

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR OCURT DEPARTMENT  
CIVIL ACTION NO. 1584CV03703-BLS

LUSTIG, GLASER & WILSON, P.C.,

Plaintiff,

v.

DAVID J. COTNEY, in his capacity as the  
Commissioner of Banks, and  
MASSACHUSETTS DIVISION OF BANKS,

Defendants.

**DEFENDANTS' ANSWER TO FIRST VERIFIED AMENDED COMPLAINT**

Defendant David J. Cotney, in his capacity as the Commissioner of Banks, and the  
Massachusetts Division of Banks (“the defendants”) answer the Complaint by corresponding  
paragraphs, and assert the following defenses:

1. The first sentence of paragraph 1 merely introduces the action and therefore no answer is required. The first clause of the second sentence constitutes legal argument and therefore no answer is required. With respect to the remainder of the second sentence, the state defendants admit that the Division issued the referenced opinion and answer further that the opinion speaks for itself. The third sentence of paragraph 1 constitutes legal argument and therefore no answer is required. The fourth sentence of paragraph 1 merely states the plaintiff’s requested relief and no answer is required.
2. Upon information and belief, the state defendants admit the allegations in paragraph 2.
3. Admitted.
4. Admitted.

### III. FACTS

5. To the extent paragraph 5 characterizes and summarizes the meaning of statutes, those statutes speak for themselves and no answer is required. The remainder of the allegations in paragraph 5 constitute legal argument and no answer is required.
6. Paragraph 6 characterizes and summarizes the meaning of regulations, which speak for themselves and no answer is required.
7. The first sentence of paragraph 7 constitutes legal argument, not an allegation of fact, and therefore no answer is required. The second and third sentence of paragraph seven merely summarize and characterize documents, which speak for themselves and no answer is required. The defendants admit the fourth sentence of paragraph 7. The fifth sentence of paragraph seven merely summarizes and characterizes documents, which speaks for themselves and therefore no further answer is required. Upon information and belief, the defendants admit the sixth sentence of paragraph 7.
8. The defendants admit that LGW is a law firm located in the Commonwealth of Massachusetts whose Massachusetts attorneys concentrate their practice in the area of consumer debt collection, but lack sufficient knowledge or information to form a belief as to the truth or falsity of the remainder of the allegations in paragraph 8.
9. With respect to the first sentence of paragraph 9, the defendants admit that Kenneth Wilson wrote to the Division by letter dated September 9, 2013, requesting an opinion. The remainder of the first sentence simply summarizes and characterizes a document, which speaks for itself and no further answer is required. The defendants admit the second sentence of paragraph 9.
10. Admitted.
11. The defendants admit that by letter dated November 2, 2015, the Division informed LGW of its opinion that LGW is a debt collector and therefore requires a license to conduct its debt collection business. With respect to the second sentence of paragraph 11, the first three clauses constitute legal argument and no answer is required. The fourth clause of the second sentence characterizes and summarizes the meaning of documents, which speak for themselves and no answer is required. The fifth clause of the second sentence constitutes legal argument and no answer is required. The third sentence of paragraph 11 characterizes and summarizes the meaning of a document, which speak for itself and no answer is required. The state defendants admit the fourth sentence of paragraph 11.
12. The state defendants admit that their November 2, 2015 letter gives affected law firms six months to register, to post a bond, and to obtain a license from the Division. The remainder of the first sentence of paragraph 12 characterizes and summarizes the meaning of a document, which speaks for itself. Therefore, no answer is required. The defendants admit the second sentence of paragraph 12.

#### IV. CAUSES OF ACTION

(Count I - Declaratory Judgment, G.L. c. 231A, § 1)

13. The foregoing Answers to paragraphs 1 through 12 are incorporated herein by reference.
14. The allegations in paragraph 14 state a legal conclusion to which no answer is required.
15. The allegations in paragraph 15 state a legal conclusion to which no answer is required.
16. The allegations in paragraph 16 state legal conclusions and speculation to which no answer is required.
17. Denied.

(Count II – G.L. c. 231, §1 – Separation of Powers)

18. The foregoing Answers to paragraphs 1 through 17 are incorporated herein by reference.
19. The allegations in paragraph 19 state a legal conclusion to which no answer is required.
20. Denied.
21. The allegation in paragraph 21 is merely a quote from Article XXX of the Massachusetts Constitution's Declaration of Rights, which speaks for itself and no answer is required.
22. The allegations in paragraph 22 state a legal conclusion to which no answer is required.
23. The allegations in paragraph 23 state a legal conclusion to which no answer is required.
24. Denied.
25. Denied.
26. Denied.

(Count III: Violation of Civil Rights, 42 U.S.C. § 1983 and G.L. c. 12, § 11I)

27. The foregoing Answers to paragraphs 1 through 26 are incorporated herein by reference.
28. Denied.
29. Denied.
30. The allegations in paragraph 30 state a legal conclusion to which no answer is required.

31. Denied.

(Count IV - Injunctive Relief)

32. The foregoing Answers to paragraphs 1 through 31 are incorporated herein by reference.

33. The allegations in paragraph 33 state legal conclusions to which no answer is required.

34. The allegations in paragraph 34 state legal conclusions and speculation to which no answer is required.

35. Denied.

36. Denied.

#### **V. DEMAND FOR RELIEF**

The remainder of the plaintiff's Complaint constitutes a demand for relief, to which no answer is required.

#### **AFFIRMATIVE DEFENSES**

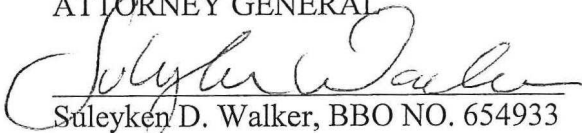
1. The plaintiff has failed to state a claim for relief under 42 U.S.C. § 1983, where the facts pled fail to establish a violation of a federal or constitutional right, and thus Count III should be dismissed under Mass. R. Civ. P. 12(b)(6).
2. The plaintiff has failed to state a claim for relief under G.L. c. 12, § 11I, where the facts pled fail to establish any threat, intimidation or coercion, or other attempt to interfere by threats, intimidation or coercion, in a right or rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth. Count III must therefore be dismissed under Mass. R. Civ. P. 12(b)(6).
3. The plaintiff has failed to state a sufficient claim for injunctive relief involving a state agency or official and so Count IV should be dismissed under Mass. R. Civ. P. 12(b)(6).
4. The state defendants hereby gives notice that they intend to rely upon such other and further defenses as may become available or apparent during further proceedings in this action and they reserve the right to amend their Answer and to assert any such defense by appropriate motion.

Respectfully submitted,

DAVID J. COTNEY, in his capacity as the  
Commissioner of Banks, and the  
MASSACHUSETTS DIVISION OF BANKS

By their attorney,

MAURA HEALY  
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was sent to each of the attorney of record for each of the party by mail (by hand) on 1/29/2016

