

Motion to Dismiss in a Debt Collection Suit Instructions, Example, Sample Form

If the Plaintiff did not give you the documents you requested in [Discovery](#), and they did not give you documents after you filed a [Motion to Compel](#), you can file a [Motion to Dismiss](#). To learn more about Discovery and "Motion to Compel" visit www.MassLegalHelp.org and search "Discovery + Consumer".

These are instructions for the "Motion to Dismiss" form. We have included an example Motion to Dismiss from Kerry Timberland to help you understand the instructions. Kerry is a made up person.

- 1.** At the top left corner of the Motion form you will see "_____, ss". This is where you write the county you live in. Put in the same county that is on the complaint that the plaintiff sent to you.
 - In the example, Kerry lives in Dorchester so she lives in Suffolk County.
- 2.** On the "____ Division" line, write in where the court is located.
 - The Court is located in Dorchester so Kerry wrote in "Dorchester."
- 3.** Write in the docket number on the "Docket no._____" line. You can find this number on the complaint that the Plaintiff sent you.
 - Kerry's number was on the top right corner of the complaint so she copied it onto the answer as "2011-CV-3833"
- 4.** The "_____plaintiff" line needs to say who is suing you. Copy the name listed on the complaint before the word "plaintiff".
 - The Bank of New Debt is suing Kerry so she wrote "Bank of New Debt" on the line before "plaintiff".
- 5.** The "_____defendant" line needs to say who is being sued. Copy the name listed on the complaint before the word "defendant" on your answer. It is probably your name.
 - The Bank of New Debt is suing Kerry so she wrote her name on the line before "defendant".
- 6. In the body of the motion** fill in the information from the Motion to Compel Hearing. Write:
 - i. the Date the Judge ordered the Plaintiff to do something;
 - ii. what the Judge ordered them to do;
 - iii. the date you mailed the motion to compel notice;
 - iv. the date of the hearing; and

- v. the date the judge said they needed to give you documents.
- Kerry mailed her Discovery request April 10 and did not receive anything from the Plaintiff so she wrote in April 10th. She mailed the Motion to Compel on June 30, 2012 so she wrote that date. The hearing was July 15, 2012. The Judge gave the Plaintiffs until July 30, 2012 to give her documents so she wrote that date as well. The plaintiff did not give her any documents so she filed this motion.

7. Sign the motion.

8. In the “Notice of Hearing Section” Call the Civil Clerk’s Office of the court where your case is located. Ask when they have a hearing date for your motion to be heard. The hearing days are usually the same day and time every week. Pick the date 2 weeks away and write it in the “Notice of Hearing” section of your motion.

- Kerry’s District Court has a hearing date on the 15th of August. That is 2 weeks from the day she is mailing her motion so she wrote it in on the motion.

9. In the “Certificate of Service” section, write:

- today’s date;
- the address of the plaintiff; and,
- check “hand delivery” or “first class mail.”

10. Make two copies of everything;

11. Mail the original motion to the court;

12. Mail a copy to the plaintiff; and

13. Always keep a copy for yourself.

14. Go to court on the hearing date. See [MassLegalHelp](#) and search for [When you go to court on the motion date](#)

EXAMPLE MOTION TO DISMISS

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT OF THE COMMONWEALTH

SUFFOLK, ss.

DORCHESTER DISTRICT COURT
DOCKET NO. 2011-CV-

3833

Bank of New Debt)
Plaintiff,)
)
v.)
)
(Your name) Kerry Timberland)
Defendant.)

DEFENDANT'S MOTION TO DISMISS

NOW COMES the Defendant who hereby asks the Court to dismiss this case under Massachusetts Rules of Civil Procedure R. 37 (b)(2) (c) due to the Plaintiff's failure to comply with the Court's order dated July 15, 2012 ordering Plaintiff to (what the court told the plaintiff to do) to provide defendant with answers to discovery requests.

In support of this motion, the Defendant states:

1. Defendant mailed via first class mail the Plaintiff's counsel discovery requests including Request for Production of Documents on (date) April 10, 2012.
2. The Plaintiff did not respond to the Discovery Request with any documents.
3. Defendant mailed via first class mail to the Plaintiff's counsel Defendant's Motion to Compel Discovery on (date) June 30, 2012.
4. A hearing on Defendant's Motion to Compel Discovery was held on (date) July 15, 2012.
5. At said hearing the Court allowed Defendant's Motion to Compel requiring documents to be provided by (date) July 30, 2012.
6. Documents have not been provided at this time.

The Defendant respectfully requests the Court dismiss this case under Massachusetts Rules of Civil Procedure R. 37 (b)(2) (c) due to the Plaintiff's failure to comply with the Court's Order.

Respectfully submitted,

Signed: Kerry Timberland
Your name: Kerry Timberland

Notice of Hearing

After calling the court to verify an open motion date, this motion has been marked for hearing on
Date: August 15, 2012 at 9 AM o'clock.

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for the
Plaintiff (*check one*) in hand () or by regular first class mail postage pre-paid () at this address:
Law Firm of Ted Roco for Bank of New Debt, 1 Kimble St, Boston, MA
02222 on (date) July 30, 2012.

Kerry Timberland July 30, 2012

EXAMPLE

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT OF THE COMMONWEALTH

_____, ss.

DISTRICT COURT

DOCKET NUMBER

Plaintiff,
v. _____
(Your name) _____
Defendant.

DEFENDANT'S MOTION TO DISMISS

NOW COMES the Defendant who hereby asks the Court to dismiss this case under Massachusetts Rules of Civil Procedure R. 37 (b)(2) (c) due to the Plaintiff's failure to comply with the Court's order dated _____ ordering Plaintiff to (what the court told the plaintiff to do)_____.

In support of this motion, the Defendant states:

- 7. Defendant mailed via first class mail the Plaintiff's counsel discovery requests including Request for Production of Documents on (date)_____.
- 8. The Plaintiff did not respond to the Discovery Request with any documents.
- 9. Defendant mailed via first class mail to the Plaintiff's counsel Defendant's Motion to Compel Discovery on (date)_____.
- 10. A hearing on Defendant's Motion to Compel Discovery was held on (date)_____.
- 11. At the hearing the Court allowed Defendant's Motion to Compel requiring documents to be provided by (date)_____.
- 12. Documents have not been provided at this time.

The Defendant respectfully requests the Court dismiss this case under Massachusetts Rules of Civil Procedure R. 37 (b)(2) (c) due to the Plaintiff's failure to comply with the Court's Order.

Respectfully submitted,

Signed: _____

Your name:

Notice of Hearing

After calling the court to verify an open motion date, this motion has been marked for hearing on Date:
_____ at _____ o'clock.

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for the Plaintiff
(*check one*) in hand () or by regular first class mail postage pre-paid () at this address:

_____ On (date)_____.

Signature

Date