure to Qualify to do Business in Alabama)

The Plaintiff is a corporation which is not qualified to do business in the State of Alabama as shown by the attached certificate from the Secretary of the State of Alabama. The Plaintiff is therefore barred from bringing this action by virtue of § 40-14-4 of the Code of Alabama, 1975.

#### TWELFTH AFFIRMATIVE DEFENSE

(Illegality)

The contract [or other instrument] upon which the Plaintiff sues is illegal and unenforceable in that [state why it is illegal].

#### THIRTEENTH AFFIRMATIVE DEFENSE

(Violation of Alabama or federal consumer credit statute)

The Plaintiff cause is barred in that the contract sued upon violates § 5-19-1 et seq., of the Code of Alabama, 1975 [and/or 15 U.S.C. § 1601 et seq.], in that [explain why the contract violates the statute]. [Note: See § 1-16 supra, for a sample Complaint asserting a cause of action under these statutes, which by switching the terms "Plaintiff" and "Defendant" can be used to plead a counterclaim. The Alabama statute is commonly called the "Mini-Code" and the federal statute is commonly called the "Truth in Lending Act."]

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to give notice required by U.C.C.)

The Plaintiff's cause of action, if any, and remedy, if any, are based upon the Alabama Uniform Commercial Code, § \_\_\_\_ of the Code of Alabama, 1975. The Plaintiff has failed to give notice of the alleged breach of warranty [or contract] alleged in the Complaint [or in Count \_\_\_\_ of the Complaint]. Plaintiff's said cause of action is therefore barred by § 7-2-607(3) of the Code of Alabama, 1975.

FIFTEENTH AFFIRMATIVE DEFENSE

(Release)

The Plaintiff's cause of action alleged in the Complaint [or in Count \_\_\_\_ of the Complaint] is barred by a release executed by Plaintiff on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of which is marked Exhibit A and which is appended hereto and made a part hereof by reference.

SIXTEENTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

1. The Defendant avers that the Plaintiff's claim was compromised, settled, and adjusted by verbal [or written] agreement of the parties on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that Defendant paid to the Plaintiff the amount agreed upon.

2. The Defendant affirmatively [pleads an accord and satisfaction of the Plaintiff's claim against the Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Payment)

The Defendant avers that Defendant paid the Plaintiff \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as payment in full of Plaintiff's claim on or about \_\_\_\_\_, \_\_\_\_\_.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Discharge in Bankruptcy)

1. The Plaintiff's claim against Defendant was listed as a scheduled debt of Defendant or claim against the Defendant in Defendant's petition filed in the United States Bankruptcy Court for the \_\_\_\_\_ District of Alabama, in Case No. \_\_\_\_\_.

2. Defendant was granted a discharge as to Plaintiff's claim in said Bankruptcy case by an Order dated \_\_\_\_\_ [a copy of which is attached hereto as Exhibit A.]

NINETEENTH AFFIRMATIVE DEFENSE

(Fraud)

The contract [deed or other instrument] upon which the Plaintiff sues was procured by fraud on the part of the Plaintiff in that [here describe the fraud].

[Note: Rule 9(b) of the Alabama Rules of Civil Procedure, states in part: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Thus, the practitioner should allege all facts upon which the contention of fraud is based.]

TWENTIETH AFFIRMATIVE DEFENSE

(Laches)

The Plaintiff's cause of action as set forth in the Complaint [or in Count(s) \_\_\_\_\_ of the Complaint] is barred by doctrine of laches in that [here set out with particularity the reasons why the doctrine should be invoked by the Court, especially how the Defendant has ben prejudiced].

#### TWENTY-FIRST AFFIRMATIVE DEFENSE

(Undue Influence)

The contract [deed or other instrument] upon which the Plaintiff sues was procured by the Plaintiff by undue influence in that Plaintiff took unfair advantage of the Defendant [or \_\_\_\_\_, a person in privity with the Defendant], and unduly influenced the Defendant [or \_\_\_\_\_, a person in privity with the Defendant] in procuring the contract [deed or other instrument] sued upon in that [here describe the relationship and/or conduct constituting undue influence].

#### TWENTY-SECOND AFFIRMATIVE DEFENSE

(Duress or Coercion)

The contract [deed or other instrument] upon which the Plaintiff sues was procured by the Plaintiff through duress [and/or coercion], in that [here describe with particularity the conduct which constitutes duress or coercion].

#### TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure or lack of Consideration)

The contract [deed or other instrument] upon which the Plaintiff sues is unenforceable [because the consideration failed in that (state reason - e.g., "the check given by Plaintiff was dishonored by the bank upon which it was drawn"); or

because the Plaintiff gave no consideration as contemplated by the said contract (deed or other instrument)] and there was therefore no mutuality of consideration.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(License)

The Defendant's use of the Plaintiff's \_\_\_\_\_ [state item used - e.g., "patent," "process," etc.] was lawful and authorized by virtue of a license [or permit, etc.], a copy of which is appended hereto as Exhibit A and which is incorporated herein by reference.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Unconscionability)

The contract upon which the Plaintiff sues is subject to the provisions of the Alabama Uniform Commercial Code. Said contract was unconscionable at the time it was made in that [describe why the contract is unconscionable]. Said contract is therefore unenforceable under § 7-2-302 of the Code of Alabama, 1975.

OF COUNSEL:

\_\_\_\_\_

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that I have on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, served a copy of the foregoing by mailing same by U. S. Mail, first class postage prepaid and properly addressed, to the following:

(List counsel for all parties)



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