Debt Collection and Judgment Enforcement

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PART ONE:
DEBT COLLECTION
A debt collection case arises from the debtor’s default in payment of an obligation to a lender or a seller. Debt collection cases are similar to other kinds of cases, with certain exceptions. First, litigation rarely involves substantial issues of fact or law. The debtor usually seeks to delay the entry of judgment and to conceal his or her assets thereafter. Second, as they are usually referred on a contingent fee basis, no single case can be expected to carry its own weight economically; therefore, profitability depends upon a volume of similar cases coming from the same source.

Since the majority of debt collection cases will go to judgment by default, it is not necessary to determine all the facts and evidence at the outset of the case. Even with consumer cases, the federal Fair Debt Collection Practices Act generally does not require an independent investigation of all facts prior to collection activities, but there must be a more thorough examination of the facts and documents upon receipt of a dispute. However, it is imperative that the attorney correctly identify the legal entity of the debtor prior to the suit. You may have to check the assumed names records of the local county clerk. If the debtor is a corporation or limited liability company, you should be able to verify it online.

Debt collection cases are categorized as either consumer or commercial. A consumer credit transaction arises when credit is extended to an individual for personal, family or household purposes. The money owed is usually collected in small installments, through voluntary payments or by means of an income execution. A commercial debt collection arises from a transaction between businesses and is, often, collectible at once or in large payments. Commercial collections involve larger sums of money, and consequently the fee structure is often different. Commercial clients often wish to retain a greater degree of control over the conduct and settlement of the case. Business debtors have a greater variety of assets from which to collect than do consumer debtors, but usually are more sophisticated in avoiding creditors.

I. FORWARDERS

Debt collection cases are referred either directly from clients or from a collection agency or attorney called a forwarder. The receiving attorney is known as the receiver. Although the receiver is the client’s attorney, the forwarder may also advise the client and provide objective advice and assistance to both the client and the receiving attorney. For the client, the forwarder offers a degree of sophistication that the client usually cannot command in his or her dealings with attorneys. Furthermore, while the client may only send a claim or two to the attorney, the forwarder may send dozens, thus giving the forwarder a greater influence with the attorneys acting on the client’s behalf.

These relationships of forwarders and receivers are unique to the collection practice. Corporate lawyers do not wish to handle collections on a contingent fee basis; the creditor does not wish to have its collections handled on an hourly basis. The creditor may have a large number of claims involving debtors located in different locations around the country, and has neither the staff nor the ability to follow up on the large number of attorneys that is required to handle these claims. Therefore, the client depends on a forwarder or collection agency to handle the details according to an established system that has evolved through the years. Also, forwarders and collection agencies are able to provide attorneys with a volume of collections sufficient to justify handling them. At present, only Buffalo and New York City license these agencies. New York is one of 16 states which have no statewide license

requirement. Proposed legislation providing for licensing of collection agencies, including attorneys conducting collection activities similar to a collection agency, has previously been introduced in both Houses of the New York State Legislature. I would anticipate that a licensing statute will ultimately be passed in one of the upcoming legislative sessions.

II. COMMERCIAL LAW LEAGUE OF AMERICA AND LAW LISTS

The Commercial Law League of America is an international organization of lawyers, collection agencies and law list publishers. The Law League advocates the interests of creditors and sponsors national and regional conventions for its members. These conventions act as clearinghouses for information and educational purposes, including classes for CLE credits.

Law lists are private publications that provide names, addresses and telephone numbers of lawyers in the commercial collection field for specific regions organized by state and city. These lists are distributed to forwarding agencies, attorneys and anyone else upon request. The attorneys listed pay a fee for their listing. The list bonds the attorney and usually limits listings within a geographic area, so that the attorney’s inclusion will be of some economic value to him or her. Forwarders usually require that an attorney appear on some recognized list so that they will be protected by the list’s bonding function from a receiving attorney who defaults on his or her obligations. An attorney who wishes to practice in the debt collection area should attempt to be listed in at least one of the nationally recognized lists. Notwithstanding the commercial nature of the lists, they often provide a good, repetitive source of consumer collection work as well.

III. ATTORNEY FEES

Debt collections may be done on a contingent fee, hourly rate or piecework basis. Hourly rates are generally limited to the isolated case of substantial size that an attorney handles for a regular client. Piecework or per-case fees are usually used only in consumer collections and can only be profitable if the work is done with forms and on a volume basis.

Contingent fees are the most popular arrangement in collection cases. Although some cases generate little or no fee, others provide substantial fees; and, with a sufficient volume, the cases should balance out to a profitable return. The contingent fee has advantages for both creditor and attorney. The creditor knows there is an incentive for the attorney to do his or her work promptly and aggressively. Further, the creditor will not expect to pay a fee where there has been no collection but will not mind paying the full fee when the claim is collected. For the attorney, there is the immediate award for good work—a reasonable fee. An attorney who has a substantial volume of good collection cases should be able to make a profit on contingent fees. If the attorney does not, there is something wrong with his or her system or with the quality of the claims themselves.

Contingent fee rates for consumer collections vary from one-third to one-half of the amount collected. Fees for commercial cases are usually priced at rates originally suggested by the Commercial Law League of America. Although officially abandoned due to concern over antitrust violations, these rates are still in general use: 20% of the first $300 collected; 18% of the next $1,700; and 13% of anything over $2,000, with minimum commissions of $25; but on all collections of $75 or less, 33 1/3%.

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4 Effective March 4, 2002, N.Y. Comp. Codes R. & Regs. tit. 22, pt. 1215 (N.Y.C.R.R.) states that an attorney must provide a letter of engagement to a client, where the fee to be collected is expected to be $3,000 or more. The rule requires that the letter of engagement explain the scope of the representation, the fees and expenses to be charged and provide notice of the client’s right to arbitration in the event of a fee dispute. The rule does not apply to domestic relations matters covered by 22 N.Y.C.R.R. pt. 1400 or to cases “where the attorney’s services are of the same general kind as previously rendered to and paid for by the client.”
These rates are also subject to an additional suit fee, which is usually 10% of the amount collected. An attorney who takes a case into litigation should, if possible, charge a suit fee in advance of 5% and the full 10% if the claim is collected in full, following litigation. Even if collection is made shortly after the issuance of a summons and complaint, the attorney should still charge the full 10% to make up the time he or she spends on claims which prove to be uncollectible.

The above rates apply to cases received from a forwarder. Of course, the forwarder must also be paid. However, legal ethics and the rules of the Commercial Law League of America prohibit fee splitting between the attorney and the forwarder. The forwarder usually receives his or her fee directly from the client and normally charges somewhere in the neighborhood of 7% of the amount collected over and above what the attorney charges. Thus, the total fee for which the client is responsible comes to approximately one-third of the amount collected. The lawyer who deals with direct clients and forwarders should be aware of the amounts of the forwarder’s share and adjust his or her own fees with direct clients accordingly. It is suggested that a fee of one-fourth the amount collected before suit and one-third of the amount collected after suit is a reasonable schedule when there is no forwarder.

Consideration also should be given to the return of merchandise in satisfaction of the claim. By custom, it is expected that a fee at the established commission rate will be charged based upon one-half of the value of the return.

Usually a claim from an experienced forwarder will contain a statement of the attorney fees to be charged. In the attorney’s acknowledgment to the forwarder, he or she should relate any desired rate changes and should not undertake collection efforts until both the forwarder and the attorney are in agreement on the rates. If the forwarding letter contains no fees or commissions, the attorney should be sure to include them in the acknowledgment. The receiving attorney always is expected to submit suit requirements (a request for an advance on the suit fee and expenses) prior to actually bringing suit on the claim.

IV. FEES FOR DEFENDING A COUNTERCLAIM

An attorney who handles a collection case on a contingent fee basis should charge an additional fee for defending counterclaims. If the counterclaim is serious and involves issues separate from the principal claim, the attorney charges on an hourly basis. When a serious counterclaim is asserted, he or she should ask for a reasonable retainer, especially when dealing with an out-of-state client. However, if the counterclaim is merely a restatement of the issues of the complaint and essentially a delaying tactic, the client will be better served if charged a small, flat, noncontingent fee as a retainer for defending the counterclaim. A creditor may have insurance to cover some types of counterclaims and, if so, has the option of having its insurer retain counsel for such purpose.

V. DISBURSEMENTS

The increased cost of litigation makes it impractical and unprofitable for a lawyer to advance the disbursements required to commence litigation. In addition, the rules of the Commercial Law League of America prohibit a lawyer from paying for the cost of litigation without an express agreement for reimbursement by the creditor. New York Judiciary Law § 488(2) was amended in 2006 to permit an

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attorney to advance costs in certain circumstances, even if the client may not ultimately be required to reimburse same. When a decision is made to sue, the attorney should ask for a cost advance to cover anticipated disbursements from the forwarder or the creditor. The amount of the filing fees will depend upon the anticipated fees for service of process, court motion fees, execution fees and other post-judgment expenses. Where a case is to be sued in supreme court, where the index number fee alone is $190, which really comes up to $210 with the surcharges, it would not be unusual to ask for a disbursement advance of between $400 and $500. It could be even higher depending on the number of defendants that must be served or whether the attorney will need to pay an RJI fee and a motion fee to have the court act on an attorney fee application. Money so advanced should be accounted for at the conclusion of the case.

VI. RECEIVING THE CLAIM

The key to success in debt collections is the orderly and expedient handling of claims as soon as they are received. Because volume is integral in debt collections, many of the routine tasks should be assigned to a secretary or legal assistant. Upon receiving a claim, the following steps should be taken:

1. Perform a conflicts check to ensure your firm is not representing the debtor or is adverse to the creditor in other matters.

2. Open a separate file for each case and incorporate it in a tickler or diary system.

3. Evaluate the claim.

4. Evaluate the debtor and determine its correct legal entity.

5. Make a written demand on the debtor.

6. Acknowledge the claim to the client or forwarder.

7. Make a follow-up demand by telephone.

It is important to the client or the forwarder that the attorney promptly acknowledge the claim. The attorney should make an immediate demand on the debtor because this establishes his or her presence in the case and the right to a fee for any payments made, whether to the attorney or directly to the client.

Much of the success in debt collection cases arises out of an orderly follow-up of the case. The attorney should establish a tickler or diary system in order to follow the case properly and also to avoid missing deadlines or court appearances. The filing system should provide a means for recording collections, remittances, expenses and cost advances.

Most debt collection firms use computer software programs to track and diary collection cases. There are software systems available that not only provide diary systems but also interface with word processing systems to prepare summonses and complaints, judgment rolls, execution and other enforcement forms. Some software systems will even automatically prepare documents when scheduled to do so. The Commercial Law League of America publishes bi-monthly magazine titled Commercial Law World, which contains advertisements for these kinds of software systems and articles pertinent to debt collection.

7 N.Y. Civil Practice Law & Rules 8018(a)(1) (CPLR).
VII. EVALUATING THE CLAIM

Most debt collection claims will result from open account sales of goods, wares and merchandise delivered to a debtor, or from the rendering of services. The creditor or forwarder should at least send the attorney a copy of any credit application, agreement, guaranty, and a statement of the account. The creditor should also be encouraged to send copies of the invoices making up the account, and any other documentation or information that he or she has on file, such as correspondence, records of telephone conversations and copies of payment checks received from the debtor.

Upon initial review of the documentation and, if necessary, in conversations with the creditor, the attorney should try to ascertain any possible statute of limitations problems and notice requirements under N.Y. Uniform Commercial Code § 2-702 (UCC) or U.S. Bankruptcy Code § 546. If the client deals in material used in the construction industry, the attorney should try to ascertain whether the client has any mechanic’s lien rights, or labor and material payment bond rights, or trust fund rights. It is incumbent upon the attorney to take all appropriate steps necessary to protect all the client’s rights and to maximize the chance of recovery.

The documentation should also be reviewed to establish whether the claim is a commercial claim or a consumer claim. Consumer claims require that any suit be brought where the contract was signed or where the debtor resides at the commencement of the action.8 Also, the provisions of the Fair Debt Collection Act will apply.9

A consumer claim is defined as “a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.”10

Also, the documentation should be reviewed and the client interviewed to determine whether the client has any collateral means of recovering on its debt. There may be a security interest in the debtor’s property, a guaranty by a third party, or a labor and material payment bond that guarantees payment of the client’s materials. Also, the documentation may contain an agreement by the debtor to pay attorney fees or to pay interest in excess of the statutory rate (currently 9% per annum).11 In those cases, demand should be made upon the debtor not only for the principal amount of the claim, but also for the attorney fees and for the interest as computed to the date of demand.

The following checklist will aid the attorney in evaluating the claim and assist in determining what action to take to best protect the client and to maximize the recovery on the claim:

1. Identify transaction—causes of action
   a. Goods, wares, merchandise sold and delivered
   b. Services rendered
   c. Account stated

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8 CPLR 503(f); see 15 U.S.C. § 1692i(a)(2); Hess v. Cohen & Slamowitz LLP, 637 F.3d 117 (2d Cir. 2011).
9 See infra X.A.
10 CPLR 105(f).
11 CPLR 5004.
d. Promissory note  

e. Replevin (recovery of chattel)  

f. Lien rights, bond rights or trust fund rights  

g. Reclamation  

h. Other, credit card purchases, NSF checks, deficiency actions  

i. Lease or rentals  

2. Identify relevant statutes of limitation  

a. CPLR 213—six-year statute on contracts, notes, other causes of action with no other limitation  

b. UCC § 2-725—four-year statute in contracts for sale of goods  

c. CPLR 214(3)—three-year statute for damage to property or action to recover chattel or to recover damages for taking or detention of a chattel  

d. UCC § 2-702—10-day limitation on reclamation demand  

e. U.S. Bankruptcy Code § 546(c)—Effective April 20, 2005, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), this section of the Code was amended to permit reclamation of goods received by an insolvent debtor within 45 days of the filing. It also extended the deadline for a creditor to make a reclamation demand from 10 to 20 days after the commencement of the case.  

f. N.Y. Lien Law § 10(1)—four-month limitation on filing mechanic’s lien on single-family dwelling; eight-month limitation on filing mechanic’s lien on other real property; and where the notice of lien is for retainage, the lien may be filed within 90 days after the date the retainage was due to be released.  

g. Lien Law § 12—30 days after completion and acceptance limitation on filing mechanic’s liens on public improvements  

h. Lien Law § 77(2)—one-year limitation following completion of the construction to enforce trust fund claims under article 3-A of the Lien Law  

i. Miscellaneous notice requirements and limitation requirements in payment bonds  

j. Agreements on contracts between parties fixing time limitations  

3. Identify all possible defendants  

a. Original debtor as per invoices, etc.—correct legal composition  

b. Guarantors on credit applications, etc.  

c. Makers, drawers, endorsers of commercial paper

d. Responsible parents for minor children

e. Bonding companies and/or general contractors

f. Owner of real estate where merchandise was used

g. Banks for improper dishonor of negotiable instruments

h. Prior owners and new owners, depending on terms of buy-sell

4. Miscellaneous

a. Agreements allowing for recovery of attorney fees

b. Agreements allowing for addition of late charges and interest greater than 9% per annum.

c. Debtors in bankruptcy—pre-petition vs. post-petition transactions and their differing rights

d. Arbitration clauses prohibiting suit

e. Agreements on venue and venue rules 13

f. Consumer vs. nonconsumer claims

VIII. EVALUATING THE DEBTOR

Collecting a claim and earning a fee will depend in large part on the attorney investigating and evaluating not only the claim but also the debtor. It will be a waste of the client’s money (for disbursements) and the attorney’s time to proceed with a claim against the debtor who is totally uncollectible. The checklist below suggests some aids for investigating the collectibility of a debtor.

A. Client’s File

The attorney should ask for and review the client’s collection file, statements and invoices. Often these documents contain information that the client does not perceive as important to the collection of his or her claim. Look for the following:

1. Credit reports and credit applications obtained by the client on the debtor.

2. Letters or purchase orders from the debtor, which will reveal the full and correct name, telephone number, names of officers and branch offices of the debtor.

3. Memoranda of telephone numbers and names of people that the client may have talked to in his or her attempts to collect the claims.

4. Notations of debtor’s bank account or copies of checks from prior payments.

13 CPLR 501–513.
5. Any letters or memoranda from the debtor acknowledging or disputing the claim.

6. Review invoices. If they are for delivery of building materials, check the dates and for a difference between the “Bill To” and the “Deliver To” addresses as they may provide the location of the improvement for possible mechanic’s lien purposes.

B. Directories

With the ever-increasing use of cell phones, printed telephone directories have lost much of their value for collection purposes. However, I have found an online site, whitepages.com, that is extremely helpful. It affords you the ability to search for persons or businesses. It provides a reverse directory by telephone number or address. It enables you to identify and obtain contact information on neighbors.

You might also consider a subscription with LexisNexis. Through its Public Records database, you can conduct searches on persons or businesses using names, addresses, telephone numbers or Social Security numbers. The results provide information on dates of birth, other household members, deeds, vehicle registrations, and judgments and liens.

C. Court Records

The review of court and other government records can reveal a wealth of information concerning the debtor. Discussed below are some of the records that can be checked.

1. Judgments, Deeds and Liens

A search of the records of county clerks indexed by the defendant’s name will reveal a wealth of information which is a good indication of the debtor’s collectibility, and the attorneys for the judgment creditor will usually provide some indication of their experience with the debtor. If judgments are satisfied, it is a good indication that the debtor may be solvent. Depending on the location of the debtor, some of this information may also be found online from the county clerk’s records. Currently, each clerk has the ability to determine the manner in which records can be accessed via the Internet, if at all. For example, in the western New York area, some counties’ sites require a subscription for access (e.g., Niagara), fees for copies only (e.g., Erie), or no fee for full access and copies (e.g., Monroe).

2. Security Agreements and Federal Tax Liens

A search for UCC-1 filings will reveal if the debtor has chatted his or her assets. The UCC-1 also describes the debtor’s assets and how long they have been chatted. If the assets have been chatted for a lengthy period of time, assume that the debtor might have some equity in those assets. The UCC search will also reveal federal tax liens against the debtor. A UCC search can be done in person or through the mail by using form UCC-11 and paying the appropriate fee.14

Filings can be checked at no cost from http://appsext7.dos.ny.gov/pls/ucc_public/web_search.main_frame. However, copies are not currently available.

3. Motor Vehicle Lien Search

Liens against a debtor’s motor vehicle (1973 or newer) are not discoverable by a UCC search. Motor vehicle lien records are maintained by the New York State Department of Motor Vehicles in

PART ONE: DEBT COLLECTION

Albany and can be searched by use of form MV-15, or through a service company that has computer access to Department of Motor Vehicle records. Access to DMV records which contain personal information is limited by the Driver’s Privacy Protection Act (18 U.S.C. 2721). Lien status searches can be conducted at http://www.dmv.ny.gov/titlestat/default.html. To obtain abstracts, you can create an account—see http://www.dmv.ny.gov/dialin.htm.

4. Tax Assessor’s Office

A telephone call or visit to the appropriate tax assessor’s office will reveal if the debtor owns the real property for which the attorney has addresses. For a fee, you can subscribe through http://www.real-info.com for comprehensive assessment information. The description and approximate market value of most residences can be obtained by going to http://www.zillow.com.

D. Employment Confirmation

If the attorney has information concerning the debtor’s employment, he or she can try to confirm that employment by a letter to the employer. Although the employer is not required to reply, most employers will reply if furnished with a short form to complete and a self-addressed, stamped return envelope. Many employers require that you obtain verification from a third-party source. You may wish to consider using http://www.theworknumber.com/ to create an account to allow for employment searches of many employers who subscribe to them.

E. Bank Accounts

If the attorney has the name of a bank and the debtor’s bank account number, he or she can call the bank and determine if the debtor has an open account. However, the bank will not reveal information concerning the amount in the account or other personal information. The January 2007 amendments to CPLR 5224(a)(3) make it important for creditors to keep records as to where their customers bank.

F. Law Journals

The local legal newspaper gives information concerning judgments, tax liens, real estate transfers, mortgages, recently filed assumed names, recently filed corporations, pending cases and bankruptcies. If read on a daily basis, this will provide the practitioner with current information concerning the debtors against whom he or she has claims. Many daily newspapers have websites that allow a search for articles—just type in the debtor’s name.

G. Previous Experience

It should be required office practice to run a conflict check of the creditor and debtor on all new claims. This should turn up information on other open or closed files involving the debtor. The information in these files may assist the attorney in collecting the new claim from the debtor.

H. Private Detectives

Sometimes clients have to be reminded that a law office is not and cannot be a private detective agency. If the client desires detective work, an outside agency should be hired. However, this should not be done without the client’s consent and approval as to the expense involved. If the attorney’s office is contracting the hiring, it is preferred that the client advance the funds for the anticipated

expense. The detective should be given specific information or a specific goal; without such specific instructions, the expense may get out of hand. In commercial cases, the detective’s job is usually limited to either locating the defendant or locating some specified assets.

I. Local Sheriff’s Office

Executions on file with the sheriff’s office often can reveal the collectibility of a judgment, a debtor’s history and his or her current employer. Establishing a good rapport with the Civil Divisions is imperative.

J. Asset Locate Firms

There are numerous firms that research the availability of assets to satisfy a claim or judgment. These firms perform their services for fees. Their services include skip tracing, collection probability reports, asset research and bank account searches. Just type “asset searches” in your search engine to retrieve millions of results.

K. Online Search Engines

Check the Internet, using, for example, Google or Yahoo, to locate a debtor’s website, which may contain valuable information. Such search engines also have people-searching capabilities, which may assist in locating a debtor. Reverse telephone directories, which may be accessed through these search engines and through whitepages.com, can also be of assistance.

IX. IDENTIFYING THE DEBTOR

In some cases, the documentation and information received from the creditor or forwarder will sufficiently identify the debtor, not only for demand purposes, but for suit purposes. On many occasions, the documentation may identify the debtor only by a business name, without indicating its status as a corporation limited liability company, partnership or sole proprietorship. In such cases, a review of the assumed name, partnership and corporate LLC indexes in the county clerk’s office should be made to determine the defendant’s status, its correct and full name, or the correct names of all the partners. Under N.Y. General Business Law § 130 (GBL), a corporation may do business under an assumed name. If a local search is unavailing, a search of the certificates of incorporation filed with the secretary of state in Albany should be instituted. This may be done by mail or through lawyer service agencies such as Infosearch or Servico. If time is of the essence, a verbal report may be obtained immediately for a fee from the Department of State by calling 1-900-TEL-CORP (835-2677). Also, information concerning corporations and assumed names can be obtained through online computer services such as LEXIS-NEXIS or Westlaw. You can also access such records through the Department of State website at http://www.dos.ny.gov/corps/bus_entity_search.html.

Having the correct and full name or names of all the parties is important for the purposes of demand, but it is essential when the case is sued. The judgment that incorrectly names the defendant will be difficult, if not impossible, to enforce.

Claims against partnerships and unincorporated associations should be initiated against all the partners or members. Although CPLR 1025 provides that actions against partnerships can be sued in the partnership name, and actions against unincorporated associations can be instituted by naming the association’s president or treasurer, these provisions appear primarily designated for expediency of suit. Subsequent judgment, while enforceable against jointly held assets of the partnership or associa-
tion, cannot be enforced against the individually owned assets of parties not served with process. Moreover, a suit instituted against an unincorporated association in the name of its president or treasurer bars a subsequent suit against the association’s individual members until an execution on the initial judgment is returned unsatisfied.

In addition to the principal debtors, a creditor may also have documents indicating that there is a guarantor or guarantors. The guarantor of payment of the claim is also a debtor. Thus, demand can be made on a guarantor, and suit can be commenced against the guarantor based on the guaranty. Under the New York State Statute of Frauds, the guarantor’s liability must be evidenced by a writing signed by the guarantor.

It is important that all parties liable for a given debt be joined; otherwise, an action can be subject to a motion for dismissal for nonjoinder. However, liberal amendatory mechanisms are available under article 10 of the CPLR to cure such defect. Article 10 also contains provisions for the substitution of appropriate parties in the event of the death, incompetency or, in the case of a corporation, dissolution of a party defendant.

X. RESTRICTIONS ON DEBT COLLECTION

Both the state of New York and the United States have adopted comprehensive measures to protect consumer debtors from what were previously described as overreaching tactics by unscrupulous debt collectors or creditors. These restrictions do not apply to commercial or nonconsumer debts.

Three statutes impose restrictions on debt collections:

3. N.Y. Penal Law § 240.30, “Aggravated harassment in the second degree.” Aggravated harassment in the second degree is a class A misdemeanor.

Although the New York State Debt Collection Procedures statute and the federal Fair Debt Collection Practices Act are very similar, they should be read in conjunction with each other. The Fair Debt Collection Practices Act is more detailed and broader with respect to proscribed activities. Each statute should be read carefully, and care should be taken to avoid activities proscribed by either statute. As with proposed legislation affecting licensing of collections agencies, the New York State Legislature has considered various versions of bills to amend the General Business Law as to debt collection. The legislation generally mirrors the federal Fair Debt Collection Practices Act. However, the legislation introduced in our State legislature would unfairly limit the bona fide error defense in certain circumstances (even further than the Supreme Court in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, precluding application of the bona fide error defense to mistakes of law relative to interpretation of the FDCPA). The following areas are covered in the Fair Debt Collection Practices Act.

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16 CPLR 1502; see CPLR 5201(b).
17 N.Y. General Associations Law §§ 16-17 (Gen. Ass’ns Law).
19 CPLR 3211(a)(10).
20 130 S. Ct. 1605 (U.S. 2010).
A. Proposed New York Regulations

On August 31, 2013, the New York State Department of Financial Services issued proposed Regulations to govern consumer debt collection activities. As of this writing, the comment period has not expired (it expires on October 5, 2013).

23 N.Y.C.R.R. 1: DEBT COLLECTION

§ 1.1 Definitions.

For the purposes of this Part:

(a) Clear and conspicuous means that the statement, representation or term being disclosed is of such size, color, and contrast and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood.

(b) Collection efforts means any action or attempted action by a debt collector in obtaining or attempting to obtain payment on a debt owed by a consumer.

(c) Consumer means any natural person who owes or who is alleged to owe a debt.

(d) Debt means any obligation or alleged obligation of a natural person for the payment of money or its equivalent which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. This term includes the obligation of a natural person who is a co-maker, guarantor, or endorser, as well as the obligation of the natural person to whom the credit was originally extended. Debt shall not include any obligation or alleged obligation of a consumer for the payment of money or its equivalent which arises out of credit extended directly to a consumer exclusively for the purpose of enabling that consumer to purchase consumer goods or services directly from the seller.

(e) Debt collector means any person engaged in a business with the principal purpose of collecting or attempting to collect debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Debt collector includes without limitation a buyer of delinquent debt who seeks to collect such debt either directly or indirectly.

(f) Default means that the payment on a debt obligation is delinquent under the terms of the original agreement that created the debt.

(g) Original creditor means any person who offers or extends credit creating a debt.

(h) Person has the same meaning as prescribed in Financial Services Law section 104(a)(3).
§ 1.2 Required initial disclosures by debt collectors.

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification of the consumer’s rights in connection with the debt, including:

(1) that debt collectors, in accordance with the federal Fair Debt Collection Practices Act, 15 U.S.C § 1692 et seq., are prohibited from engaging in abusive, deceptive, and misleading debt collection efforts, including but not limited to:

(i) the use or threat of violence;

(ii) the use of obscene or profane language; and

(iii) repeated phone calls made with the intent to annoy, abuse, or harass.

(2) the following written notice:

“A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain ‘exempt’ moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be ‘exempt’ from collection:

1. Supplemental security income, (SSI);

2. Social security;

3. Public assistance (welfare);

4. Spousal support, maintenance (alimony) or child support;

5. Unemployment benefits;

6. Disability benefits;

7. Workers’ compensation benefits;

8. Public or private pensions;

9. Veterans’ benefits; and

10. Federal student loans, federal student grants, and federal work study funds.”

(b) Within five days after the initial communication with a consumer in connection with the collection of any defaulted debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification regarding the nature of the consumer’s defaulted debt, including:

(1) The name of the original creditor;
(2) An itemized accounting of the debt, including:

(i) The total amount of the debt due as of default, including principal balance due and any charges and fees;

(ii) each additional charge or fee accrued since the default;

(iii) the name of the creditor or debt collector that levied each charge or fee since the default;

(iv) the date of and the basis for the accrual of each additional charge or fee since the default; and

(v) each payment made on the debt since the default, including settlements, and the date of each payment.

§ 1.3 Disclosures for debts in which the statute of limitations may be expired.

(a) If a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the defaulted debt, the debt collector must provide the consumer with clear and conspicuous notice of the following in the same medium (e.g., via telephone, electronic communication) that the debt collector will accept payment that:

(1) the debt collector believes that the statute of limitations applicable to the debt may be expired;

(2) if the consumer is sued on a debt that has expired, the consumer can stop the lawsuit by responding to the court that the statute of limitations has expired;

(3) the consumer is not required to provide the debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations;

(4) if the consumer makes any payment on an expired debt or admits, affirms, acknowledges, or promises to pay the expired debt, the statute of limitations may restart; and

(5) failure to pay a debt that the consumer owes, even if the statute of limitations has expired, may damage the consumer’s credit history and credit score and may negatively affect the consumer’s ability to obtain credit.

(b) The following language satisfies the notice requirement contained in section 1.3(a) of this Part:

“We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice:

Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. If the creditor sues you to collect
on this debt, court rules require you to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment against you. Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again. Further, please note that an expired debt is not extinguished even though the statute of limitations has expired. Failure to pay the debt may negatively affect your credit history and credit score and your ability to obtain credit. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.”

§ 1.4 Verification of debts.

(a) If a consumer disputes the validity of a defaulted debt or requests verification of a defaulted debt orally or in writing, a debt collector must provide the consumer written verification of the defaulted debt within 30 days of the dispute or request. Verification of the defaulted debt shall include:

(1) documentation identifying the original creditor, including copies of:

(i) the signed contract or signed application that created the debt, or, in the case of a transaction that does not involve a signed contract or signed application, other documents evidencing the transaction resulting in the indebtedness of the consumer to the original creditor; and

(ii) the final account statement, or equivalent document, issued by the original creditor to the consumer;

(2) a statement describing the complete chain of title from the original creditor to the present debt owner, including the date of each assignment;

(3) where applicable, the consumer’s account number with the original creditor at the time of default, the current account number, and any intervening account numbers; and

(4) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt.

(b) If a consumer disputes a defaulted debt or requests verification of a defaulted debt pursuant to section 1.4(a) of this Part, the debt collector must retain the following documentation until the debt is discharged, sold, or transferred:

(1) evidence of the consumer’s dispute or request for verification; and

(2) all documents provided in response to the dispute or request.

§ 1.5 Debt payment procedures.

(a) No debt collector shall accept any payment under a debt payment schedule or other agreement to settle a defaulted debt without first furnishing the consumer with a clear and conspicuous written document containing:
(1) written confirmation of the debt payment schedule or other agreement to settle the defaulted debt. This written confirmation shall not include any terms or conditions to which the consumer did not specifically agree; and

(2) the following notice:

“A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain ‘exempt’ moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be ‘exempt’ from collection:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans’ benefits; and
10. Federal student loans, federal student grants, and federal work study funds.”

(b) If a consumer agrees to a debt payment schedule or other agreement to settle a defaulted debt, the debt collector shall provide the consumer with an accounting of the debt on at least a quarterly basis.

(c) Within 15 business days of the receipt of a payment satisfying a consumer’s defaulted debt, the debt collector shall send to the consumer a written confirmation of the satisfaction of the debt that identifies the original creditor and the last original account number.

§1.6 Communication through electronic mail.

(a) After mailing a consumer written disclosures as required under section 1.2 of this Part, a debt collector may provide subsequent correspondence to the consumer through electronic mail only if the consumer has:

(1) voluntarily provided a secure electronic mail account to the debt collector which is not an electronic mail account furnished or owned by the consumer’s employer; and
(2) consented in writing to receive electronic mail correspondence from the debt collector in reference to a specific debt. A consumer’s electronic signature constitutes written consent under this Section.

§ 1.7 Effective date.

This Part shall become effective upon adoption, except that sections 1.2(b) and 1.4(a) of this Part shall become effective 180 days after adoption.

The proposed Regulations greatly exceed the debt collector’s requirements under the federal Fair Debt Collection Practices Act (FDCPA). For many years, the New York State Legislature has considered comprehensive debt collection legislation, but same never passed both Houses. The authority of the Department of Financial Services appears dubious. However, even if authorized, there are many provisions that appear improperly and/or hastily considered. I wish to highlight some issues:

Part 1.2(a): the debt collector must provide the consumer with “written notification of the consumer’s rights in connection with the debt, including [emphasis added]” various specific disclosures. The FDCPA simply requires “a written notice containing” specific disclosures, with no requirement to provide “notice of the consumer’s rights.” The term “consumer’s rights” is simply overbroad, and would encompass summaries based upon hundreds of thousands of pages from multiple statutes, regulations, caselaw interpretations/holdings and even federal and state Constitutions. I anticipate that the Department does not expect that a consumer receive more than that specific disclosures contained in this Part, but this provision must be modified. The language should mirror the FDCPA, and eliminate reference to “the consumer’s rights in connection with the debt, including[.]”

Part 1.2(b): basically, must provide an itemized payment and charge history from date of last payment or default, whichever is earlier. The Regulations should be amended to permit compliance by simply providing copies of the account statements showing all charges and payments.

Part 1.4: verification of a debt requires more information and documentation, and is required upon either an oral or written dispute or request. The FDCPA is in conflict, requiring a written dispute from the debtor for debt verification;21 and “exhaustive documentation” is not required to comply with the federal statute.22

Part 1.5: if a payment agreement is entered, see the detailed notice required to be provided. The exemption notice would have been provided upon the initial demand. The only purpose for the duplicate notice appears to be to dissuade payment of legitimate debts. Additionally, there must be an automatic accounting of the debt at least quarterly; this will be a tremendous burden upon attorneys, and will actually result in less payment agreements due to this burden. It makes more sense to require any statement to be provided only upon individual request of the consumer (the consumer could be advised as to his/her right to request such an individual accounting as part of the detailed notice addressed above). The Department must also clarify whether the accounting is required after default in the payment agreement; it is highly impractical to require quarterly accountings when there is no longer a valid agreement, and no payments are being made.

Part 1.6: the proposal permits electronic communications with a consumer debtor. However, it is not certain if such communications would be permissible under the FDCPA.

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Part 1.7: the effective date for the majority of the proposal is “upon adoption.” Given the drastic change to the requirements of an attorney/debt collector, there should be additional time for compliance. Given the fact that our Legislature has, year after year, rejected similar statutes designed to regulate debt collection, there is no compelling need for an immediate effective date.”

B. Communications in Connection With Debt Collection

Within five days of the debt collector’s initial communication with the consumer in connection with the collection of any debt, the collector must send the consumer a written notice in accord with the provisions of 15 U.S.C. § 1692g(a)(1)–(5). Attorneys handling collection cases should adhere to the requirements of this section, as the courts have held that an attorney will be considered a “debt collector” if he or she has “regularly” collected or attempted to collect debts. In Stojanovski v. Strobl & Manoogian, P.C., the court held that a law firm was a “debt collector” even though its collection practice was less than 4% of its total business. In the U.S. Supreme Court case of Heintz v. Jenkins held that the Fair Debt Collection Practices Act applied not only to the debt collection activities of lawyers but also to the litigation and judgment enforcement phases of debt collection activities.

Section 1691 should be read in connection with §§ 1692e(11) and 1692g. Improper communications with consumer debtors have been the subject of numerous lawsuits and attempts by debtors to use violations as a bargaining chip to obtain a discount on the debt or to dismiss the lawsuit. Section 1692e(11) requires that the debt collector disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

You should provide the required notices in all verbal and written communications, and all documents that do not qualify as formal pleadings (e.g., a Subpoena is not technically a pleading).

Section 1692g requires a notice to be given to the consumer debtor within five days after the first “communication.” This notice is designed to give the consumer debtor an opportunity to dispute the debt. The notice should be given within five days after the first “communication,” whether that communication is oral or in writing. Section 1692g requires:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

23  15 U.S.C. §§ 1691, 1692e(11), 1692g.
26  See Part Two, “Enforcement of Money Judgments.”
(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

No specific notice has been approved by the courts or by the Federal Trade Commission, so the use of any notice is a risk to the user. Some cases have held that the language of the notice should not contain a “threatening contradiction.”27 A case in the Northern District of New York examined the language of an attorney demand letter; Justice Rosemary S. Pooler, in Beeman v. Lacy, Katzen, Ryen & Mittleman,28 held that a complaint alleging violations of 15 U.S.C. § 1692g can survive a challenge under Federal Rules of Civil Practice 12(b)(6) (Fed. R. Civ. P.) as long as (1) the plaintiff pleads a contradiction between the demand language and the validation language and (2) it is possible that the plaintiff could prove that the contradiction would mislead the least sophisticated consumer into disregarding his or her rights under the validation notice.29

Justice Pooler in Beeman also concluded that the language “or a copy of a judgment” contained in the above letter is not required if a judgment did not exist when the letter was issued. Nevertheless, such language (“or a copy of a judgment”) is permitted to be included even if there is no judgment.30

Absent prior consent of a consumer given directly to a debt collector or, alternatively, upon court order, a debt collector cannot communicate with a consumer regarding the pursuit of a debt at any unusual time or place where it is known or should be known that the same would be inconvenient to the consumer. Additionally, all communications with third parties, where such third party is a person other than the consumer’s attorney or consumer reporting agency, is strictly forbidden, except to the extent that the consumer has given the debt collector permission to contact third parties, or where the debt collector has obtained a court order or as reasonably necessary to effectuate a post-judgment judicial remedy.31

29 See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) (denying dismissal unless the factual allegations are enough “to raise a right to relief above the speculative level”); Swanson v. S. Or. Credit Serv., 869 F.2d 1222, 1225–26 (9th Cir. 1988). The Seventh Circuit held that whether a dunning letter complied with the Fair Debt Collection Act is a question of fact, the question being whether the dunning letter would confuse an unsophisticated consumer. See Marshall-Mosby v. Corporate Receivables, Inc., 205 F.3d 323 (7th Cir. 2000).
31 Under 15 U.S.C. § 1692b, permitting communication with third parties to acquire location information, the creditor is prohibited from stating that the consumer owes any debt.
C. FDCPA Update

In September of 2006 Congress passed a regulatory relief bill (S.2856) which contained some amendments to the FDCPA. The ones with the greatest impact for debt collectors is § 802 of the bill, which, among other things, adds a final sentence to 15 U.S.C. § 1692g(b) which reads:

Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer’s right to dispute the debt or request the name and address of the original creditor.

(Note: This amendment, while appearing to be favorable to the debt collector, is not. There are too many questions raised, for example, what “collection activities and communication” are to be deemed as “overshadowing”?)

The Second Circuit Court of Appeals confirmed that language in a Summons and Complaint served within the validation period could overshadow the Debtor’s right to dispute the debt under the FDCPA. While the Court reiterated that there is nothing in the FDCPA proscribing the commencement of litigation within the validation period,

[i]f the debt collector chooses not to wait until the end of the validation period to commence debt collection litigation, an explanation of the lawsuit's impact—or more accurately, lack of impact—on the disclosures made in the validation notice must be provided. This explanation should be set forth in either the validation notice itself, or in a notice provided with the summons and complaint. The best practice is to provide an explanation in both the validation notice and the summons and complaint. Clarifying that commencement of a lawsuit does not trump the validation notice will come at little or no cost to debt collectors and will ensure that the consumer rights secured under the FDCPA are not overshadowed or contradicted.32

Also, two subparagraphs to 15 U.S.C. § 1692g read:

(d) LEGAL PLEADINGS—A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(Note: Prior to this amendment the Eleventh Circuit Court of Appeals had held that service of process in a lawsuit was not an “initial communication” under the statute; yet the Second and Seventh Circuit Courts of Appeal had held that it was. Unfortunately, the act fails to define the term “formal pleading in a civil action” and the best guideline would be to follow Fed. R. Civ. P. 7. Federal Rule of Civil Procedure 7(a) would certainly bring pleadings under the exemption, but there is doubt that it would apply to the “Motions and Other Papers” described in rule 7(b). And what about discovery demands? All things considered, the safest practice would be to send the validation notice prior to commencing any action.)

32 Ellis v. Solomon & Solomon, P.C., 591 F.3d 130, 137 (2d Cir. 2010).
(e) NOTICE PROVISIONS—The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of the Gramm-Leach-Bliley Act, or any provision of federal or state law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

As required by the FDCPA, the Federal Trade Commission (FTC) must submit a report now to be submitted by the Consumer Financial Protection Bureau (CFPB) to Congress annually summarizing the administrative and enforcement actions it has taken in the prior year. In the annual report for 2013, the CFPB reported that the number of FDCPA complaints about third-party debt collectors decreased in absolute terms (to 125,136 from 144,451 in 2011) and decreased as a percentage of all complaints that consumers filed (to 24.1% from 27.5% in 2010). Included in its definition of third-party debt collectors are “contingency fee collectors and attorneys who regularly collect or attempt to collect, directly or indirectly, debts asserted to be owed or due another, as well as debt buyers collecting on debts they purchased in default.” It again reported receipt of more complaints about the debt collection industry than any other specific industry. Identified as some of the most frequently received complaints were:

- harassing the alleged debtor or others,
- demanding an amount other than is permitted by law or contract,
- failing to send required written notice of the debt to consumer,
- threatening dire consequences if consumer fails to pay,
- failing to identify self as a debt collector,
- revealing alleged debt to third parties,
- impermissible calls to consumer’s place of employment,
- failing to verify disputed debts,
- continuing to contact consumer after receiving “cease communication.”


In March 2011, the Commission announced a settlement agreement with collector West Asset Management, Inc. (WAM), resulting in a $2.8 million civil penalty, the largest civil penalty ever obtained by the FTC in a debt collection case. The complaint alleged WAM violated the FDCPA by
calling consumers and third parties repeatedly with intent to harass or annoy, and by revealing debts to third parties and calling them for reasons other than to obtain location information about the consumer. In addition, the Commission alleged that WAM engaged in deception in violation of the FTC Act by materially misrepresenting to consumers that WAM was a law firm, it would bring civil action or criminal prosecution against consumers who failed to pay, and nonpayment would result in the seizure, garnishment, attachment, or sale of consumers’ properties or wages, or their arrest or imprisonment. The FTC further alleged WAM engaged in unfairness in violation of the FTC Act by debiting consumers’ financial accounts or charging their credit cards without their express, informed consent. Under the settlement agreement, in addition to paying the record civil penalty mentioned above, WAM is enjoined from (1) further violating the FDCPA or the FTC Act through engaging in the same or similar conduct as alleged in the complaint; (2) making any misrepresentation about the consequences of paying or not paying a debt; (3) making any material misrepresentation to collect or attempt to collect or to obtain information concerning a consumer; and (4) making bank account withdrawals or imposing credit card charges without authorization.

D. False or Misleading Representations

The statute sets forth 16 specific types of activities that are deemed to be false, deceptive and/or misleading, including, as mentioned above, the failure to include in all communications a notice that the communication is an attempt to collect a debt or obtain information about the consumer. Further examples of prohibited activities are threatening to take action that is not intended or cannot legally be taken, falsely implicating that the consumer committed a crime or other disgraceful conduct, and falsely implicating that accounts were turned over to good-faith purchasers.

In Lesher v. Law Offices of Mitchell N. Kay, P.C., the Debtor alleged that a letter from an attorney gave the false impression that an attorney was involved in collecting the debt. The Court held that

the least sophisticated debtor, upon receiving these letters, may reasonably believe that an attorney has reviewed his file and has determined that [the Debtor] is a candidate for legal action. . . . Nor do we believe that the disclaimers included in the letters, which are printed on the backs, make clear to the least sophisticated debtor that the Kay Law Firm is acting solely as a debt collector and not in any legal capacity in sending the letters. First, in our view, the statement that “at this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account” does little to clarify the Kay Law Firm’s role in collecting the debt because it completely contradicts the message sent on the front of the letters—that the creditor retained a law firm to collect the debt.

E. Unfair Practices

A debt collector is proscribed generally from using any unfair or unconscionable means to collect or to attempt to collect any debt. Eight specific types of conduct are outlined such as soliciting a post-dated payment instrument to threaten or institute criminal prosecution, communicating via postcard with a consumer about a debt, and depositing or threatening to deposit a post-dated payment instrument before the date on the instrument.

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35 Id. at *8.
F. Claims Against Estates

It is often necessary to attempt to collect debts against estates of deceased debtors. The FDCPA still applies to such consumer claims. The FTC has recently issued a “Statement of Policy Regarding Communications in Connection with the Collection of Decedents’ Debts,” effective August 29, 2011. Note the general guidelines applicable to collections of deceased accounts by third-party collectors, including attorneys:

1. Permissible individuals to be contacted for information relative to estate—spouse, parent of minor, guardian, executor/administrator, or another person with authority to pay estate debts. However, once an executor/administrator has been identified, the collector may only contact said individual relative to the decedent’s debts.

2. Information that may be revealed in location information/or to determine identity of executor/administrator—no reference can be made as to the decedent’s debt, but the collector can state that they are seeking to identify and locate the person with authority to pay any outstanding bills of the estate. In no event may the collector engage in leading questions, or any other contact that may mislead the person to mistakenly believe that they have authority relative to the estate, or that such person may have personal liability for the estate’s debts.

3. Timing of communication—there is no required waiting or “cooling-off” period specified, but the general prohibition against contact at an unusual or inconvenient time or place applies.

4. Contact with person with authority relative to estate—there should be disclosures confirming that the collector is seeking payment from the assets in the estate, and the person with authority could not be required to use their individual assets or jointly owned assets to pay the decedent’s debts.

G. Damages37 (Civil Liability)

An aggrieved consumer may be awarded damages as a result of a debt collector’s violation of this statute. The consumer can recover actual damages, plus additional damages not exceeding $1,000. If the action is a class action, the class can recover actual damages for each member of the class, and the court may also allow for other class members irrespective of a minimum individual recovery, all of which is not to exceed the lesser of $500,000 or 1% of the debt collector’s net worth. In the event of successful litigation, attorney fees and court costs can be awarded. The standards used by a court in awarding attorney fees are explained very well by Judge Skretny in Coles v. Lieberman, Michaels & Kelly, LLC,38 in which the consumer-plaintiff was awarded a default judgment in the amount of $250 in statutory damages, $500 in actual damages, and $2,700 in attorney fees.

A careful reading of these statutes should be made to determine the definition of “debt collector.”39 Although there are statutory exclusions in the definition of debt collector, the Fair Debt Collection Practices Act was amended to remove attorneys at law as one of the statutory exclusions.

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In addition, there is the possibility of criminal prosecution for violation of aggravated harassment. There are two cases where criminal prosecutions have been sustained based upon collection efforts. Although these holdings predate the state Debt Collection Procedures Act, they still remain good law.40

XI. DEMAND UPON THE DEBTOR

A. Purpose of Demand

A telephoned or written demand upon the debtor should be made on the same day a claim is received. This may not be possible due to conflict clearance if you are with a large firm or one with multiple offices. The demand for payment establishes the date when the attorney commenced work on the claim. If the debtor makes payment directly to the client after the attorney received the claim, but before the attorney made a demand, it is difficult to justify the legal fee to the client.

B. Written Demand

It is good practice to always send a written demand to the debtor. The letter should be direct and simple and should contain the name of the creditor and the full amount of the claim. (See the Forms section following this Part One.) If the letter contains too much information, or includes attachments, or is too long, it may give the debtor something to dispute or argue about. The demand letter should be sent even if the client has authorized immediate legal action; it establishes the attorney’s presence in the case while a summons and complaint is being prepared and served.

The demand written to a consumer debtor should not violate any of the debt collection restrictions contained in the FDCPA and applicable law. You should be aware that you must include information as to the entire amount due, including interest and fees if due (noting that you are not permitted to suggest that attorney fees may be due if there is no agreement or law permitting same).41 The demand should not threaten legal action if the attorney knows the client will not authorize legal action.42 In Gregory W. Wilhelm, individually, and on behalf of others similarly situated v. Credico, Inc.,43 the Court found that the collection agency defendant violated this provision by categorically threatening to sue Wilhelm “in a letter that failed to disclose that Credico would not sue any consumer who timely disputed the debt and requested its validation.” The letter opened:

YOU WILL BE SUED—UNLESS YOU MAKE ARRANGEMENTS TO PAY YOUR BILL. THIS LETTER IS NO IDLE THREAT—THE PAPERWORK HAS BEEN ORDERED TO BEGIN A LAWSUIT AGAINST YOU. WE ONLY SEND THIS LETTER TO PEOPLE WE INTEND TO SUE!44

A written demand also serves to confirm the address of the debtor, and it can be useful in locating the debtor if the creditor does not have a current address, particularly if the attorney’s office subscribes to the “address correction requested” facility offered by the post office.45

40 See People v. Globe Jewelers, 249 A.D. 122, 291 N.Y.S. 362 (1st Dep’t 1936); People v. Loveless, 84 N.Y.S. 1114 (Spec. Sess. 1903).
41 Lox v. CDA, Ltd., 689 F.3d 818 (7th Cir. 2012).
42 GBL § 601(8); see 15 U.S.C. § 1692e(5).
43 519 F.3d 416 (8th Cir. 2008).
44 Id. at 419.
45 See the Forms section following this Part One.
C. Telephone Demands

The size or nature of the claim may warrant a personal telephone call. This call not only can serve as a demand for payment, but also can serve as a source for information. Even if the debtor states that he or she cannot or will not pay, if the attorney gives the debtor an opportunity to talk or explain his or her position, this may well develop information that ultimately will help enforce the judgment. Whether an oral or written demand is used, it is important to develop a follow-up system. Do not rely on the debtor answering the demand letter or responding to a telephone call to bring the claim back out of the filing system. If the follow-up is a second demand letter, the claim should be diaried ahead for a certain day. It should be remembered that if a telephone demand is made to a consumer debtor, the debtor should be advised that the telephone conversation is “an attempt to collect a debt and any information obtained will be used for that purpose” and also that a 30-day validation notice, as required by 15 U.S.C. § 1692g, must be given to the consumer debtor within five days after the telephone communication.

The notice requirements appear to apply to voicemail messages as well, and I do not personally recommend that voicemail messages be made in consumer cases. In a decision which only addressed class certification, the Court certified as a class:

All persons who received telephone communication from NCO between January 29, 2000 and December 10, 2007, i.e., the day the Order of Preliminary Approval of Class Action Settlement was entered, wherein NCO failed to (i) identify itself as a “debt collector” and/or (ii) communicate the “mini-Miranda” required by 15 U.S.C. § 1692e(11) of the Fair Debt Collection Practices Act, or a similar state law.

XII. PAYMENT AGREEMENTS

If the attorney’s demands have resulted in the debtor agreeing to payment or to a payment plan, the agreement should be confirmed by a letter to the debtor. If the payment date is in the future or is to be in installments, this letter should request the debtor confirm his or her agreement. This can easily be done by providing the debtor with an extra copy of the letter and asking the debtor to confirm his or her agreement by signing the letter and returning the copy in an envelope provided. Once the debtor signs the agreement letter, the attorney has the debtor’s written acknowledgment of the debt. If the debtor fails to respond to the letter, the attorney has a justifiable inference that the debtor does not dispute the debt. In either case, the letter can be helpful in establishing the debtor’s liability if the debtor fails to pay or tries to contest the legal action.

The anticipated return of the letter and a proposed payment date should be diaried for follow-up action in the event the debtor does not keep the agreement.

XIII. ALTERNATIVES TO LITIGATION

There are basically three devices that could be considered alternatives to litigation: (1) confessions of judgment, (2) stipulations of settlement, and (3) arbitration.

48 See the Forms section following this Part One.
A. Confessions of Judgment

Confessions of judgment are governed by CPLR 3218. See the Forms section following this Part One for suggested forms. Civil Practice Law and Rules 3218 outlines the substantive content of an affidavit upon which a judgment by confession may be obtained. No action need be commenced, but the affidavit should relate specifically to an obligation of the debtor where the money is either presently due or may become due to the plaintiff. The liability may be either contingent or direct; the nature of the liability must be embodied in an affidavit executed by the debtor that states the sum for which a judgment may be entered. The confession authorizes the entry of judgment, states the material facts creating the indebtedness, and further indicates that the sum so confessed is justly due or may become due. The affidavit must also state the county where the defendant resides or, if the defendant is a nonresident, the county in which the judgment may be entered.

Civil Practice Law and Rules 3218(b) sets forth pertinent information as to the entry of a judgment by confession. The affidavit must be filed within three years from the date of its execution.

Reference must also be made to CPLR 3201, which invalidates confessions of judgment executed before default on certain installment contracts.

Failure to comply with the strict provisions of CPLR 3218 and 3201 may subject the judgment by confession to attack not only by the judgment debtor, but also by third-party creditors who are prejudiced by the early entry of the judgment. If the debtor is reluctant to execute a confession of judgment, the attorney might consider having a promissory note executed. This would start a new statute of limitations and the attorney might even be able to include a provision for the recovery of attorney fees in the event of default.

B. Stipulations of Settlement

The costs and delays of litigation often encourage creditors to accept settlements for a sum less than their claim, or to accept settlements that provide for payment terms. If a settlement is reached before suit, it should be reduced to a written agreement signed by both of the parties and, if on an installment basis, it should include a provision for acceleration in the event the debtor defaults in his or her payment terms. If the settlement is reached after suit has been commenced, it should be in the form of a stipulation in the lawsuit. The stipulation should contain the full caption of the lawsuit, together with the appropriate index number, and should include a provision that the stipulation is being executed by the defendant as settlement of the lawsuit and, in the event of default, that judgment can be entered for the amount so stipulated, together with costs, disbursements and interest. If the creditor has agreed to accept less than what is due and it is to be paid in installments, as an incentive for the debtor to adhere to the payment schedule, draft the stipulation in such a manner that, in the event of a payment default, the creditor may enter judgment not on the balance of the settlement amount, but on the balance of the original amount of the debt.


50 See the Forms section following this Part One for a sample form.

51 See the Forms section following this Part One for samples.
C. Arbitration

Often, contract documents stipulate that any breaches or differences between the parties, including nonpayment, will be submitted to arbitration. If there is not an express contract provision establishing arbitration as a means of resolution, the parties can stipulate to submit their disputes to arbitration. Some cases, even if sued, will be submitted to arbitration pursuant to court rules. The Judiciary Court Acts authorize the chief administrator to require arbitration of all cases in city and district courts where the recovery sought is less than $6,000, and is less than $10,000 in the civil court of the City of New York.\(^52\) However, upon being served with an unfavorable decision after compulsory arbitration, a party has 30 days in which to demand a trial \textit{de novo}. Otherwise, parties can submit disputes to the American Arbitration Association, or other bar association programs or better business programs that provide arbitration services. In any event, the arbitration process is usually shorter than the trial process.

XIV. INSTITUTING SUIT

Once the attorney determines that the debt cannot be collected without suit, he or she should report that determination to the client and seek the client’s approval to institute legal action. Do not institute legal action without the client’s authority. This is the time to request that the client advance the disbursements deemed necessary to commence the lawsuit and cover anticipated post-judgment costs.

In determining where to commence the lawsuit, the attorney should consider:


2. Where the defendant can be served.

3. Where the judgment can be enforced.

4. The costs and expenses of service of process and filing fees, as well as the expense of serving restraining orders and issuing one execution.

5. Whether the court now requires mandatory electronic filing.

An action in the supreme and county courts is commenced by filing a summons with notice, or summonses and complaint, with the court.\(^53\) Before a summons can be served, it must be filed with the court and an index number obtained at a cost of $190.\(^54\) After adding on the surcharges, the index number actually costs $210. The summons when served must bear the index number. Any service of the summons that does not bear an index number is a “nullity.” Service of the summons before filing will not secure jurisdiction over the defendant and will not constitute commencement of the action so as to satisfy the statute of limitations. Previously, in lower court actions, the defendant was served before the pleadings were filed. However, effective September 8, 2005, all civil, district and city court actions must also be commenced by filing.\(^55\) The filing fee for City Court actions is $45, plus $95 for consumer claims.

\(^{52}\) 22 N.Y.C.R.R. pt. 28, § 28.2; N.Y. Uniform City Court Act § 206 (UCCA); N.Y. Uniform District Court Act § 206 (UDCA); N.Y. City Civil Court Act § 206 (CCA).

\(^{53}\) CPLR 304.

\(^{54}\) CPLR 8018(a); see supra V.

\(^{55}\) 2005 N.Y. Laws ch. 452.
A. Jurisdictional Limits

It is generally good practice to commence the action in the lowest court that has jurisdiction over the subject matter and the parties, and over the dollar amount of the action. The following courts are available:

1. Supreme Court—unlimited monetary jurisdiction.
2. Civil court of the City of New York—monetary limit of $25,000.\(^{56}\)
3. District court (in Nassau County and Western Suffolk County)—monetary limit of $15,000.\(^{57}\)
4. County court—monetary limit of $25,000.\(^{58}\)
5. City court—each of the state’s 61 cities outside the city of New York has a city court. These courts have a uniform monetary jurisdiction of $15,000.\(^{59}\)
6. Justice court—local laws establish the monetary limits of justice courts; however, the monetary jurisdiction of a justice court may not exceed $3,000.\(^{60}\)
7. Small claims court—exists in New York City Civil Court, the district courts and city courts. The monetary jurisdiction cannot exceed $5,000.\(^{61}\)

B. Where Defendant Can Be Served

The choice of court may also be governed by the area where the defendant can be served. In choosing a court, the practitioner should ask: Where can the defendant be served, and where did the cause of action arise?

The Supreme Court has personal jurisdiction of the defendant if

1. the summons is personally delivered to the defendant in New York State regardless of where he or she resides;\(^{62}\)
2. the defendant either resides in New York or does business in New York and is properly served by some method authorized by statute;\(^{63}\) or
3. service is properly made on a nonresident defendant who is subject to the long-arm jurisdiction of CPLR 302 on the basis of acts performed within the state.

\(^{56}\) CCA § 202.
\(^{57}\) UDCA § 202.
\(^{58}\) N.Y. Judiciary Law § 190(3).
\(^{59}\) UCCA § 202.
\(^{60}\) N.Y. Uniform Justice Court Act § 202 (UJCA).
\(^{61}\) CCA § 1801; UDCA § 1801; UCCA § 1801.
\(^{62}\) CPLR 308(1).
\(^{63}\) See infra XVI.
Consumer collection attorneys should try to verify the address for process. Usually a postal search will do. See the form in the Forms section following this Part One. In *Alton Bowens v. Mel S. Harris and Associates, LLC*, the defendant law firm had obtained a default judgment against Bowens on a consumer debt owed Sears and restrained his bank account. Bowens claimed service of process was made at an address where he never resided and where the attorneys knew or should have known he never resided. After Bowen succeeded in having the judgment vacated, he sued the attorneys for abuse of process and FDCPA violations. The attorneys removed it to federal court, but Judge Skretny refused to dismiss it.

The civil court and the district court exercise personal jurisdiction similar to the supreme court. All three of these courts exercise personal jurisdiction over anyone served within their geographic boundaries. For the supreme court, its boundary is the state of New York, but for civil court and the district courts, the boundaries are New York City and the county in which the district is organized. Similarly, for long-arm purposes, the relevant geographic boundaries are New York State, New York City and the county of organization for the supreme court, civil court and district courts, respectively.

For city courts, the relevant geographic boundary is the county in which the city is located, both for the purpose of summons service and for long-arm purposes. Further limitations are set forth in UCCA § 213, which requires the parties to have certain contacts with the city or a town contiguous thereto. Though these additional limitations are not jurisdictional and may be waived by either party, the action should be commenced in a city court only if the requirements are met in order to avoid dismissal at the urging of the defendant or upon a court’s own initiative.

Justice courts have the most limited jurisdictional reach. Service must be made within the county, and there are no applicable long-arm provisions. Also, there are additional nonjurisdictional requirements that the parties have certain contacts with the municipality in which the justice court is organized.

C. Venue

The general rule concerning venue is that the trial shall take place in the county in which one of the parties resided when the action was commenced. If none of the parties resided in New York when the action was commenced, then the trial shall be in any county designated by the plaintiff. A party who is a resident of multiple counties is deemed a resident of each of the multiple counties. A defective venue is not grounds for dismissal in New York practice as it is in federal practice. Unless a defendant acts to change the venue, it will remain in the place designated by the plaintiff. However, in the case of actions based upon consumer credit transactions, the clerk of the court may reject the papers for filing where, on its face, it appears an improper venue has been selected.

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65 UCCA § 403.
66 UCCA § 404. For long-arm purposes, service may also be made in any county adjoining the county where the city is located.
67 UCCA § 213(d).
68 UJCA § 403.
69 UJCA § 213.
70 CPLR 503(a).
71 See CPLR 513.
Venue rules are required only for courts with territorial subdivisions such as the supreme court, New York City Civil Court and district court. Each county court is an independent entity, and whether suit can be brought in a particular county court is a question of jurisdiction and not a question of venue. The New York City Civil Court\textsuperscript{72} consists of the five New York City counties, while the district court\textsuperscript{73} has districts into which the counties of Nassau and Western Suffolk are divided. If the venue designated by the plaintiff is based upon the residence of the plaintiff, the summons must specify the plaintiff’s address.

D. Consumer Credit Transactions

The venue for an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is the defendant shall be the residence of the defendant, if one resides within the state, or the place where the contract was signed.\textsuperscript{74} The purpose of these provisions is to make it easier for consumers to defend by compelling plaintiffs to sue consumers in the county where they reside or where the transaction took place. Civil Practice Law and Rules 305(a) also requires that in an action arising out of consumer credit transaction, the summons shall:

1. Prominently display the words “CONSUMER CREDIT TRANSACTION” at the top of the summons; and

2. Where a purchaser, borrower or debtor is a defendant, it must specify
   a. the county of residence of the defendant, if one resides within the state, and
   b. the county where the consumer credit transaction took place, if it is within the state.

In New York City Civil Court, the required notice is more extensive and must also appear in Spanish.\textsuperscript{75}

E. Commercial Divisions of Supreme Court

Certain actions arising out of commercial transactions can be litigated in special commercial trial divisions of the Supreme Court that have been established in Albany County, Kings County, Nassau County, New York County, Onondaga County, Queens County, Suffolk County and Westchester County. A separate division has been established in Rochester, New York, which handles all of the Seventh Judicial District, and in Buffalo, New York, to handle all of the Eighth Judicial District. The goal of these divisions is the fair, expeditious, and cost-effective resolution of “commercial cases” which are defined differently by each division according to varying thresholds of amount at issue and other substantive criteria.\textsuperscript{76}

If the pleadings meet these criteria, then the request for judicial intervention can be marked “Commercial” and accompanied by a “Justification Checklist” form. If the case meets the criteria set forth

\textsuperscript{72} CCA §§ 301–307.
\textsuperscript{73} UDCA §§ 300–307.
\textsuperscript{74} CPLR 503(f).
\textsuperscript{75} 22 N.Y.C.R.R. § 208.6(d); see also infra XVI.B.4.
\textsuperscript{76} See 22 N.Y.C.R.R. § 202.70 for current comprehensive guidelines. Rules & Practices for Cases Assigned to the Commercial Division, Supreme Court, are available at http://www.nycourts.gov/courts/comdiv. Click on the pertinent county or judicial district.
in the rules, the case will be assigned to the Commercial Division for disposition. The applicable rules are available on request from the clerk of the Commercial Division in each particular county.

This Commercial Division of Supreme Court should not be confused with the “Commercial Claims Procedure” available in city and district courts.77

XV. PREPARING THE PLEADINGS

The pleadings in a debt collection action can take four forms:

1. Summons containing a default notice, commonly called a “summons with notice.”
2. Summons with an endorsed complaint.
3. Summons and formal complaint.
4. Summons and motion for summary judgment in lieu of complaint.

The Uniform Court Rules prescribe the forms for summons in the New York City courts, city courts, district courts and justice courts.78

A. Summons With Notice

A summons with notice can be used only in the supreme court or in the county court. It must contain a notice stating “the nature of the action and the relief sought, and . . . the sum of money for which judgment may be taken in case of default.”79

B. Summons With Endorsed Complaint

In New York City Civil Court, the district courts, city courts and justice courts, an action for the sum of money may be made by complaint set forth by endorsement upon the summons.80 In the civil court and the justice court, there are no limitations on the use of this simplified pleading device. In the district courts and city courts, however, there are limitations on the use of this device. The statutory limitations concern the place and method of service. In district courts, an endorsed complaint may only be used where the defendant is served within the county.81 In city courts and New York City courts, not only must the service be made within the county, but service must also be made by personal delivery.82 Some local court rules impose severe restrictions on the use of an endorsed complaint. In the district courts,83 and in some city courts, local rules prohibit the use of an endorsed complaint in a long list of enumerated actions, including any action where the amount claimed is more than $1,500.

77 UCCA art. 18-A; UDCA art. 18-A; 22 N.Y.C.R.R. §§ 208.41-a, 210.41-a, 212.41-a.
78 22 N.Y.C.R.R. §§ 208.6, 210.6, 212.6, 214.3.
79 CPLR 305(b).
80 CCA § 902(a)(1); UDCA § 902(a)(1); UCCA § 902(a)(1); UJCA § 902(a)(1).
81 UDCA § 902(a)(1). Interestingly, the district court rules for both Nassau and Suffolk counties suggest that to use an endorsed complaint, service must not only be made within the county, but it must also be made by personal delivery. See 22 N.Y.C.R.R. § 212.6(c)(2). That suggestion does not conform to the statutory language. Compare UDCA § 902(a)(1) with UCCA § 902(a)(1).
82 UCCA § 902(a)(1).
83 22 N.Y.C.R.R. § 212.7(f).
Even if an endorsed complaint is permitted, the question remains as to what words will be sufficient to constitute “an endorsement.” The respective court rules advise only that the endorsement “shall consist of a statement of the nature and substance of the cause of action. . . .”\(^\text{84}\) This is very little guidance for the practicing lawyer.

### C. Summons and Complaint

The plaintiff’s attorneys normally should prepare a summons and complaint. Although it is referred to as a formal complaint, the word “formal” should not be taken to imply that the complaint must be long or that it must meet many technical requirements. As a matter of practice, the complaint should be as short and as plain as possible.\(^\text{85}\) However, it must be set forth sufficiently to state a cause of action upon which relief can be granted.

CPLR 3015(e) requires the following additional pleading requirement:

> Where the plaintiff’s cause of action against a consumer arises from the plaintiff’s conduct of a business which is required by state or local law to be licensed by the department of consumer affairs of the city of New York, the Suffolk county department of consumer affairs, the Westchester county department of consumer affairs/weight-measures, the county of Rockland, the county of Putnam or the Nassau county department of consumer affairs, the complaint shall allege, as part of the cause of action, that plaintiff was duly licensed at the time of services rendered and shall contain the name and number, if any, of such license and the governmental agency which issued such license. The failure of the plaintiff to comply with this subdivision will permit the defendant to move for dismissal pursuant to paragraph seven of subdivision (a) of rule thirty-two hundred eleven of this chapter.

### D. Verification

Generally, the CPLR leaves verification of the complaint to the option of the pleader. Two cases require verification: (1) if the action is pleaded pursuant to CPLR 3016(f), where the lawyer chooses to particularize the items of the claim; and (2) when the complaint must be verified in a subsequent action against a joint obligor who was not summoned in the original action against his or her co-obligor.\(^\text{86}\)

However, court rules supply a good reason for some complaints in collection actions to be verified. To obtain a judgment by default, the attorney must present to the clerk an affidavit of the plaintiff (or other person having knowledge of the facts), setting forth the facts constituting the cause of action.\(^\text{87}\) However, if the complaint is verified, no separate affidavit is necessary.\(^\text{88}\)

Therefore, preparing a verified complaint in the first instance will eliminate a need to prepare a second paper and to have the client sign it before judgment can be entered. This can be an important

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\(^{84}\) UDCA § 902(a)(1); UCCA § 902(a)(1); CCA § 902(a)(1); UJCA § 902(a)(1).

\(^{85}\) Examples of summons and complaint forms appear in the Forms section following this Part One.

\(^{86}\) CPLR 1502. For a verification, see the Forms section following this Part One.

\(^{87}\) See, e.g., 22 N.Y.C.R.R. § 208.32 (civil court); 22 N.Y.C.R.R. §§ 212.14, 212.32 (district court, Nassau & Suffolk Co.); 22 N.Y.C.R.R. § 210.32 (city court, Long Beach). Other local court rules should be consulted for similar provisions.

\(^{88}\) 22 N.Y.C.R.R. §§ 208.32, 212.14, 212.32, 210.32.
practical consideration when speed is a factor. With modern technology, an attorney-verified complaint could be issued for service the same day an affidavit is e-mailed to the creditor for execution and return by overnight mail. However, some courts accept an attorney-verified complaint without requiring an affidavit from the plaintiff.

E. Summons and Motion for Summary Judgment in Lieu of Complaint

Section 3213 of the CPLR authorizes the service of a summons, a notice of motion for summary judgment and supporting papers in lieu of a complaint where the action is based upon an instrument for the payment of money only or upon any judgment. The summons served with such motion papers requires the defendant to submit answering papers on the motion within the time provided in the notice of motion. If the motion is denied, the moving and answering papers are deemed the complaint and the answer, respectively.

An action commenced pursuant to CPLR 3213 is within the ambit of CPLR 306-a, so that it is commenced by filing of the papers and paying for an index number, as well as RJI and motion fees. Since it is a motion, the papers, with the index number affixed, should also be filed with the clerk of the court hearing the motion. See the Forms section following this Part One for sample forms.

A motion pursuant to CPLR 3213 should have a return date, and the return date should be sufficiently advanced so as to allow the respondent time to answer as provided in CPLR 320, depending on the method of service. Failure to include a return date may make the motion jurisdictionally defective. In practice, the court calendar clerk assigns the case to a judge and the return date will be set based upon that judge’s motion calendar. For actions commenced after January 1, 1998, the moving party must complete service of process under CPLR 306-b within 120 days after purchasing an index number. If the plaintiff fails to complete service of process within the 120-day period, the court, upon motion by a defendant, may dismiss the action without prejudice to said defendant; however, the plaintiff can cross move for an extension based upon “good cause shown” or “in the interests of justice.” The Court of Appeals, in Leader v. Maroney, Ponzini & Spencer, held that the trial court has broad discretion with respect to same. It should also be noted that the plaintiff can apply for an extension ex parte.

The most frequently litigated question under CPLR 3213 is whether the particular writing constitutes “an instrument for the payment of money only.” The courts have held that to qualify for CPLR 3213 treatment, the plaintiff must prove a prima facie case by proving the instrument and a failure to make the payments called for by its terms. Where proof outside the instrument is necessary to establish the underlying obligation, CPLR 3213 is not available.

XVI. SERVICE OF PROCESS

The process in a debt collection action is usually the summons and complaint. The service of process is necessary to give the court power over the parties and to give the defendants notice of the commencement of the action. The proof of service must be filed in order for the court to continue to have jurisdiction.

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92 See infra XVI.G.
A. Who May Serve and When

A summons may be served by any person 18 years of age or older and not a party to the action. An officer or director of a plaintiff corporation may serve process. Process may be served at any hour of the day or night or on any day of the week, except Sunday. Sunday service is void. Malicious service of process on a Saturday against a defendant who observes that day as a holy time constitutes a misdemeanor.

B. Service of Process Upon a Natural Person

Personal service of a summons or other process upon a natural person can be made by one of the five methods discussed below.

1. Personal Delivery

The personal handing of the process to the defendant within the state is the most desirable because it assures actual notice to the defendant. In some cases, service will be valid even if the process is not handed to the defendant—for example, where the defendant resists service by force or deceit or refusal to accept service.

2. Delivery and Mailing

Service of process can be accomplished by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the defendant and by mailing a copy of the process to the defendant at his or her last known residence, or by mailing the process by first-class mail to the person to be served at his or her actual place of business. If the mailing is done to the defendant’s place of business, it must be in an envelope bearing the legend “Personal and Confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person being served.

This method can be used without any prior effort to make personal delivery. Delivery and mailing are both essential in order for the court to obtain jurisdiction over the defendant.

3. Agent for Service

Process can be served within the state on an agent designated by the defendant for service pursuant to CPLR 318. However, most individual defendants in collection cases generally do not designate agents.

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93 CPLR 2103.
94 GBL § 11.
95 GBL § 13.
96 See Estate of Turecamo, 96 Misc. 2d 120, 121, 408 N.Y.S.2d 930 (Sur. Ct., Nassau Co. 1978) (where the defendant refused to open the door to accept service).
97 CPLR 308(2).
98 CPLR 308(3).
4. Nailing and Mailing

Where service cannot be made by personal delivery or by “delivery and mailing” after due diligence, it may be effected by affixing the process to the door of either the actual place of business, dwelling place or usual place of abode within the state of the defendant and by mailing the process to such person at his or her last known residence, or by mailing the process by first-class mail to the person to be served in his or her actual place of business in an envelope bearing the legend “Personal and Confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served.99

Also, effective April 1, 2008, section 208.6(h) was added to the Uniform Rules for the New York City Civil Court providing additional notice requirements in actions arising from consumer credit transactions. A copy of that addition—setting forth the requirements, procedures and statutory English and Spanish language that must be set forth in the notice—is annexed hereto as Appendix A.

Actions commenced after January 1, 1998, do not require filing proof of service within 120 days. Instead, they require only that service be completed within 120 days after purchasing an index number. Under CPLR 306-b, if service is not completed within 120 days after purchasing an index number, the opposing party must make a motion in order to dismiss the action. The court has the discretion to either dismiss the action or to extend the time for service.

It should be noted that this method as well as the delivery and mailing method only require mailing by first-class mail. Although registered or certified mail may avoid a possible claim that actual notice was never received, often defendants refuse to accept registered or certified mail whereas ordinary mail raises a presumption of receipt.

The nail and mail method of service requires “due diligence.” The process server must detail his or her attempts and efforts to achieve service under the other provisions.100 A single visit when no one is at home will not suffice. On the other hand, several visits at different times and days of the week (including weekends) to the defendant’s residence and place of business will probably constitute the requisite “due diligence.”

Mailing under method No. 2 or No. 4 must be in strict compliance with CPLR 308(2) and (4). Failure to mark the envelope “Personal and Confidential” or failure to include in the mailing affidavit that it was so marked and that it did not indicate it came from an attorney can result in invalid service and a dismissal for want of jurisdiction.101

5. Court-Directed Service

Section 308(5) of the CPLR permits service to be made “in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four” of CPLR 308. Methods of service other than those described in paragraphs 1, 2, and 4 need not be attempted before applying for a court order.102

99 CPLR 308(4).
100 CPLR 306(c).
C. Service Upon a Corporation or Limited Liability Company

Personal service upon a domestic or foreign corporation shall be made by delivering the summons to an officer, director, managing or general agent, or cashier or assistant cashier, or to any other agent authorized by appointment or by law to receive service. Service upon a low-level clerical employee who possesses no supervisory or administrative duties is not good service upon a corporation. On the other hand, a person who appears to be in charge qualifies as a managing agent for service, and this person needs no formal title indicating a high position. The New York State Secretary of State or other designated agent of a corporation is authorized by law to receive service, and the New York State Superintendent of Insurance is authorized to receive service for authorized and unauthorized insurers.

Service on a domestic or foreign limited liability company must be made by delivering a copy personally to (a) a member in this state, if the management is vested in its members, (b) any manager of the limited liability company in this state if management is vested in one or more managers, (c) to any other agent authorized by appointment to receive process, or (d) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant. Service may also be made pursuant to article three of the Limited Liability Company Law. If service in any of these alternatives is impractical, it may be made in such manner as the court, on motion without notice, directs.

D. Personal Service Upon a Partnership

Personal service upon persons conducting a business as a partnership may be made by personally serving the summons within the state upon any one of the partners. A partnership may be served by substituted service if the process server follows the procedures set forth in subdivisions (b), (c), (d), and (e) of CPLR 310. However, for a partner who is not personally served, only that partner’s interest, and not his or her personal assets, may be reached by the judgment creditor.

E. Personal Service Outside New York State

Service of process outside the state gives personal jurisdiction if the defendant is a domiciliary of the state or has committed acts that meet the requirements of CPLR 302.

F. Affidavit of Service

Proof of service shall be in the form of a certificate if made by the sheriff or other public officer, or in the form of an affidavit if made by any other person. The requirements of the affidavit are set forth in CPLR 306.

103 CPLR 311(a)(1).
107 CPLR 311-a.
108 CPLR 310.
109 CPLR 5201(b).
110 CPLR 306(d).
It should be noted that whenever delivery of a summons is made to an individual, whether service is made to a person of suitable age (under CPLR 308(2)), on an officer of a corporation or on a partner, the affidavit of service must contain the description of the person to whom it was so delivered, including but not limited to sex, color of skin, hair color, approximate age, approximate weight and height, and other identifying features.\textsuperscript{111}

G. Filing of Proof of Service

Service of process must be completed within 120 days after commencement of an action. If service is not made within that time, the court, upon motion, may dismiss without prejudice or, upon good cause shown or in the interest of justice, extend the time for service.\textsuperscript{112} Under this statute, the certainty of a second 120-day period has been eliminated and substituted with judicial discretion.

In some cases, proof of service must be filed in order for the service to be complete, and the defendant’s time to answer does not begin to run until service is complete. This means that the plaintiff’s right to enter a default judgment does not accrue until the service is complete and the defendant’s time to answer has expired.\textsuperscript{113} Proof of service must be filed with the clerk of the court.

H. “Additional Notice” Required to Be Filed in Some Cases

1. Individuals

Where a default or a default judgment is sought against a natural person in an action based upon nonpayment of a contractual obligation, an affidavit must be filed that “additional notice” has been given to the defendant at least 20 days before entry of such judgment by mailing a copy of the summons by first-class mail to the defendant at his or her place of residence in an envelope bearing the legend “Personal and Confidential” and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt.\textsuperscript{114} A form for the affidavit of such mailing is in the Forms section following this Part One.

If the notice is returned undelivered or if the defendant’s residence is unknown, the summons may be mailed in the same manner to the defendant’s place of employment, if known. If neither the defendant’s residence nor place of employment is known, then it is to be mailed to his or her last known residence.\textsuperscript{115} This additional notice can only be mailed simultaneously with or after service of the process.\textsuperscript{116} Judgment cannot be entered until 20 days have elapsed from the date of the mailing. This additional notice is not required in small claims court nor in connection with summary proceedings to recover possession of real property or actions affecting title to real property.\textsuperscript{117}

\textsuperscript{111} CPLR 306(b). See the Forms section following this Part One.
\textsuperscript{112} CPLR 306-b.
\textsuperscript{113} See infra XVI.J.
\textsuperscript{114} CPLR 3215(g)(3)(i); see also supra XVI.B.4.
\textsuperscript{115} CPLR 3215(g)(3)(i); see also supra XVI.B.4.
\textsuperscript{116} CPLR 3215(g)(3)(ii).
\textsuperscript{117} CPLR 3215(g)(3)(iii). See the Forms section following this Part One.
2. Corporations

When a default judgment is sought against a domestic or authorized foreign corporation pursuant to BCL § 306 (served on the secretary of state), an affidavit shall be submitted that an additional service of the summons by first-class mail has been made upon the defendant corporation at its last known address at least 20 days before the entry of judgment.118 The summons shall be accompanied by a notice that service is being made pursuant to BCL § 306. I have found that some attorneys are mailing to the defendants only a copy of the pleadings; that fails to satisfy that statutory notice requirement.119

The failure to follow all the requirements connected with the mailing, and the failure of the filed affidavit of service to indicate satisfaction of all the requirements, is a jurisdictional defect that will result in dismissal of the action.120

I. Personal Service by Mail

Civil Practice Law and Rules 312-a permits service by mail. The section permits the service of a summons and complaint, summons and notice, or notice of petition and petition, by first-class, pre-paid mail upon a natural person, partnership, corporation, the state of New York, governmental subdivisions, courts, boards or commissions. It cannot be used for service outside the state or upon infants or incompetents. The papers served must be accompanied by two copies of a “statement of service by mail” and an “acknowledgment of receipt” in the form specified in the statute (as appears in the Forms section following this Part One).

Upon receipt of the paper to be served, the defendant, an authorized employee of the defendant, the defendant’s attorney or an employee of the attorney must complete the acknowledgment form and mail it or deliver it within 30 days after receipt. Service is complete on the date the signed acknowledgment is mailed or delivered to the sender. The signed acknowledgment of receipt constitutes proof of service. If the applicable court rules require filing, the papers served and the acknowledgment should be filed within the specified time limits.121 Filing of proof of service within 120 days is not required for actions commenced after January 1, 1998.122 If service by mail is attempted and the defendant fails to acknowledge service, this leaves only 90 days after the filing of the summons and complaint to complete service by some other method.

The defendant has 20 days from the date of his or her signed acknowledgment to answer the complaint or petition. This 20-day period applies regardless of the court in which the action is commenced.123

Unlike other statutes governing service, this section authorizes the plaintiff or any other person to make the service by mail.

118 CPLR 3215(g)(4).
119 See the Forms section following this Part One for a form that can be mailed with the pleadings to satisfy that requirement; the affidavit of such mailing is also available in the Forms section.
121 See supra XVI.G.
122 CPLR 306-b.
123 CPLR 312-a(b)(2).
If the acknowledgment is not returned within 30 days, the reasonable expenses of alternative service are taxed to the plaintiff, provided it is awarded costs. (This is the present rule, in any event.) In addition, if the acknowledgment is not returned, the plaintiff must include on the summons or other paper that an attempt was previously made to effect service under this section.

Although the statute does not specify the location at which to mail the papers (e.g., “last known residence”), the mailing should be to an address where the plaintiff anticipates the defendant will actually receive it, since service is effective only if the defendant receives it and acknowledges receipt.

Parallel sections of the New York City Civil Court Act, Uniform District Court Act, Uniform City Court Act and the Uniform Justice Court Act have also been enacted.124

J. Time to Answer

A default judgment cannot be entered against the defendant until his or her time to answer expires. The defendant’s time to answer varies by the manner of service and the court involved:

1. Twenty days after personal service in the district court and 10 days after personal service in city courts outside the city of New York.125 However, the 20-day default judgment rules of CPLR 3215 can extend that time.

2. Twenty days after personal service in supreme court and county court or in the New York City Civil Court.126

3. Thirty days after service is filed or after summons is served outside the county by publication or by means other than personal delivery to the defendant within the county, or upon a designee, and the action is either in New York City Civil Court or in one of the district courts.127

4. Thirty days after service is complete when the summons is served outside the county by publication or by means other than personal delivery to the defendant within the county, or upon a designee, when the action is in the city court other than the New York City Civil Court.128

Note that service is not complete until ten days after proof of service is filed when service is made by delivery and mailing or nailing and mailing pursuant to CPLR 308(2) and (4). Therefore, 10 days must be added to the time that the defendant has to answer. In supreme court and county court, that usually gives the defendant a total of 30 days to answer, whereas in the city courts and the district courts, it gives the defendant a total of 40 days to answer.

XVII. ENTRY OF DEFAULT JUDGMENT

The clerk of the court (judgment clerk) can enter a default judgment in an action for a “sum certain” (liquidated amount) when the defendant has failed to appear, plead or proceed to trial within one

124 CCA § 403; UDCA § 403; UCCA § 403; UJCA § 403.
125 UDCA § 402(a); UCCA § 402(a).
126 CPLR 3012(a); CCA § 402(a).
127 CCA § 402(b); UDCA § 402(b).
128 UCCA § 402(b).
The following papers must be submitted to the court for entry of a default judgment:

1. **Summons and verified complaint (or affidavit of merit by the plaintiff, if the complaint is not verified).**

2. **Affidavit of service (if not already filed).**

3. **Affidavit of additional notice if required by CPLR 3215(g)(3)(i) or if required by BCL § 306.**

4. **Affidavit of non-military service.** Even if the pleadings were delivered personally to the defendant and the Affidavit of Service recited that the defendant was not on active duty in the military service, some court clerks are requiring something to show that the defendant is not on active duty at the time you are applying for the judgment. Generally speaking, the court clerks will accept a Military Status Report, which can be quickly obtained on line from the Department of Defense—Manpower Data Center. You will need to insert the Social Security number and last name. Some courts have erroneously required additional information to be included (e.g., first name); however, the additional information will limit matches of active-duty debtors, creating false negatives; in other words, the website provides only “active-duty” information for exact matches with the inputted information. In seconds you will receive a report you can print and submit which states (1) it does not possess information regarding whether the individual is on active duty, or (2) it possesses information that the individual is on active duty, with dates of said active duty.

5. **Affidavit of Merit.** If the complaint was not verified or was verified by the attorney—pursuant to CPLR 3016(f)—rather than by the plaintiff, an Affidavit of Merit executed by the plaintiff is also required to enter judgment under CPLR 3215(f).

6. **A statement for judgment containing the amount in the complaint, computed interest, statutory costs and actual disbursements.**

7. The judgment clerk may not enter a default judgment that includes an award for attorney fees as a percentage of the recovery without proof pursuant to CPLR 3215(a) that the award is both reasonable and necessary. Accordingly, if attorney fees are sought, an affidavit of service, a proposed order and a request for judicial intervention must be prepared. The order approving the attorney fees must be signed by a judge before the judgment clerk will include the attorney fees in a default judgment. In general, the factors to be considered include (1) the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; (2) the lawyer’s experience, ability and reputation; (3) the amount involved and benefit resulting to the client from the services; (4) the customary fee charged for similar services; (5) the contingency or certainty of compensation; (6) the results obtained; and (7) the responsibility involved.

---

129 CPLR 3215.


131 See the Forms section following this Part One for form of statement for judgment.


133 See the Forms section following this Part One.

Keep in mind, also, that where the underlying claim was referred to you by a collection agency, pursuant to Rule 5.4, legal fees cannot be divided with a non-attorney. Thus, any fees paid to the agency must be for services provided by the agency and not those provided by the attorney.

A. Severance

If the complaint contains multiple defendants and the judgment is not being entered against all defendants, then the judgment should contain an order of severance as to defendants against whom judgment is not being taken (e.g., defendants not served, or defendants who had answered). Failure to enter an order of severance will preclude the entry of judgment against those defendants later.

B. Interest Rates

Prior to the entry of judgment, interest may be assessed at the rate provided in the agreement or contract between the parties. The contract rate of interest, rather than statutory legal rate, governs until payment of principal, or until the contract is merged in judgment. However, an invoice warning of 1.5% monthly interest for lateness does not constitute a contract and does not alter the CPLR rate for pre-judgment interest. There must be a writing signed by the person to be charged with the increased interest rate. If the contract or agreement is silent as to the rate of interest, interest may be assessed at the rate of 9% per annum.

Once judgment is entered, the post-judgment rate of interest is 9% per annum as of June 25, 1981. Such interest accrues on the entire judgment amount, including costs and, if awarded, attorney fees.

XVIII. PRE-JUDGMENT REMEDIES

Remedies that provide some relief to a plaintiff pending the entry of a judgment are called provisional remedies. The provisional remedies are attachment, injunction, receivership, notice of pendency and seizure of a chattel in an action to recover a chattel. Provisional remedies are unique in that they afford to the plaintiff during the action a measure of the relief he or she seeks in the final judgment. Obviously, such a remedy is drastic, for it gives the plaintiff significant relief without the plaintiff’s showing that he or she is in fact entitled to that relief. Provisional remedies are designed to maintain the status quo during the lawsuit to ensure the plaintiff does not come away with a Pyrrhic victory. The plaintiff will accomplish little by obtaining a judgment against the defendant if during the action the defendant has disposed of all his or her assets, thereby rendering himself or herself judgment-proof. To avoid this kind of hardship on plaintiffs, provisional remedies are provided.

The U.S. Supreme Court has taken a dim view of provisional remedies, particularly when they are granted without notice to the defendant.

135 N.Y. Rules of Professional Conduct, rule 5.4; see also N.Y. Judiciary Law § 491, which prohibits the sharing of attorney fees with a non-lawyer in return for placing a matter with the attorney.

136 CPLR 3215(a); see the Forms section following this Part One.


139 CPLR 5004.

The provisional remedies are found in the following articles of the CPLR:

1. Attachment—article 62
2. Injunction—article 63
3. Receivership—article 64
4. Notice of pendency—article 65
5. Recovery of chattel—article 71

Time and space do not permit a full analysis of these provisional remedies in this monograph. The practitioner should read the particular CPLR sections very carefully, making sure that he or she has the most current versions on hand. The courts continue to be very concerned with the enormous burden that would be imposed upon debtors by mistake or improper deprivations of their property.

Legal services connected with provisional remedies are routinely handled at hourly rates. Some require the posting of a bond by the creditor.
APPENDIX A

§ 208.6 Summons

(h) Additional mailing of notice on an action arising from a consumer credit transaction

(1) At the time of filing with the clerk of the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

CIVIL COURT. CITY OF NEW YORK

TRIBUNAL CIVIL DE LA CIUDAD DE NUEVA YORK

COUNTY OF ____________________________________

INDEX (LIBRO) NO. _____________________________

Plaintiff/Demandante______________________________

Defendant/Demandado______________

ATTENTION: A SUMMONS AND COMPLAINT HAS BEEN FILED ON A CONSUMER CREDIT TRANSACTION ASKING THE COURT TO RENDER A JUDGMENT AGAINST YOU. YOU MAY WISH TO CONTACT AN ATTORNEY. YOU MUST ANSWER AT THE LOCATION AND WITHIN THE TIME SPECIFIED ON THE SUMMONS. IF YOU DO NOT APPEAR IN COURT THE COURT MAY GRANT A JUDGMENT AGAINST YOU. IF A JUDGMENT IS GRANTED AGAINST YOU YOUR PROPERTY CAN BE TAKEN. PART OF YOUR PAY CAN BE TAKEN FROM YOU (GARNISHEED), AND YOUR CREDIT RATING CAN BE AFFECTED. IF YOU HAVE NOT RECEIVED THE SUMMONS AND COMPLAINT GO TO THE CIVIL COURT CLERK’S OFFICE SPECIFIED ON THE RETURN ADDRESS AND BRING THIS NOTICE WITH YOU.

ATENCIÓN: BASADO EN UNA TRANSACCIÓN DE CRÉDITO AL CONSUMIDOR, SE HA SOMETIDO UNA QUERELLA Y UNA CITACIÓN JUDICIAL ANTE EL TRIBUNAL CIVIL, SOLICITÁNDO QUE SE EMITA UN FALLO JUDICIAL EN CONTRA SUYA, POR LO QUE USTED QUERRÁ COMUNICARSE CON UN ABOGADO. USTED TIENE QUE SOMETER UNA RESPUESTA ANTE EL TRIBUNAL, EN EL LUGAR Y EL MOMENTO INDICADO EN LA CITACIÓN. SI NO COMPARECE ANTE EL TRIBUNAL, SE PUEDE EMITIR UN FALLO JUDICIAL EN SU CONTRA. DE SER ASÍ, SUS PERTENENCIAS PUEDEN SER EMBARGADAS, PARTE DE SU SALARIO PUEDE SER EMBARGADO Y LA CLASIFICACIÓN DE SU CRÉDITO PUEDEN SER AFECTADA NEGATIVAMENTE. SI NO HA RECIBIDO LA QUERELLA, DIRIJASE AL DESPACHO DEL SECRETARIO JUDICIAL INDICADO EN LA DIRECCIÓN DEL REMITENTE Y TRAIGA ESTA NOTIFICACIÓN CON USTED.

The face of the envelope shall be addressed to the defendant at the address at which process was served in the summons and complaint, and shall contain the defendant’s name, address (including apartment number) and Zip Code. The face of the envelope also shall contain, in the form of a return
address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:

**Bronx:**
Civil Court of the City of New York  
851 Grand Concourse, Basement  
Bronx, NY 10451

**Kings:**
Civil Court of the City of New York  
141 Livingston Street  
Room 302  
Brooklyn, New York 11201

**New York:**
Civil Court of the City of New York  
111 Centre Street, Room 118  
New York, New York 10013

**Queens:**
Civil Court of the City of New York  
89-17 Sutphin Boulevard, Room 147  
Jamaica, New York 11435

**Richmond:**
Civil Court of the City of New York  
927 Castleton Avenue, Basement  
Staten Island, New York 10310

(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1). No default judgment based on defendant’s failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk.
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* Some of the forms contained in this monograph are omitted from the forms CD accompanying this publication because they are available from government agencies. These forms are obtainable from the following government agency: the New York State Unified Court System (1-800-268-7876) <www.nycourts.gov>. 
(date)

FORWARD/ADDRESS CORRECTION REQUESTED

________________________________________
________________________________________
________________________________________

Re:  (name of creditor)
    Amount Due: $__________
    Our File No.:  _________

Dear Sir or Madam:

This account has been turned over to this firm for collection. It is long past due, and we understand previous efforts to collect it were unsuccessful.

This is YOUR FINAL OPPORTUNITY to conclude this matter amicably. We will expect to receive a check for the full balance on or before __________, 20___. If that deadline cannot be met, you must call us prior thereto to discuss other acceptable arrangements.

Yours truly,
RE: Claim of

Dear Sir/Madam:

Our client above named has consulted us concerning a debt claimed due from you in the amount of $, plus interest at % from ($ to date). Although we may have requested that you take certain action, you still have the right to make a written request, within thirty days of your receipt of this notice, for more information about the debt. Your rights are described at the end of this notice. Note- because of interest or other charges that may vary from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive the payment, in which event we will inform you. For further information, please contact this office.

This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.

Very truly yours,

NOTE: Unless you, within thirty days after receipt of this notice, dispute the validity of the debt, or any portion of it, the debt will be assumed to be valid by us. If you notify us in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and mail a copy of such verification to you. Upon your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. We may proceed with suit or other proceeding to enforce any obligation against you without waiting the thirty-day period if so requested by our client. Your rights noted in this notice will not be affected by such suit or proceeding.

Our file number- ©
(date)

FORWARD/ADDRESS CORRECTION REQUESTED

____________________________
____________________________
____________________________

Re:  (creditor)__________________
    Amount Due: $___________
    Our File No.: ___________

Dear ________________________:

This account has been turned over to this firm for collection. It is long past due, and we understand previous efforts to collect it were unsuccessful. While we realize it is a corporate debt, you are also personally liable under a guaranty, a copy of which is enclosed.

This is YOUR FINAL OPPORTUNITY to conclude this matter amicably. We will expect to receive a check for the full balance on or before ____________, 20___. If that deadline cannot be met, you must call us prior thereto to discuss other acceptable arrangements.

Yours truly,

Enclosure
# Change of Address or Boxholder Request Form - Process Servers

(Letterhead Optional)

<table>
<thead>
<tr>
<th>Postmaster</th>
<th>Date</th>
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City, State, ZIP Code

**REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS**

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name:________________________________________________________________________
Address:______________________________________________________________________

**Note:** The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.

1. Capacity of requester (e.g., process server, attorney, party representing self):

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se - except a corporation acting pro se must cite statute):

   __________________________________________________________________________

   __________________________________________________________________________

3. The names of all known parties to the litigation:

4. The court in which the case has been or will be heard:

5. The docket or other identifying number if one has been issued:

6. The capacity in which this individual is to be served (e.g., defendant or witness):

   __________________________________________________________________________

**WARNING**

THE SUBMISSION OF FALSE INFORMATION (1) TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION or (2) TO AVOID PAYMENT OF THE FEE FOR CHANGE OF ADDRESS INFORMATION, COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

_________________________________________ ________________________________
Signature Address

_________________________________________ ________________________________
Printed Name  City, State, ZIP Code

**POST OFFICE USE ONLY**

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<tr>
<th>No change of address order on file.</th>
<th>NEW ADDRESS OR BOXHOLDER’S NAME</th>
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<td>Moved, left no forwarding address.</td>
<td>POSTMARK AND STREET ADDRESS</td>
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CONFIRMING LETTER*

Re: Claimant:

Amount:

Dear ________________:

This will confirm your agreement to pay the above claim. As agreed, your payment(s) will be due: (e.g., the sum of $2,000.00 to be paid in monthly installments of $250.00 commencing the first of next month and a like sum on the first of each month thereafter until paid in full, together with interest at the rate of 9% per annum).

Please confirm this agreement by signing the extra copy of this letter and then returning it in the enclosed envelope, thus avoiding the necessity of any other legal action being considered in this case.

Yours truly,

*If this confirming letter goes to a consumer debtor, it should contain the following: This letter is an attempt to collect a debt and any information obtained will be used for that purpose.
STATE OF NEW YORK
______________ CITY COURT : ___________________ COUNTY

____________________________________________________|

| CREDITOR | Index No. _______
<table>
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<td>____________________________, NY __________,</td>
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AFFIDAVIT OF
CONFESSION
OF JUDGMENT

Plaintiff,

vs

DEBTOR (Individual or Individual d/b/a)

________________________ |
| ________________________ |
| ________________________, NY __________, |

Defendant.

____________________________________________________|

STATE OF NEW YORK ) ss.:
COUNTY OF__________________ )

DEBTOR, being duly sworn, deposes and says that he/she resides at ________________________,
__________________________, New York __________ and hereby confesses judgment herein
and consents to the entry thereof against it in _________________ City Court, ______________ County,
New York, as hereinafter conditioned.

This confession of judgment is for a debt justly due to the Plaintiff arising from the following
facts:

DEBTOR, as obligor, defaulted in payment due CREDITOR for various goods, wares and
merchandise he/she purchased therefrom. DEBTOR owes CREDITOR $______________ inclusive
of service charges computed as of ________________, 20__ which he/she agrees to pay as follows:
$__________ on the execution of this Affidavit of Confession of Judgment and, in any event, on or
before ________________, 20__; the remaining balance must be paid on or before ________________, 20__.
Both payments must be made to, and received by, __________________________, attorneys for CREDITOR, at ________________________,
__________________________, New York, _________ on or before the due dates. TIME IS OF THE ESSENCE and
DEBTOR hereby confesses and consents to entry of judgment against him/her for whatever balance of the $________________ remains unpaid only in the event he/she defaults on timely payment required hereby or in the event any check tendered by, or in his/her behalf, fails to clear the first time it is deposited.

__________________________________

(PRINT NAME) ____________________

Sworn to before me this ______
day of ______________, 20____.

_______________________________

Notary Public
STATE OF NEW YORK
___________________ CITY COURT : ________________________ COUNTY

CREDITOR, | Index No. __________

Plaintiff, | JUDGMENT OF CONFESSION

vs

DEBTOR, |

Defendant. |

Amount confessed.................................................................................................... $ __________
Interest ........................................................................................................ +
Total........................................... $

Costs by Statute ................................................................. 15.00
Filing Fee .........................................................................................
Transcripting Fees..................................................................................
Execution Fee .....................................................................................
Cost Total ............ + _________
Judgment Total ........................................................................................... $

ATTORNEY’S AFFIRMATION

STATE OF NEW YORK, COUNTY OF ________________

The undersigned, an attorney at law of the State of New York, affirms that he is one of the attorneys of ____________________________, attorneys for the plaintiff herein and states that the disbursements above specified are correct and true and have been or will necessarily be made or incurred herein and are reasonable in amount and affirms this statement to be true under the penalties of perjury.

Dated: _________________20__

_______________________________
(print name) _________________, Esq.
JUDGMENT entered the ____ day of ______________, 20__.

On filing the foregoing Affidavit of Confession of Judgment made by the defendant herein, sworn to the ____ day of ______________, 20__.

NOW, ON MOTION OF __________________________________, attorneys for plaintiff it is
ADJUDGED that plaintiff, CREDITOR, residing at ________________________________,
______________, NY ______, does recover of the defendant, DEBTOR, residing at
______________, ________________, NY ______, the sum of $______________ with interest
of $_______ making a total of $_____________; together with $______ costs and disbursements,
amounting in all to the sum of $______________; and that the plaintiff have execution therefor.

_______________________________
Clerk
STATE OF NEW YORK
SUPREME COURT: ______________ COUNTY

CREDITOR | Index No._________
__________________________ | |
__________________________ , NY __________. | AFFIDAVIT OF Plaintiff, |
| CONFESSION OF JUDGMENT |

vs

DEBTOR (Corporation)

__________________________ | |
__________________________ , NY __________. | |
Defendant. |

STATE OF NEW YORK ) ss.:
COUNTY OF ________________ )
__________________________, being duly sworn, deposes and says that he is the __________ of DEBTOR, a New York corporation, and is duly authorized to make this affidavit on its behalf.

DEBTOR, with offices at the above-captioned address, hereby confesses judgment herein and consents to the entry thereof against it in Supreme Court, ________________ County, New York.

This confession of judgment is for a debt justly due to the Plaintiff arising from the following facts:

DEBTOR, as obligor, defaulted in payment due the CREDITOR on a promissory note, a copy of which is annexed hereto. DEBTOR hereby confesses judgment for the unpaid balance in the amount of $______________, plus interest thereon at __% from the____ day of _______________, 20__.

DEBTOR
By:__________________________

(NAME)__________________________

(TITLE)__________________________

Sworn to before me this ____
day of ________________, 20__.

____________________________
Notary Public
STATE OF NEW YORK

SUPREME COURT: _____________ COUNTY

___________________________________________________

CREDITOR, | Index No. __________

Plaintiff, | JUDGMENT OF

vs | CONFESSION

DEBTOR, |

Defendant. |

___________________________________________________

Amount confessed............................................................................................................... $ ________________

Interest .................................................................................................................. +

Total .................................................................................................................... $ ________________

Costs by Statute ........................................................................................................ 15.00

Index Application .................................................................................................

Filing Fee ............................................................................................................... 

Execution Fee .........................................................................................................

Cost Total .................................. + ________________

Judgment Total ........................................................................................................ $ ________________

ATTORNEY’S AFFIRMATION

STATE OF NEW YORK, COUNTY OF ______________

The undersigned, an attorney at law of the State of New York, affirms that he is one of the attorneys of ________________________________, attorneys for the plaintiff herein and states that the disbursements above specified are correct and true and have been or will necessarily be made or incurred herein and are reasonable in amount and affirms this statement to be true under the penalties of perjury.

Dated: __________________, 20__

______________________________
(print name) __________________, Esq.

JUDGMENT entered the ___ day of ________________, 20__.
On filing the foregoing Affidavit of Confession of Judgment made by the defendant herein, sworn to the _____ day of __________________, 20___.

NOW, ON MOTION OF ___________________________________, attorneys for plaintiff it is

ADJUDGED that plaintiff, CREDITOR, residing at ________________________________,
____________________, NY _____ ____, does recover of defendant, DEBTOR, residing at
____________________, ___________________, NY _________, the sum of $________________ with interest
of $_________ making a total of $_____________; together with $______ costs and disbursements,
amounting in all to the sum of $________________ ; and that the plaintiff have execution therefor.

____________________________________

Clerk
STATE OF NEW YORK
COUNTY OF : 

Plaintiff, STIPULATION
vs. Index No.
Defendant(s). ASSIGNED JUDGE: Hon.

It is stipulated and agreed by and between the parties that this action is settled on the following terms and conditions as to:

1. Defendant(s) hereby admits due service of the Summons and Complaint in this action, withdraws the appearance and Answer, if any, filed on Defendant(s)’ behalf, including any claims or Counterclaims relating to the cause of action in the underlying Complaint (whether or not asserted), but nevertheless submits Defendant(s)’ person and the subject matter of this action to the jurisdiction and venue of this Court, and admits the allegations in the underlying Complaint.

2. Defendant(s) owe Plaintiff as follows (see Complaint):
   a. Principal amount in Complaint
   b. Plus interest at from
   c. Plus reasonable attorney fees
   d. Plus actual disbursements to date $ 
   e. Plus fee to file Stipulation $ 
   f. Less credits to date ()
   g. Total due, plus interest at 9% from , and all additional costs and disbursements allowed by statute upon entry of Judgment.
3. As settlement of this matter as to , Defendant(s) shall pay to the Plaintiff the aforementioned “Total due” ($) in paragraph 2(g), plus interest at 9% from , as follows: initial payment in the amount of $ on or before ; the remaining balance in installments of $ each month commencing , each payable on or before the same date of each subsequent month until said amount is paid in full.

4. All payments are to be made to the order of the attorney for Plaintiff, and to be received at said attorney’s office address on or before each due date.

5. Upon full payment by Defendant(s) in accordance with the terms of this Stipulation, Plaintiff shall forward a signed Stipulation of Discontinuance as to to be filed by the Defendant(s).

6. Upon default by Defendant(s), and if such default remains uncured for ten (10) days, or if any check or payment instrument tendered by or on behalf of Defendant(s) fails to clear upon presentment or is otherwise reversed, Plaintiff may proceed pursuant to CPLR 3215(i) for the amount specified in paragraph 2(g) (“Total due” plus interest and disbursements) for the entry of Judgment upon Attorney Affirmation as to the default, without further notice, crediting the Defendant(s) with payments made hereunder, if any, upon entry of Judgment by the Clerk.

7. This Stipulation may be signed in counter-parts.

DATED:  

____________________________  
Attorney(s) for Plaintiff

DATED:  

____________________________  
Attorney for Defendant(s)

Defendant(s) hereby acknowledge that Defendant(s) have read and understand the terms of this Stipulation, are aware of Defendant(s)’ right to be represented by an attorney and/or obtain legal counsel relative to this action and the terms of this Stipulation, and knowingly and voluntarily sign this Stipulation.

____________________________

STATE OF  
COUNTY OF  )  SS.:  
On , before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_________________________________  
NOTARY PUBLIC
STATE OF NEW YORK
COUNTY OF:

, Plaintiff,                      ATTORNEY’S AFFIRMATION

vs.                             Index No.

, Defendant(s).                ASSIGNED JUDGE:

Hon.

, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff in the above-referenced matter, and am fully familiar with the facts and circumstances of this action.

2. I submit this affirmation in support of the Plaintiff’s application for Judgment to be entered in favor of the Plaintiff and against the Defendant(s).

3. A Stipulation settling this action was entered between the attorneys for the Plaintiff and the Defendant(s). A copy of the Stipulation is attached hereto.

4. The Defendant(s) have failed to comply with the terms of said Stipulation by failing to make the required payments to the Plaintiff. To date, the Defendant(s) have only paid .

WHEREFORE, it is respectfully requested that Judgment be entered against the Defendant(s), as provided in the Stipulation.

DATED:

Buffalo, New York

Our file number- ©
CONSUMER CREDIT TRANSACTION [if applicable]

STATE OF NEW YORK
SUPREME COURT

COUNTY OF

Plaintiff,

-VS-

Index No. __________

Date Filed: __________

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff’s attorneys an Answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue designated is the residence of (Plaintiff or Defendant) Any request for Judgment for the relief demanded in the complaint will be subject to approval by the Court and applicable law.

DATED: __________, 20__

By: ______________________________________

(ATTY NAME)

Attorneys for Plaintiff

_____________________________, New York, ______

Telephone (____) ____-_________

FAX SERVICE NOT ACCEPTED

Note: “If suit is commenced on a consumer claim within the 30-day validation period, the following language is recommended at the end of the Summons:

This advice pertains to your dealings with me as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons is a command from the court, not from me, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this portion of the document also does not affect my relations with the court. As a lawyer, I may file papers in the suit according to the court’s rules and the judge’s instructions. Unless you, within thirty days after receipt of this notice, dispute the validity of the debt, or any portion of it, the debt will be assumed to be valid by us. If you notify us in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and mail a copy of such verification to you. Upon your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. The law does not require us to wait until the end of the thirty-day period following first contact with you before suing you to collect the debt. Even though the law provides that your answer to the Complaint may be required to be served in some cases in less than thirty days, no request will be made to the Court for a judgment until, at least, the expiration of thirty days after your receipt of this summons. However, if you dispute the debt or request the name and address of the original creditor within the thirty-day period that begins with your receipt of this summons, and in the manner stated above, the law requires us to cease efforts (through litigation or otherwise) to collect the debt until we mail the requested information to you. Nevertheless, this dispute or request may not constitute an Answer under law. You should consult an attorney for advice concerning your rights and obligations in this suit. This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.”
STATE OF NEW YORK

CONSUMER CREDIT TRANSACTION

________________________

________________________

Index No.

-against-

Plaintiff,

SUMMONS

________________________

________________________

Defendant.

To the above-named defendant:

YOU ARE HEREBY SUMMONED and required to appear in the City Court of ____________, located at ____________, in said City, County of ____________, State of New York, by serving an answer * to the annexed complaint upon plaintiff’s attorney at the address stated below, or if there is no attorney, upon the plaintiff at the address stated above, within the time provided by law as noted below; upon your failure to so answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action. The basis of venue is the County where (the consumer credit transaction took place, defendant resides, or both). Any request for Judgment for the relief demanded in the Complaint will be subject to approval by the Court and applicable law.

Dated the __ day of __________, 20___.

(name of firm)

Attorneys for Plaintiff

By: ____________________________

(atty name)

________________________

New York, _____

(____) ____ - _________

Note: The law provides that:

(1) if this summons is served by delivery to you personally within the County of ____________, you must answer within 10 days after such service; or

(2) if this summons is served by delivery to any person other than you personally, or is served outside the County of ____________, or by publication, or by any means other than personal delivery to you within the County of ____________, you are allowed 30 days after service is complete within which to answer.

* You need not physically go to the court to serve an answer.

Note: “If suit is commenced on a consumer claim within the 30-day validation period, the following language is recommended at the end of the Summons:

This advice pertains to your dealings with me as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons is a command from the court, not from me, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this portion of the document also does not affect my relations with the court. As a lawyer, I may file papers in the suit according to the court's rules and the judge's instructions. Unless you, within thirty days after receipt of this notice, dispute the validity of the debt, or any portion of it, the debt will be assumed to be valid by us. If you notify us in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and mail a copy of such verification to you. Upon your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. The law does not require us to wait until the end of the thirty-day period following first contact with you before suing you to collect the debt. Even though the law provides that your answer to the Complaint may be required to be served in some cases in less than thirty days, no request will be made to the Court for a judgment until, at least, the expiration of thirty days after your receipt of this summons. However, if you dispute the debt or request the name and address of the original creditor within the thirty-day period that begins with your receipt of this summons, and in the manner stated above, the law requires us to cease efforts (through litigation or otherwise) to collect the debt until we mail the requested information to you. Nevertheless, this dispute or request may not constitute an Answer under law. You should consult an attorney for advice concerning your rights and obligations in this suit. This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.”
STATE OF NEW YORK

_____________________COURT                                             COUNTY OF

__________________________________________,

Plaintiff,                                   COMPLAINT

Index No. ______________

__________________________________________.

Defendant.

Plaintiff, by its attorneys, ___________________________________________, as and for its Complaint against Defendant, alleges as follows:

PARTIES

1. At all times material the plaintiff was and is now a __________________ corporation engaged in interstate commerce with principal offices at ____________________, ____________________.

2. On information and belief; the defendant __________________ is a natural person doing business under the assumed name and style of ___________________ with principal offices at ____________________, ____________________, NY __________.

JURISDICTION AND VENUE

3. The events giving rise to this action involve goods, sold and delivered to the defendant by the plaintiff.
4. Venue in the County of _________________is proper because it is the county of the defendant’s place of business.

5. This Court has jurisdiction over the defendant by virtue of the CPLR § 301.

6. This is an action to recover from the defendant the balance due for goods sold and delivered to the defendant together with applicable interest, and costs. The amount demanded exceeds the jurisdiction of all lower courts.

**FIRST CAUSE OF ACTION**

7. Between the _____ day of _____________, 20 and the _____ day of _______________, 20____, the plaintiff, at the request of the defendant, sold and delivered to the defendant various goods, wares and merchandise for the agreed price, and of the reasonable value of $________________ on terms of net 30 days.

8. Although payment thereof was duly demanded, no part thereof was paid or credited.

9. By reason of the foregoing there is due the plaintiff from the defendant on its First Cause of Action the sum of $_______________ together with applicable interest computed from the _____ day of _____________, 20__,

**SECOND CAUSE OF ACTION**

10. Plaintiff repeats and realleges all of the allegations set forth above as if more fully set forth herein.
11. Heretofore, the plaintiff submitted to the defendant copies of the invoices and periodic statements of the account, all of were retained without objection, thus creating an account stated.

12. By reason of the foregoing there is due the plaintiff from the defendant on its Second Cause of Action the sum of $_________ together with applicable interest computed from the ____ day of _____________, 20__.

WHEREFORE, Plaintiff demands a Judgment of this Court in its favor against the Defendant for:

(a) compensatory damages on its First and/or Second Cause of Action in the sum of $_________ together with interest at 9% per annum from the _____ day of _____________, 20__;

(b) the costs and disbursements of this action; and

(c) such other and further relief as the Court deems fair and proper.

DATED: _____________, 20__

(FIRM NAME) ______________________________________________

By: ____________________________________________

(ATTY NAME) __________________________________________

Attorneys for Plaintiff

Office and Post Office Address

____________________________________________________

____________________________________________________, New York ______

Telephone (___) ______
STATE OF NEW YORK
SUPREME COUNTY OF ________________

CREDITOR (Corporation),

Plaintiff,  

vs

DEBTOR (Individual),

Defendant.

Plaintiff, by its attorneys, ________________, as and for its Complaint against Defendant, alleges as follows:

PARTIES

1. The plaintiff, __________________________ is a domestic corporation with principal offices at __________________________, __________________________, NY __________.

2. The defendant, DEBTOR, is a natural person who, on information and belief, resides at __________________________________________, __________________________, New York __________.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the defendant by virtue of CPLR §301.

4. Venue in the County of __________________________ because it is the residence of the plaintiff and the defendant.

5. This is an action to recover from the defendant, the balance due plaintiff on two promissory notes together with applicable interest, costs and attorneys fees.

FOR ITS FIRST CAUSE OF ACTION

6. On or about the ___ day of ____________, 20___, for valuable consideration, DEBTOR executed and delivered to the plaintiff a Promissory Note (“Note 1”); a copy is annexed hereto and made part hereof as Exhibit "A".

7. Pursuant to the terms of Note 1 DEBTOR promised to pay Polis the principal amount of $___________ together with specified interest at the times set forth therein.
8. **DEBTOR** thereafter defaulted in the payment of the installments due on and after the ___ day of ____________________, 20___.

9. In accordance with the terms of the note, Polis has elected and does hereby elect to and demands due the total unpaid principal in the amount of $31,163.60 together with applicable interest thereon from the 1st day of February, 2007.

10. By reason of the foregoing there is due the plaintiff from the defendant on the First Cause of Action the sum of $31,163.60 with interest thereon at the default rate of 8% per annum from the 1st day of February, 2007.

**SECOND CAUSE OF ACTION**

11. The plaintiff repeats each and every allegation set forth above.

12. On or about the 4th day of October, 2006, for valuable consideration, **DEBTOR** executed and delivered to the plaintiff a second Promissory Note ("Note 2"); a copy is annexed hereto and made part hereof as Exhibit "B".

13. Pursuant to the terms of Note 2 **DEBTOR** promised to pay Polis the principal amount of $8,000.00 together with specified interest at the times set forth therein.

14. **DEBTOR** thereafter defaulted in the payment of the installment due on the 1st day of March, 2007 and more than thirty (30) days have since past.

15. In accordance with the terms of the note, Polis has elected and does hereby elect to and demands due the total unpaid principal in the amount of $5,200.00 together with applicable interest thereon from the 1st day of February, 2007.

16. By reason of the foregoing there is due the plaintiff from the defendant on the Second Cause of Action the sum of $5,200.00 with interest thereon at the default rate of 8% per annum from the 1st day of February, 2007.

**THIRD CAUSE OF ACTION**

17. The plaintiff repeats each and every allegation set forth above.
18. Pursuant to the terms of Note 1 and Note 2, the defendant also agreed to pay the plaintiff’s reasonable costs of collection including attorney’s fees to be requested in the amount of $_____. [for consumer cases].

WHEREFORE, plaintiff demands judgment against the defendant:

(a) on the First Cause of Action and Second Causes of Action for the combined principal sum of $________________________ with interest thereon at _____ per annum from the _____ day of __________________, 20___;

(b) on the Third Cause of Action for reasonable attorneys fees as determined by the Court to be requested in the amount of $_____. [for consumer cases];

(c) the costs and disbursements of this action; and

(d) such other and further relief as the Court may deem just.

DATED: _________________, 20___                LAW FIRM

By: ____________________________________

(PRINT NAME) ________________________, Esq.

Attorneys for Plaintiff

CREDITOR.

Office and Post Office Address

______________________________

______________________,NY ________

Telephone (    ) ______________
STATE OF NEW YORK )
COUNTY OF ________________ ) ss.:

________________________, being duly sworn, deposes and says that deponent is the
______________ of CREDITOR, the corporation described in the within action; that deponent has
duly read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge,
except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent
believes it to be true. This verification is made by deponent because Plaintiff is a New York corporation and
Deponent is the _______________________ thereof.

___________________________________
(PRINT NAME) __________________________

Sworn to before me this

_____ day of ____________, 20____

____________________________
Notary Public
STATE OF NEW YORK
COUNTY OF ____________________________

being duly sworn deposes and says: that deponent is not a party to the action and is 18 years of age, or older; and that deponent served the annexed

on the Defendant(s), or Person(s) named herein, ____________________________ , in the following manner:

Complete one of the following BLOCKS, and the DESCRIPTION BELOW:

☐ by personally delivering to and leaving a true copy thereof with the above defendant on the ______ day of ________________, 20__, at ______ AM/PM, at ____________________ (address or place of service), and that deponent knew the person so served to be the person described as the said defendant therein.

☐ A. by personally delivering to and leaving a true copy thereof with a person of suitable age and discretion, on the ______ day of ________________, at ______ AM/PM, at ____________________ (address or place of service), the dwelling place - usual place of abode - place of business - within the State of New York.

OR ☐ B. by affixing a true copy thereof to the defendant’s door at ____________________ (address or place of service), the dwelling place - usual place of abode - place of business - within the State of New York on ______ day of ________________, at ______ AM/PM.

AND by mailing a true copy of the same to the defendant(s) at ____________________ (address mailed to: Street - No. - City - State - zip) his/her (their) last known residence - his/her (their) business address in a plain envelope marked “Personal and Confidential”. Deponent previously attempted to serve the defendant(s) with due diligence pursuant to CPLR Sec. 308(4) on: (1) ______ day of ________________, at ______ AM/PM;

(2) ______ day of ________________, at ______ AM/PM; (3) ______ day of ________________, at ______ AM/PM.

☐ by personally delivering to and leaving a true copy thereof with ____________________ (name of person served) at ____________________ (address or place of service) on ______ day of ________________, at ______ AM/PM; deponent knew the said corporation so served to be the corporation described in this action as the defendant therein, and that the said individual was the ____________________ (title of individual served) thereof.

The description of the person served pursuant to (1), (2) or (4) above is: Sex ____________ ; Skin color ____________ ; Hair color ____________ ;

Approx. age ____________ ; Approx. weight ____________ ; Approx. height ____________ ; Other identifying features ____________

To my best knowledge, information and belief, the said defendant at the time of service was not engaged in military service of the United States.

Sworn to before me ____________________ , 20__.

Notary Public State of New York; County of ____________ .

Originally qualified in ____________ County.

Type Defendant’s Name Below Line
STATEMENT OF SERVICE BY MAIL AND ACKNOWLEDGMENT OF RECEIPT BY MAIL OF SUMMONS AND COMPLAINT OR SUMMONS AND NOTICE OR NOTICE OF PETITION AND PETITION

[CAPTION]

STATEMENT OF SERVICE BY MAIL

TO: (Insert the name and address of the person or entity to be served). The enclosed summons and complaint, or summons and notice, or notice of petition and petition (strike out inapplicable terms) are served pursuant to section 312-a of the Civil Practice Law and Rules.

To avoid being charged with the expense of service upon you, you must sign, date and complete the acknowledgment part of this form and mail or deliver one copy of the completed form to the sender within thirty (30) days from the date you receive it. You should keep a copy for your records or your attorney. If you wish to consult an attorney, you should do so as soon as possible before the thirty (30) days expire.

If you do not complete and return the form to the sender within thirty (30) days, you (or the party on whose behalf you are being served) will be required to pay expenses incurred in serving the summons and complaint, or summons and notice, or notice of petition and petition in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against you.

If you have received a complaint or petition with this statement, the return of this statement and acknowledgment does not relieve you of the necessity to answer the complaint or petition. The time to answer expires twenty (20) days after the day you mail or deliver this form to the sender. If you wish to consult with an attorney, you should do so as soon as possible before the twenty (20) days expire.

If you are served on behalf of a corporation, unincorporated association, partnership or other entity, you must indicate under your signature your relationship to the entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

It is a crime to forge a signature or to make a false entry on this statement or on the acknowledgment.

___________________________________
Signature

___________________________________
Print name

___________________________________
Address
ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT OR SUMMONS AND NOTICE OR NOTICE OF PETITION AND PETITION

I received a summons and complaint, or summons and notice, or notice of petition and petition (strike out inapplicable terms) in the above-captioned matter at __________________________________________________________ (insert address).

PLEASE CHECK ONE OF THE FOLLOWING (if No. 2 is checked, complete as indicated):

_____ 1. I am not in the military service.

_____ 2. I am in the military service, and my rank, serial number and branch of service are as follows:

Rank ____________________________________________________________________________

Branch of Service __________________________________________________________________

TO BE COMPLETED REGARDLESS OF MILITARY STATUS:

Date: ____________________________________________________________________________

I affirm the above as true under penalty (date this acknowledgment is executed)

___________________________________
Signature

___________________________________
Print Name

___________________________________
Name of Defendant Represented by Signatory
Position of Signatory with Defendant
(e.g., officer, attorney, etc.)

PLEASE COMPLETE ALL BLANKS INCLUDING DATES
STATE OF NEW YORK
COUNTY OF:

__________________________________________________

, Plaintiff,

vs.

, Defendant(s).

JUDGMENT

Index No.

STATE OF NEW YORK )
COUNTY OF ERIE ) SS:

, an attorney duly admitted to practice in the Courts of the State of New York, and not a party
to this action, affirms the following under the penalties of perjury:

1. I am the attorney of record for the Plaintiff in this action, and am fully familiar with the facts
   and circumstances of this matter.

2. The time for the Defendant(s) to appear and answer has expired, and has not been
   extended. The Defendant(s) have not answered the Complaint herein.

3. The items of disbursements hereinafter delineated are allowed by law, have been or will be
   necessarily incurred, and are reasonable in amount.

4. Upon information and belief, the current addresses of the Defendant(s) are:

5. Pursuant to the Department of Defense Manpower Data Center Report, Defendant(s) are not
   in the active military service of the United States.

Dated:

If the action upon which the judgment below is based was for nonpayment of a contractual
obligation, CPLR 3215(g) was complied with, as more fully appears from the Affidavit of Mailing, by
mailing to Defendant(s), at least twenty days prior to entry of this judgment, a copy of the Summons
and Complaint.

Service of the Summons and Complaint in this action on , the Defendant(s) herein, having
been completed on  by service upon said Defendant(s) on , and the time of said Defendant(s) to appear and answer having expired, and the said Defendant(s) not having answered the Complaint herein.

NOW, ON MOTION OF , by , attorney for the Plaintiff(s), it is ADJUDGED that Plaintiff(s), , , , do recover of Defendant(s), , the following sums as and for Judgment, and the Plaintiff have execution therefor.

<table>
<thead>
<tr>
<th>Amount claimed in Complaint</th>
<th>Plus Interest at from</th>
<th>Less Credits</th>
<th>Balance Before Fees and Costs</th>
<th>Plus Attorney Fees</th>
<th>Balance Before Costs</th>
<th>Plus Costs Taxed as follows:</th>
<th>Clerk</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Costs by Statute
Service Costs
Military Affidavit
Transcripts and Docketing
Sheriff’s Fees on Execution
Fees for Index Number
RJI and Motion Costs
Other:
TOTAL JUDGMENT AMOUNT

Judgment entered this _____ day of ________________________,.

____________________________
Clerk

Our file number- ©
STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE  

___________________________________________  
Plaintiff,  

ORDER TO SEVER¹  

v.  

Defendant.  

___________________________________________  

The defendant, ____________________________________________ being in default in pleading and the plaintiff being entitled to judgment against said defendant, and that as to the defendant ____________________________________________, the plaintiff is not entitled to enter judgment at this time.  

NOW on motion of GETMAN & BIRYLA, LLP, attorneys for the plaintiff, it is  

ORDERED that the action be severed as to the defendant __________________________, and the plaintiff have leave to proceed against said defendant.  

___________________________________________  

¹ Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
STATE OF NEW YORK
COUNTY OF:

, Plaintiff,  

vs.

, Defendant(s).  

ATTORNEY’S AFFIRMATION

Index No.

ASSIGNED JUDGE:

, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff in the above-referenced matter, and am fully familiar with the facts and circumstances of this action. I submit this affirmation in support of the Plaintiff’s motion for default judgment, and for reasonable attorney fees to be awarded to the Plaintiff and against the Defendant(s).

2. Plaintiff’s Complaint seeks to collect the sum of , plus interest, owing from the Defendant(s) based on a written agreement. The Complaint further seeks judgment for attorneys’ fees in the amount of , of the aforementioned sum due, in accordance with the agreement of the Defendant(s) to be responsible therefor.

3. The Defendant(s), have been duly served with the summons and complaint in this action and have failed to appear or answer within the time prescribed by law.

4. The Plaintiff submits the Affidavit of Facts filed herewith and in support of Plaintiff’s request for default judgment, together with the required additional mailing in compliance with CPLR 3215.

5. Pursuant to the Department of Defense Manpower Data Center Report relative to
natural persons, said Defendant(s) are not in the active military service of the United States.

6. Affirmant, and other members of affirmant's firm, as well as legal and secretarial personnel under the supervision of an attorney, have performed or will perform the following legal services:

   a. Receipt and review of initial correspondence, materials and documents concerning claim from Plaintiff; prepare and open file.

   b. Prepare Summons and Complaint; arrange for service of same upon Defendant(s); receipt and review of affidavit of service; mailing of additional copies of Summons and Complaint and preparation and execution of affirmation of mailing in compliance with CPLR 3215; and file same as required by law.

   c. Prepare Order and Affirmation to submit to Court for approval of attorneys fees and prepare Statement for Judgment/Bill of Costs, Judgment Roll and Transcript of Judgment.

   d. As for post-judgment proceedings, I note the impossibility of predicting the extent of such effort and time; However, such proceedings can involve executions, subpoenas and contempt motions if the subpoenas are not complied with, restraining notices and review of public records and information to locate assets for collection.

7. The amount requested for attorneys' fees is a fair and reasonable sum, and is commonly accepted in the collection practice in the County of and surrounding counties.

8. Our fee agreement with provides that shall be entitled to a contingency fee on all
net (after disbursements) proceeds recovered from the debtor(s). We do not charge this client pursuant to an hourly rate; however, our average rate in debtor-creditor matters is $ per hour.

9. Plaintiff respectfully prays that this Court authorize entry of default judgment, and granting attorneys' fees in the sum of , together with such other and further relief as to the Court may seem just and proper.

10. No prior application for the relief requested herein has been made.

DATED: Buffalo, New York

Our file number- ©
STATE OF NEW YORK
COUNTY OF:

Plaintiff, vs. Index No.

Defendant(s). ASSIGNED JUDGE:

Upon the Complaint filed herein, on the annexed affirmation of , and on all other papers and proceedings previously had herein, from all of which it appears that Defendant(s), , have defaulted herein and default judgment may be entered against said Defendant(s); and this matter having been duly presented to this Court on the papers alone; and the Court having had due deliberation hereon.

NOW, on motion of , it is

ORDERED, that Plaintiff have default judgment against Defendant(s), , and the total recovery for attorneys’ fees to be in the amount of , and that the Clerk of this Court enter judgment for the relief requested in the Complaint without additional Motion cost, to include attorneys' fees for the aforesaid amount, without interest on said fee amount, upon the filing of this Order and the presentation of appropriate judgment papers to the Clerk by the attorneys for Plaintiff.

DATED:

HON.

Our file number- ©
STATE OF NEW YORK
COUNTY OF:

', Plaintiff, ATTORNEY’S AFFIRMATION
vs. (ATTORNEY’S FEES)
Index No.

', Defendant(s). ASSIGNED JUDGE:

Hon.

, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff, and as such I make this Affirmation as a supplement to my Affirmation submitted in support of Plaintiff’s Motion for Attorney Fees.

2. My fee agreement with provides that shall be entitled to a contingency fee on all net (after disbursements) proceeds recovered from the debtor(s). We do not charge this client pursuant to an hourly rate; however, our average rate in debtor-creditor matters is $225.00 per hour, with non-attorney billing at $75.00 per hour.

3. The Defendant(s) contract with the Plaintiff obligates the Defendant(s) to pay attorney fees as noted in the contract. “A contract provision that in the event of default in paying the obligation the debtor will pay to the creditor the reasonable expenses of collecting the debt has long been recognized as lawful and proper… This is so even where the parties agree that a specific percentage of the unpaid debt may be computed as the amount of the attorneys’ fees and be included as part of the collection expenses to be incorporated in the judgment.” Mead v. First Trust & Deposit Co., 60 A.D.2d 71, p. 76 (4th Dep’t 1977)
4. While a hearing relative to the attorney fee award is not usually necessary, the Court “must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered.” *Bankers Fed. Sav. Bank FSB v. Off W. Broadway Developers*, 224 A.D.2d 376 (1st Dep't 1996).

5. In determining the reasonableness of an application for attorneys' fees, the court should consider the following factors: “time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved”, *(see Matter of Freeman, 34 N.Y.2d 1, 9, (1974); Hayes v. Ontario Plastics, Inc., 6 A.D.3d 1122 (4th Dep't 2004).)*

6. The following is submitted relative to the request for an award of attorney fees:
   
   a. **Time spent.**

   This category generally includes the additional factors of difficulties involved in the case, the default, and the nature of the services rendered.

   I have annexed an itemized list of work performed and hours expended by my firm to date. As for post-judgment proceedings, I ask the Court to take notice as to the impossibility of predicting the extent of such effort and time. However, from my experience, the vast majority of time and effort is spent in post-Judgment enforcement proceedings, including skip-tracing, asset location, Executions, Restraints, Subpoenas, and proceedings to obtain compliance with Subpoenas. The difficulty in most collection matters is not in taking the
PART ONE: DEBT COLLECTION FORMS


b. The amount in controversy, including the fee customarily charged by other similarly situated attorneys for similar services.

Plaintiff's Complaint seeks to collect the sum of , plus interest, owing from the Defendant(s) based on a written agreement. The Complaint further seeks judgment for attorneys' fees in the amount of , of the aforementioned sum due, in accordance with the agreement of the Defendant(s) to be responsible therefor. The contingency fee percentage requested for attorneys' fees is a fair and reasonable sum, and is commonly accepted in the collection practice in the State of New York.

c. The professional standing of counsel.

Attached is an individual biography. The law firm of has a primary focus in creditor's rights' litigation and enforcement of Judgments. My personal practice is almost entirely concentrated in collections and enforcing creditor's rights.

d. The contingency or certainty of compensation, including the results obtained.

My firm's contingency fee is completely dependent upon our ability to successfully collect the money due to our client. This is not a case where our fee is hourly or fixed, and the award equal to a fixed percentage would result in a windfall to the Plaintiff (or possible fee splitting). There is no certainty of
collection, as enforcement of Judgments is a difficult and time-consuming process. The ability to collect Judgments has been further complicated by the 2008 amendments that will effectively exempt most bank accounts, and 2011 amendments increasing the majority of exemptions (e.g., real estate to $75,000 each Judgment-Debtor), and adding new exemptions (including motor vehicles).

In this case, if we do not collect, we do not receive any fee. The Defendant(s) are being asked to pay the attorney fee percentage that the Plaintiff has become obligated to pay as a result of the Defendant(s)’ default; the Defendant(s) have agreed to reimburse the Plaintiff for attorney fees in the event of such default.

DATED:

Buffalo, New York

__________________________

Our file number- ©
PART ONE: DEBT COLLECTION FORMS

STATE OF NEW YORK
SUPREME COURT COUNTY OF ___________

CREDITOR

| ____________________________________________ | | 
| ________________________________ | | 
| SUMMONS | | Index No. ___________
| Plaintiff. | | Date Filed: _________
| -1/3- | | 

DEBTOR d/b/a

| ____________________________________________ | | 
| ________________________________ | | 

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to submit to plaintiff's attorney your answering papers on this motion within the time provided in the notice of motion annexed hereto. In case of your failure to submit answering papers, summary judgment will be taken against you by default for the relief demanded in the notice of motion.

The basis of the venue designated is ___________ County, New York, as it is the county of residence of the defendant. Any request for Judgment for the relief demanded in the complaint will be subject to approval by the Court and applicable law.

DATED: _____________________, 20___ LAW FIRM

By: _________________________________________

(PRINT) __________________________________

Attorneys for Plaintiff

__________________________________________

. NY __________________ Telephone: (     ) _____________ _____________

Note: “If suit is commenced on a consumer claim within the 30-day validation period, the following language is recommended at the end of the Summons:

This advice pertains to your dealings with me as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons is a command from the court, not from me, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this portion of the document also does not affect my relations with the court. As a lawyer, I may file papers in the suit according to the court's rules and the judge's instructions. Unless you, within thirty days after receipt of this notice, dispute the validity of the debt, or any portion of it, the debt will be assumed to be valid by us. If you notify us in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and mail a copy of such verification to you. Upon your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. The law does not require us to wait until the end of the thirty-day period following first contact with you before suing you to collect the debt. Even though the law provides that your answer to the Complaint may be required to be served in some cases in less than thirty days, no request will be made to the Court for a judgment until, at least, the expiration of thirty days after your receipt of this summons. However, if you dispute the debt or request the name and address of the original creditor within the thirty-day period that begins with your receipt of this summons, and in the manner stated above, the law requires us to cease efforts (through litigation or constitute an Answer under law. You should consult an attorney for advice concerning your rights and obligations in this suit. This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.”
STATE OF NEW YORK
SUPREME COURT COURT OF ______

CREDITOR, | NOTICE OF MOTION FOR
Plaintiff | SUMMARY JUDGMENT IN
~vs~ | LIEU OF COMPLAINT
DEBTOR d/b/a, | Index No. _________________

Defendant,

Upon the summons, dated ________, 20____, and the affidavit of ______________ sworn to on ______________, 20___, the plaintiff will move this Court, at an IAS Term, Part ___, at the Courthouse, ________________________, New York ________, on ______________, 20___, at ________ in the __________ noon, or as soon as counsel may be heard, for an order directing the entry of judgment for the plaintiff and against the defendant in the amount of __________________________ and __/100 Dollars ($_____________), with interest thereon at ___% from ______________, 20____, and for such other and further relief as to the court may seem just and proper, plus the costs of this motion, upon the ground that this action is based upon a sister state judgment which is unsatisfied.

Take further notice that all answering papers shall be served on the undersigned on or before the 10th day after personal delivery of the summons to you.

DATED: __________________ __, 2007 LAW FIRM
By:________________________________

(PRINT NAME) _______________________
Attorneys for Plaintiff

CREDITOR
Office and Post Office Address

____________________________
______________, New York _______
Telephone (    ) ____________
STATE OF NEW YORK
SUPREME COURT COUNTY OF __________

___________________________________________________
CREDITOR, | |

Plaintiff, | AFFIDAVIT
~v~

Index No. ______________

DEBTOR d/b/a,

Defendant.

___________________________________________________
STATE OF _______________
COUNTY OF _______________

__________________________, being duly sworn, deposes and says:

1. I am the ______________________ of the plaintiff in this action and make this affidavit in support of a motion for summary judgment in lieu of complaint based upon my personal knowledge, the plaintiff’s records, and the records of the original forum.

2. This is an action based upon a judgment of the State of _______________ to make it a judgment of this State and to enforce and collect it; the underlying cause of action was for goods, sold and delivered.

3. On the _____ day of _____________ ____, 20___, upon the defendant’s default in appearance, a judgment was rendered in the ________________ Court of ________________, in favor of the plaintiff and against the defendant for the sum of ________________________and __/100 Dollars ($_______) and ________________________ and __/100 Dollars ($_______) costs for a total of $_____________. A court-exemplified copy of the judgment is annexed hereto and made a part hereof as Exhibit “A”.

4. The ______________ Court of ______________________________, was then and still is a court of general jurisdiction.
5. The Court had jurisdiction over the defendant because the underlying transactions took
place in the State of __________(or pursuant to a forum selection clause set forth in the credit
agreement included as an exhibit to the original complaint which is included as part Exhibit “A” hereto.

6. Venue in ________ County was proper because it is the residence of the plaintiff.

7. No appeal has been taken nor has any motion or action been taken with reference to the
judgment and the judgment remains totally unpaid.

8. Defendant has a place of business in _________ County, New York.

9. There is no defense to this cause of action and no part of the judgment has been paid and
no previous application for the relief sought has been made.

10. I have been advised that, pursuant to the law of _______________, the plaintiff is entitled
to recover post-judgment interest at the rate of ___% per annum from the date of its entry.

WHEREFORE, it is respectfully requested that summary judgment be granted making the
judgment and decree of the ________________ Court of the State of _____________ rendered in the
plaintiff’s favor and against the defendant on ________________, 20____, a judgment of this court,
together with such other and further relief as the court deems proper.

_______________________________
(PRINT NAME) ______________________

Sworn to before me this

_____ day of ____________, 20___

___________________________
Notary Public
At An IAS Term of the Supreme Court,
___________County held at the Courthouse,
______________. NY on __________,20__.

PRESENT: Hon. ____________________ J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF ____________

CREDITOR,

Plaintiff,

-vs-

DEBTOR d/b/a,

Defendant.

Plaintiff has moved this Court for summary judgment against the defendant on a judgment entered in favor of the plaintiff and against the defendant in ______ Court of the State of ______________. In support of the motion, plaintiff has submitted a Summons and a Notice of Motion for Summary Judgment in Lieu of Complaint, both dated __________, 20___; the Affidavit of ______________, sworn to the ____ day of _ ___________, 20___; a Court-exemplified copy of the judgment annexed thereto; and proof of service thereof by personal delivery to the defendant on ______________, 20___. No papers were submitted in opposition thereto and a hearing on the motion was held on ______________, 20__.  

Upon the foregoing papers and, upon hearing _______________________, __________, Esq., of counsel, in support of the motion and ______________________ having appeared in opposition thereto, and due deliberation having been had; it is

ORDERED, that the motion of the plaintiff is hereby granted; and it is
ADJUDGED that the plaintiff, CREDITOR, is granted judgment against the defendant, DEBTOR d/b/a, for $______________ with interest thereon at ___% per annum from the ___ day of ______________, 20__, motion costs of $______________, and disbursements as to be taxed by the Clerk of this Court upon the presentation of the proper papers; and that the plaintiff have execution therefor.

_______________________________________________
Hon. ________________, J.S.C.

GRANTED:
STATE OF NEW YORK
COUNTY OF ________________ : ____________________ COURT

Plaintiff,

vs.

Defendant.

-----------------------------------------------------------------

STATE OF NEW YORK )
COUNTY OF ________________ ) SS:______________________

______________________, being duly sworn, deposes and says:

1. I am a(n) ___________________ in the office of ________________________, am over 18 years of age, and am
not a party to this action.

2. On ______________, 20___, and pursuant to CPLR §3215(g)3, I mailed a
copy of the Summons and Complaint in this action, by first class mail to the
Defendant in an envelope bearing the legend "PERSONAL AND
CONFIDENTIAL" and not indicating on the outside that the communication is
from an attorney or concerns an alleged debt, and properly addressed to the
Defendant as follows: __________________, __________________,____________________,
_____________, KY ____________, the place of residence of said Defendant, in
an official depository located in the State of New York under the exclusive care
and custody of the United States Post Office Department.

__________________________________________

Sworn to before me

______________________, 20___

Notary Public
NOTICE

PURSUANT TO NEW YORK CIVIL PRACTICE LAW AND RULES § 3215(g)4(ii) YOU ARE HEREBY NOTIFIED THAT A COPY OF THIS SUMMONS AND COMPLAINT HAS BEEN SERVED ON THE NAMED DEFENDANT BY SERVICE ON THE SECRETARY OF STATE PURSUANT TO NEW YORK BUSINESS CORPORATION LAW § 306(b).
STATE OF NEW YORK
COUNTY OF ____________ : __________________ COURT

Plaintiff, AFFIDAVIT OF MAILING

vs. CPLR 3215(g)4

Defendant. Index No.

____________________________, being duly sworn, deposes and says:
3. I am a(n) ______________________ in the law office of
____________________________, am over 18 years of age, and am not a party to
this action.
4. On _______________20__, I mailed a copy of the Summons and
Complaint in this action, by first class mail and properly addressed to the
Defendant as follows: ________________________
____________________________," _______________________, NY _________, the place
of residence of said Defendant in an official depository located in the State of
New York under the exclusive care and custody of the United States Post Office
Department. Pursuant to CPLR §3215(g)4(ii), the Summons and Complaint
were accompanied by a notice indicating that service of the Summons and Complaint
had been made by service on the Secretary of State pursuant to paragraph (b) of
Section 306 of the NY Business Corporation Law.

______________________________________________

Sworn to before me

______________________________________________

Notary Public

____________________________, 20__
### REQUEST FOR JUDICIAL INTERVENTION

**Supreme COURT, COUNTY OF Albany**

<table>
<thead>
<tr>
<th>Index No:</th>
<th>Date Index Issued:</th>
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**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

**Nature of Action or Proceeding:**

**Matrimonial:**
- Contested
  - **Note:** For all Matrimonial actions where the parties have children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum.
  - For Uncontested Matrimonial actions, use RJI form UD-13.

**Commercial:**
- Business Entity (including corporations, partnerships, LLCs, etc.)
- Contract
- Insurance (where insurer is a party, except arbitration)
- UCC (including sales, negotiable instruments)
- Other Commercial: (specify)

**Torts:**
- Asbestos
- Breast Implant
- Environmental: (specify)
- Medical, Dental, or Podiatric Malpractice
- Motor Vehicle
- Products Liability: (specify)
- Other Negligence: (specify)
- Other Professional Malpractice: (specify)
- Other Tort: (specify)

**Real Property:**
- Condemnation
- Mortgage Foreclosure (specify)
- Residential
- Commercial
- Property Address: Alabama
- Other Real Property: (specify)

**Other Matters:**
- Certificate of Incorporation/Dissolution
  - **Note:** Under Commercial
- Emergency Medical Treatment
- Habeas Corpus
- Local Court Appeal
- Mechanic's Lien
- Name Change
- Pistol Permit Revocation Hearing
- Sale or Finance of Religious/Not-for-Profit Property
- Other: (specify)

**Special Proceedings:**
- CPLR Article 75 (Arbitration)
  - **Note:** Under Commercial
- CPLR Article 78 (Body or Officer)
- Election Law
- MHL Article 9.60 (Kendra's Law)
- MHL Article 10 (Sex Offender Confinement-Initial)
- MHL Article 10 (Sex Offender Confinement-Review)
- MHL Article 81 (Guardianship)
- Other Mental Hygiene: (specify)
- Other Special Proceeding: (specify)

**Status of Action or Proceeding:**

**Yes** or **No** for EVERY question AND enter additional information where indicated.

<table>
<thead>
<tr>
<th>Has a summons and complaint or summons w/notice been filed?</th>
<th>YES</th>
<th>NO</th>
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<tr>
<th>Has a summons and complaint or summons w/notice been served?</th>
<th>YES</th>
<th>NO</th>
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<tr>
<th>Is this action/proceeding being filed post-judgment?</th>
<th>YES</th>
<th>NO</th>
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<tbody>
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NATURE OF JUDICIAL INTERVENTION: Check ONE box only AND enter additional information where indicated.

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice
- Notice of Motion
- Notice of Petition
- Order to Show Cause
- Other Ex Parte Application
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify): _______________________________________________________________________________________________________

Date Issue Joined: _____________________________

Return Date: _____________________________

Relief Sought: _________________________

NOTICE OF JUDICIAL INTERVENTION:

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: _____________________________

SIGNATURE

ATTORNEY REGISTRATION NUMBER

PRINT OR TYPE NAME

Print Form
Request for Judicial Intervention Addendum

Supreme Albany
__________________________ Court, County of

Index No: ________________________

For use when additional space is needed to provide party or related case information.

PARTIES: For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

<table>
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<tr>
<th>Un-Rep</th>
<th>Parties:</th>
<th>Attorneys and/or Unrepresented Litigants:</th>
<th>Issue Joined (Y/N):</th>
<th>Insurance Carrier(s):</th>
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<td>Plaintiff</td>
<td>Plaintiff</td>
<td>Plaintiff</td>
<td>Plaintiff</td>
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</tbody>
</table>

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

<table>
<thead>
<tr>
<th>Case Title</th>
<th>Index/Case No.</th>
<th>Court</th>
<th>Judge (if assigned)</th>
<th>Relationship to Instant Case</th>
</tr>
</thead>
</table>

Print Form
UCS-840A (7/2012)
SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Yates ________________________________

-against-

 Plaintiff(s)/Petitioner(s)

 Defendant(s)/Respondent(s)

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner’s cause(s) of action [check all that apply]:

☐ Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common
    law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate
    restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and
    employment agreements not including claims that principally involve alleged discriminatory practices)

☐ Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium
    units)

☐ Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent
    only

☐ Shareholder derivative actions — without consideration of the monetary threshold

☐ Commercial class actions — without consideration of the monetary threshold

☐ Business transactions involving or arising out of dealings with commercial banks and other financial institutions

☐ Internal affairs of business organizations

☐ Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters

☐ Environmental insurance coverage

☐ Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)

☐ Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without
    consideration of the monetary threshold

☐ Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR
    Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner’s claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

$ _____________________________

Plaintiff/Petitioner’s claim for equitable or declaratory relief [brief description]:

Defendant/Respondent’s counterclaim(s) [brief description, including claim for monetary relief]:

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE
MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR §
202.70(a), (b) AND (c).

Dated: _____________________________

SIGNATURE

PRINT OR TYPE NAME
PART TWO: ENFORCEMENT OF MONEY JUDGMENTS
I. GENERAL CONSIDERATIONS

A. Applicability of Fair Debt Collection Practices Act

Attorneys who handle consumer credit collection cases should adhere to the requirements of the Fair Debt Collection Practices Act (FDCPA)\(^1\) when engaged in enforcement-of-judgment activities. The United States Supreme Court, in *Heintz v. Jenkins*,\(^2\) affirmed the holding of the Seventh Circuit that the FDCPA applies to lawyers who “regularly” engage in consumer debt collection activities, even when that activity consists of litigation. The Court held that a post-litigation settlement demand for an amount not authorized by the agreement in dispute was an effort to collect an unauthorized debt and thus violated the FDCPA.

The Court found two “rather strong” reasons for believing that the FDCPA applied to litigation activities of lawyers. First, the FDCPA includes in its definition of “debt collector” one who “regularly collects or attempts to collect, directly or indirectly, [consumer] debts owed or due or asserted to be owed or due another.”\(^3\) The Court concluded that a lawyer who regularly tries to obtain payment for consumer debts through legal proceedings is a lawyer who regularly “attempts” to “collect” those consumer debts. Second, Congress enacted an earlier version of the FDCPA in 1977, which contained an express exemption for lawyers—the term “debt collector” specifically excluded “any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client.”\(^4\) In 1986, however, Congress repealed this exemption in its entirety\(^5\) without creating a narrower, litigation-related exemption to fill the void. Without more, then, the Court in *Heintz* observed that Congress seemingly intended that lawyers be subject to the FDCPA whenever they meet the general “debt collector” definition.\(^6\)

While the 2006 amendments to the FDCPA state that a “formal pleading in civil action shall not be treated as an initial communication” triggering the notice requirements of 15 U.S.C. § 1692g(a), what constitutes a “formal pleading” is unclear.

Accordingly, it is suggested that this aspect as well as the restrictions on debt collection, as they are more fully outlined in Part One of this monograph, be reviewed carefully whenever the enforcement of a consumer credit judgment is attempted. Any post-judgment correspondence or other documents, other than judicial documents, sent to a consumer judgment debtor should contain the Fair Debt Collection Practice warnings.\(^7\)

B. Enforcement of Judgment Procedures

A money judgment is enforceable for 20 years, after which it is presumed satisfied unless the judgment debtor acknowledges it or makes a payment within the 20-year period.\(^8\) Article 52 of the CPLR

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8. N.Y. Civil Practice Law & Rules 211(b) (CPLR). However, in April 2010 the Third Department of the Appellate Division held CPLR 211(b) unconstitutional and preempted by the Supremacy Clause. *New York State Higher Education Services Corp. v. Fabrizio*, 73 A.D.3d 158, 900 N.Y.S.2d 159 (3d Dep’t 2010) (holding that “[t]he limitation contained in CPLR 211 (b) undermines 20 USC § 1091a . . . interfere with, or are contrary to the laws of [C]ongress, made in pursuance of the federal constitution are invalid”).
governs the enforcement of money judgments in New York. The following devices are available for such enforcement:

1. Restraining notices.\(^9\)

2. Subpoenas:\(^{10}\)
   a. to require attendance for taking of deposition;\(^{11}\)
   b. duces tecum to require production of books and records;\(^{12}\)
   c. information subpoenas to require answers to written questions (note certification requirement added effective after January 1, 2007 as amended by 2011 N.Y. Laws ch. 342);\(^{13}\)
   d. disobedience of subpoenas.\(^{14}\)

3. Orders for payment or delivery of property.\(^{15}\)

4. Installment payment orders.\(^{16}\)
   
   Both regular income from a job and maintenance income from a former spouse may be reached through this enforcement device. For an in-depth analysis of the processes, see Balanoff v. Niosi.\(^{17}\)

5. Executions:\(^{18}\)
   a. personal property executions;\(^{19}\)
   b. income executions;\(^{20}\)
   c. real property executions.\(^{21}\)

6. Transcripts of judgments.\(^{22}\)

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9 CPLR 5222.
10 CPLR 5224.
11 CPLR 5224(a)(1).
12 CPLR 5224(a)(2).
13 CPLR 5224(a)(3).
14 CPLR 5251.
15 CPLR 5225, 5227.
16 CPLR 5226.
18 CPLR 5230.
19 CPLR 5232–5234.
20 CPLR 5231, 5241, 5242.
21 CPLR 5203, 5235, 5236.
22 CPLR 5018.
7. Contempt orders. 23
8. Arrest. 24

These enforcement devices are subject to limitations and controls, which are also contained in article 52 of the CPLR:

1. Debts or property subject to enforcement. 25
2. Exempt personal property. 26
3. Exempt income. 27
4. Exempt real property. 28
5. Modification or protective orders. 29
6. Determination of adverse claims. 30
7. Restrictions on discrimination regarding income executions. 31
8. Receivers. 32

These enforcement options are also available for the enforcement of federal money judgments. However, you must first convert it to a New York judgment. The procedure is a simple one: Obtain a transcript of the judgment from the federal court and then file it with any county clerk in the state in accordance with CPLR 5018(b). If the judgment was rendered by a federal court outside the state, obtain a transcript from the court of record, file it in the federal court having jurisdiction over the location of the judgment debtor, and then obtain a transcript therefrom and file it with a county clerk.

II. RESTRAINING NOTICES

A restraining notice may be served on a judgment debtor or on a third party. Its effect is to restrain the transfer of assets by or to the judgment debtor or to prevent any third party from disposing of assets or debts belonging to the judgment debtor, except by delivering them to the sheriff pursuant to an execution or court order. A restraining notice may be served either personally or in the same manner as a summons, or by registered or certified mail, return receipt requested. 33 It should be kept in mind that

23 CPLR 5210.
24 CPLR 5250.
25 CPLR 5201, 5202.
26 CPLR 5205, 5222(d), (e).
27 CPLR 5205(d), 5231(b), (g).
28 CPLR 5206.
29 CPLR 5240.
30 CPLR 5239.
31 CPLR 5252.
32 CPLR 5228.
33 CPLR 5222(a).
a restraining notice is not a levy, nor does it constitute a lien on the assets, unless the judgment debtor and the third party agree to pay the creditor. Other creditors may prevail over an existing restraining notice if they obtain a levy or lien upon the same assets. The third party is only required to comply with the restraining notice if, at the time of service, there was a present or future property interest, or a transferable property right existing in favor of the Judgment-Debtor, owed or due by the third party, or in which the third party has possession.\(^{34}\) A restraining notice served on a third party is good only for a maximum of one year, and it cannot be served more than once upon the same person with respect to the same judgment without leave of the court.\(^{35}\) A restraining notice served on a judgment debtor is effective until the judgment has been satisfied or the order has been vacated.

A restraining notice that is served must bear the original signature or copy of the original signature of the clerk of the court or of the attorney who issued it.\(^ {36}\)

Where a restraining order is served in connection with a judgment debtor who is a natural person, a notice of exempt property must be served upon the judgment debtor, together with a copy of the restraining notice, within four days after the service of a restraining notice upon a third party or the judgment debtor, unless prior notice had been served upon the debtor within one year before the service of the restraining notice.\(^ {37}\) The form of the notice is set forth in CPLR 5222(e). The manner of service is set forth in CPLR 5222(d).

A. Use with Information Subpoena

A restraining order can also be combined with an information subpoena. This can be particularly effective when served on a judgment debtor’s bank. In the past, it had been common practice for the creditor’s attorney’s to serve them on all banks in the area in hopes of locating an account of the debtor.\(^ {38}\) However, with the amendments to CPLR 5224(a)(3), which became effective January 1, 2007, such practice was no longer permitted. Now, an attorney serving an information subpoena on an individual or entity other than the judgment debtor must have “a reasonable belief that the party receiving the subpoena has in their possession information about the judgment debtor that will assist the creditor in collecting his or her judgment.”\(^ {39}\) To express such belief, the statute requires that the subpoena contain the following certification signed by the creditor or the attorney for the creditor:

I HEREBY CERTIFY THAT THIS INFORMATION SUBPOENA COMPLIES WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND SECTION 601 OF THE GENERAL BUSINESS LAW AND THAT I HAVE A REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR POSSESSION INFORMATION ABOUT THE JUDGMENT DEBTOR THAT WILL ASSIST THE CREDITOR IN COLLECTING THE JUDGMENT.\(^ {40}\)


\(^{35}\) CPLR 5222(b), (c).

\(^{36}\) CPLR 5222(a).

\(^{37}\) CPLR 5222(d).

\(^{38}\) See CPLR 5224(a)(3).


\(^{40}\) See the Forms section following this Part Two.
Any information subpoena which does not have such a certification shall be deemed null and void. It therefore becomes increasingly important for creditors to require potential customers’ executed credit applications on which they disclose the name of their bank and their account number or at least keep copies of some of the payment checks received from same. If you have no such information available, you might check UCC filings with the Department of State, title records with the Department of Motor Vehicles, and/or mortgage records filed in the county clerk’s office to ascertain with what financial institutions the debtor may reasonably have an account.

Pursuant to amendments to General Business Law § 601(10) effective September 2, 2011, if the attorney sends more than 50 information subpoenas per month, said attorney must now keep records of each subpoena for a minimum of 5 years; the records must set forth the reasonable belief required by CPLR 5224(a)(3).

Some practitioners had been exploring a loophole in this new requirement as it only applies to information subpoenas. They are blanketeting banks with only restraining orders. While the bank so served had no requirement to issue any response, it did have the responsibility to search its records and restrain any accounts it had of the judgment debtor. As the banks had the responsibility to notify the depositor of the restraint, it was hoped that such notification would prompt the debtor to contact the creditor’s attorney seeking to have the account released and, hopefully, make payment arrangements. Such practice may have been affected by the new law more particularly described below in II.B.

B. Law Effective January 1, 2009

There had been public outcry by consumers concerning what they call “improperly frozen bank accounts.” Federal and state law had exempted certain funds like Social Security or Workers’ Compensation from levy. Information to such effect was set forth in the Notice to Judgment Debtor required by CPLR 5222(b) and (e). However, it did not stop the banks from freezing an account that contained exempt funds when served with a restraining order or execution. Many times these accounts belonged to low-income individuals who relied heavily on directly deposited exempt income for their rent and other everyday needs. The situation was compounded by the fact that banks charged their depositors legal processing fees of $100 to $200 when an account was restrained. Additionally, the depositors’ checks bounced and they incurred additional charges. The banks had indicated that they had no choice but to restrain the account and it was up to the depositor to take necessary legal action to establish the exemption and effect the release of the account.

Previously, the judgment debtor’s recourse to gain access to exempt funds which have been restrained had been to seek a protective order pursuant to CPLR 5240.41

The law resulted in the following statutory amendments and enactments:

1. CPLR § 5205 was amended to add to the list of exempt personal property the first $2,500 [now $2,625] in a bank account when such account contains exempt funds directly or electronically deposited within the previous 45 days. Specifically, the following provisions were added:

   (l) Exemption of banking institution accounts into which statutorily exempt payments are made electronically or by direct deposit.

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41 For a discussion, see Contact Res. Servs., LLC v. Gregory, 10 Misc. 3d 968, 806 N.Y.S.2d 407 (Rochester City Ct. 2005); see also Lincoln Fin. Servs., Inc. v. Miceli, 17 Misc. 3d 1109(A), 851 N.Y.S.2d 58 (Dist. Ct., Nassau Co. 2007).
1. If direct deposit or electronic payments reasonably identifiable as statutorily exempt payments were made to the judgment debtor’s account in any banking institution during the forty-five day period preceding the date a restraining notice was served on the banking institution or an execution was served upon the banking institution by a marshal or sheriff, then two thousand five hundred dollars [now $2,625] in the judgment debtor’s account is exempt from application to the satisfaction of a money judgment. Nothing in this subdivision shall be construed to limit a creditor’s rights under 42 U.S.C. § 659 or 38 U.S.C. § 5301 or to enforce a child support, spousal support, alimony or maintenance obligation. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, pursuant to this section or under any other provision of state or federal law, or shall affect the right of a judgment debtor to claim such exemption.

2. For purposes of this article, “statutorily exempt payments” means any personal property exempt from application to the satisfaction of a money judgment under any provision of state or federal law. Such term shall include, but not be limited to, payments from any of the following sources: social security, including retirement, survivors’ and disability benefits, supplemental security income or child support payments; veterans administration benefits; public assistance; workers’ compensation; unemployment insurance; public or private pensions; railroad retirement; and black lung benefits.

3. (i) Beginning on April first, two thousand twelve, and at each three-year interval ending on April first thereafter, the dollar amount of the exemption provided in this section, subdivisions (e) and (h) of section fifty-two hundred twenty-two, subdivision (a) of section fifty-two hundred thirty and subdivision (e) of section fifty-two hundred thirty-two of this article in effect immediately before that date shall be adjusted as provided in subparagraph (ii) of this paragraph.

(ii) The superintendent of banks shall determine the amount of the adjustment based on the change in the Consumer Price Index for All Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent three-year period ending on December thirty-first preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars.

(iii) Beginning on April first, two thousand twelve, and at each three-year interval ending on April first thereafter, the superintendent of banks shall publish the current dollar amount of the exemption provided in this section, subdivisions (e) and (h) of section fifty-two hundred twenty-two, subdivision (a) of section fifty-two hundred thirty and subdivision (e) of section fifty-two hundred thirty-two of this chapter, together with the date of the next scheduled adjustment. The publication shall be substantially in the form set below:

CURRENT DOLLAR AMOUNT OF EXEMPTION FROM ENFORCEMENT OF JUDGMENT UNDER NEW YORK CIVIL PRACTICE LAW AND RULES Sections 5205(l), 5222(e), 5222(h), 5230(a), and 5232(e).
The following is the current dollar amount of exemption from enforcement of money judgments under CPLR sections 5205(l), 5222(e), 5222(h), 5230(a), and 5232(e), as required by CPLR section 5205(l)(3):

(Amount)

This amount is effective on April 1, (year) and shall not apply to cases commenced before April 1, (year). The next adjustment is scheduled for April 1, (year).

(iv) Adjustments made under subparagraph (i) of this paragraph shall not apply with respect to restraining notices served or executions effected before the date of the adjustment.

(m) Nothing in subdivision (l) of this section limits the judgment debtor’s exemption rights in this section or under any other law.

(n) Notwithstanding any other provision of law to the contrary, the term “banking institution” when used in this article shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions, foreign banking corporations incorporated, chartered, organized or licensed under the laws of this state, foreign banking corporations maintaining a branch in this state, and nationally chartered banks.

(o) The provisions of subdivisions (l), (m) and (n) of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice or execution contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: “The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.”

Take notice that the amendment provides for the adjustment of the amount of the exemption on April 1, 2012 and every three years thereafter. On April 1, 2012, the exemption was increased to $2,625.

2. Amended CPLR § 5222 to:
(a) now identify as statutorily exempt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;

42 CPLR 5205(l), (m), (n), (o).
11. Twenty-five hundred dollars [now $2,625] of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers’ compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;
12. Railroad retirement; and
13. Black lung benefits.43

(b) as amended, CPLR § 5222(c) precludes the service of no more than two restraining notices per year on the bank institution of a natural person even if based on a different judgment.

(c) adds three sections to make clear that the first $2,625 in a bank account cannot be restrained when the account contains exempt funds deposited directly or electronically in the previous 45 days. They read:

(h) Effect of restraint on judgment debtor’s banking institution account into which statutorily exempt payments are made electronically or by direct deposit. Notwithstanding the provisions of subdivision (b) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article were made to the judgment debtor’s account during the forty-five day period preceding the date that the restraining notice was served on the banking institution, then the banking institution shall not restrain two thousand five hundred dollars [now $2,625] in the judgment debtor’s account. If the account contains an amount equal to or less than two thousand five hundred dollars, [now $2,625] the account shall not be restrained and the restraining notice shall be deemed void. Nothing in this subdivision shall be construed to limit a banking institution’s right or obligation to restrain or remove such funds from the judgment debtor’s account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(i) Effect of restraint on judgment debtor’s banking institution account. A restraining notice issued pursuant to this section shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subdivision shall be construed to

43 See CPLR 5222(e).
limit a banking institution’s right or obligation to restrain or remove such funds from the judgment debtor’s account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Where a judgment debtor’s account contains an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor), the account shall not be restrained and the restraining notice shall be deemed void, except as to those funds that a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. Nothing in this subdivision shall alter the exempt status of funds which are exempt from execution, levy, attachment or garnishment, under section fifty-two hundred five of this article or under any other provision of state or federal law, or the right of a judgment debtor to claim such exemption.

(j) Fee for banking institution’s costs in processing a restraining notice for an account. In the event that a banking institution served with a restraining notice cannot lawfully restrain a judgment debtor’s banking institution account, or a restraint is placed on the judgment debtor’s account in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.44

NOTE: Section (i) provides that a restraining notice will not apply to an amount equal to or less than the greater of: (a) 240 times the federal minimum hourly wage or (b) 240 times the state minimum hourly wage unless the court determines that it would be “unnecessary for the reasonable requirements of the judgment debtor.” Currently, that amount is $1,740 and, if an account has less than 90% of that amount, the restraining order would be void unless a court determines it “unnecessary” as indicated above.

Section (j) precludes a banking institution (bank) served with a restraining order from charging the judgment debtor’s account a fee in cases where the restraint was not lawfully placed or where the account is statutorily exempt.

3. Added CPLR § 5222-a to establish procedures for the treatment of exempt funds and two forms to implement them. You will find copies of those two mandated forms (Exemption Notice and Exemption Claim Form) in the Forms section following this Part Two. The procedures are as follows:

a. When serving a restraining notice on a bank, you must also serve a second copy of the restraining notice, an Exemption Notice and two (2) copies of the Exemption Claim Form with section “Address A” and “Address B” completed. FAILURE TO INCLUDE THOSE FORMS RENDERS THE RESTRAINING NOTICE VOID.

b. When serving a property execution for levy on the bank, the sheriff must include an Exemption Notice and two (2) copies of the Exemption Claim Form. FAILURE TO SERVE THOSE FORMS RENDERS THE EXECUTION VOID.

44 CPLR 5222(h), (i), (j).
c. A bank served with a proper restraining order or execution must, WITHIN TWO (2) DAYS, serve the judgment debtor with a copy of the restraining notice or execution, the Exemption Notice and two (2) copies of the Exemption Claim Form by first class mail to the last known address of the judgment debtor.

d. A judgment debtor has twenty (20) days from receipt of those forms to complete and sign both copies of the Exemption Claim Form and serve one copy on the bank and the other on the attorney for the judgment creditor. Such service may be in person or by first class mail.

e. Upon receipt by a bank of a completed Exemption Claim Form served by the judgment debtor, the bank must “forthwith” notify the judgment creditor of such receipt and the anticipated date the account, absent the filing of an objection by the creditor, must be released (SUCH DATE BEING EIGHT (8) DAYS AFTER THE POSTMARK ON THE ENVELOPE BY WHICH THE FORM WAS RECEIVED OR FROM THE DATE OF ITS PERSONAL DELIVERY). Presumably, it was intended that the bank would notify the judgment creditor by notification to its attorney.

f. If the proof served with the Exemption Claim Form served on the attorney demonstrates that all restrained funds are exempt, the attorney must, within seven (7) days from the post-mark on the envelope by which it was served, notify the bank to release the account; if it shows that only some of the funds are exempt, it must apply “the lowest intermediate balance principle of accounting” and notify the bank to release only the exempt funds. IF A CREDITOR FAILS TO ACT IN ACCORDANCE WITH THESE PROVISIONS, IT SHALL BE DEEMED TO HAVE ACTED IN BAD FAITH AND THE JUDGMENT DEBTOR MAY SEEK A COURT AWARD OF DAMAGES, COSTS, FEES AND PENALTIES.

g. A judgment creditor may object to a claim of exemption served by the judgment debtor and move for a hearing by serving the bank and judgment debtor with copies of its motion papers within eight (8) days from the post-mark on the envelope by which the claim was received by the creditor or the date of personal delivery of the executed claim form to the bank. The motion must be returnable seven (7) days after service of the motion papers and the creditor bears the burden of proof. The motion papers must:

(i) establish a reasonable belief that the account contains non-exempt funds and the amount thereof,

(ii) show the factual, not conclusory, basis for such belief, and

(iii) include the completed Exemption Claim Form.

h. The court must issue an order within five (5) days after the hearing and, if the creditor is found to have acted in bad faith, it SHALL award the judgment debtor costs, reasonable attorney fees, actual damages and an amount not to exceed one thousand dollars ($1,000).

Set forth below is the full text of CPLR § 5222-a.

§ 5222-a. Service of notices and forms and procedure for claim of exemption.

(a) Applicability. Any person authorized under subdivision (a) of section fifty-two hundred twenty-two of this article issuing a restraining notice affecting a natural person’s account at a banking institution pursuant to such subdivision must comply with
PART TWO: JUDGMENT ENFORCEMENT

this section, in addition to the general provisions set forth in such section. Any sheriff
levying against a natural person’s account at a banking institution pursuant to section
fifty-two hundred thirty-two of this article must comply with this section, in addition
to the general provisions set forth in section fifty-two hundred thirty-two of this article.
The procedures set forth in subdivisions (b), (c), (d), (e), (f) and (g) of this section shall
not apply where pursuant to subdivision (h) and/or (i) of section fifty-two hundred
twenty-two or subdivision (e) of section fifty-two hundred thirty-two of this article, no
funds in the account are restrained or levied upon.

(b) Service of exemption notice and exemption claim form.

1. Service with restraining notice upon banking institution. The person issuing the
restraining notice pursuant to subdivision (a) of section fifty-two hundred twenty-two
of this article shall provide the banking institution with the restraining notice, a copy
of the restraining notice, an exemption notice and two exemption claim forms with
sections titled “ADDRESS A” and “ADDRESS B” completed. The exemption notice
and exemption claim forms shall be in the forms set forth in paragraph four of this sub-
division. The notice and the forms shall be served on the banking institution together
with the restraining notice and copy of the restraining notice. Service must be accom-
plished in accordance with subdivision (a) or (g) of section fifty-two hundred twenty-
two of this article. Failure to serve the notice and forms together with the restraining
notice renders the restraining notice void, and the banking institution shall not restrain
the account.

2. Service of execution by levy upon a garnishee banking institution. When serving an
execution pursuant to subdivision (a) of section fifty-two hundred thirty-two of this
article, the sheriff shall provide the banking institution with an exemption notice and
two exemption claim forms, which shall be in the forms set forth in paragraph four of
this subdivision. The sheriff shall serve both the exemption notice and the exemption
claim forms on the banking institution together with the execution notice. Service
must be accomplished in accordance with subdivision (a) or (g) of section fifty-two hundred
thirty-two of this article. Failure to serve the notice and forms renders the execution
void, and the banking institution shall not levy upon the account.

3. Service upon judgment debtor. Within two business days after receipt of the restrain-
ing notice or execution, exemption notice and exemption claim forms, the banking
institution shall serve upon the judgment debtor the copy of the restraining notice, the
exemption notice and two exemption claim forms. The banking institution shall serve the
notice and forms by first class mail to the last known address of the judgment debtor. The
inadvertent failure by a depository institution to provide the notice required by this sub-
division shall not give rise to liability on the part of the depository institution.

4. Content of exemption notice and exemption claim form.

a. The exemption notice shall be in the following form:

See “Exemption Notice” in the Forms section following this Part Two.

b. The exemption claim form shall be in the following form:

See “Exemption Claim Form” in the Forms section following this Part Two.
(c) Claim of exemption.

1. To claim an exemption pursuant to the procedures in this section, the judgment debtor shall complete the exemption claim forms, sign them under penalty of perjury, and serve them within twenty days of the date postmarked on the correspondence containing the notice and forms. The judgment debtor shall serve one completed exemption claim form on the banking institution and the other on the attorney for the judgment creditor. In the event that there is no attorney for the judgment creditor, then the exemption claim form must be served directly on the judgment creditor. The judgment debtor may serve the exemption claim forms in person or by first-class mail.

2. Where the banking institution receives an exemption claim form, it shall notify the judgment creditor forthwith of the date on which the funds will be released pursuant to paragraph three of this subdivision.

3. The banking institution shall release all funds in the judgment debtor’s account eight days after the date postmarked on the envelope containing the executed exemption claim form mailed to the banking institution or the date of personal delivery of the executed exemption claim form to the banking institution, and the restraint shall be deemed void, except where the judgment creditor interposes an objection to the exemption within that time.

4. Where the executed exemption claim form sent to the judgment creditor is accompanied by information demonstrating that all funds in the account are exempt, the judgment creditor shall, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, instruct the banking institution to release the account, and the restraint shall be deemed void. Where the account contains some funds from exempt sources, and other funds from unknown sources, the judgment creditor shall apply the lowest intermediate balance principle of accounting and, within seven days of the postmark on the envelope containing the exemption claim form and accompanying information, shall instruct the banking institution to release the exempt money in the account. The provisions of paragraph two of subdivision (b) of rule twenty-one hundred three of this chapter shall not enlarge the judgment creditor’s time to move pursuant to this section. Information demonstrating that funds are exempt includes, but is not limited to, originals or copies of benefit award letters, checks, check stubs or any other document that discloses the source of the judgment debtor’s income, and bank records showing the last two months of account activity. If the judgment creditor fails to act in accordance with this subdivision, the judgment creditor shall be deemed to have acted in bad faith and the judgment debtor may seek a court award of the damages, costs, fees and penalties provided for in subdivision (g) of this section.

5. If no claim of exemption is received by the banking institution within twenty-five days after the notice and forms are mailed to the judgment debtor, the funds remain subject to the restraining notice or execution. Failure of the judgment debtor to deliver the executed exemption claim form does not constitute a waiver of any right to an exemption.

(d) Objection to exemption claim and request for hearing. A judgment creditor may object to the claim of exemption by moving for an order pursuant to section fifty-two
The judgment creditor must serve the banking institution and the judgment debtor with its motion papers within eight days after the date postmarked on the envelope containing the executed exemption claim form or the date of personal delivery of the executed exemption claim form to the banking institution, and the provisions of paragraph one of subdivision (b) of rule twenty-one hundred three of this chapter shall not enlarge the judgment creditor’s time to move pursuant to this section. The judgment debtor shall be served at the address provided on the exemption claim form. The affirmation or affidavit in support of the motion shall demonstrate a reasonable belief that such judgment debtor’s account contains funds that are not exempt from execution and the amount of such nonexempt funds. The executed exemption claim form shall be attached to the affirmation or affidavit. The affirmation or affidavit shall not be conclusory, but is required to show the factual basis upon which the reasonable belief is based. The hearing to decide the motion shall be noticed for seven days after service of the moving papers. The executed exemption claim form shall be prima facie evidence at such hearing that the funds in the account are exempt funds. The burden of proof shall be upon the judgment creditor to establish the amount of funds that are not exempt. The court shall, within five days of the hearing, issue an order stating whether or not funds in the account are exempt and ordering the appropriate relief. The judgment creditor or its attorney must serve the order on the banking institution and the judgment debtor no later than two business days after the court issues the order.

(e) Duties of banking institution if objection is made to exemption claim. Upon receipt of a written objection pursuant to subdivision (d) of this section from the judgment creditor or its attorney within the specified eight-day period, the banking institution shall retain the funds claimed to be exempt for twenty-one days unless otherwise ordered by the court. If the period of twenty-one days expires and the banking institution has not been otherwise ordered by the court, the banking institution shall release the funds to the judgment debtor.

(f) Release of funds. At any time during the procedure specified in this section, the judgment debtor or the judgment creditor may, by a writing dated after the service of the restraining notice, direct the banking institution to release the funds in question to the other party. Upon receipt of a release, the banking institution shall release the funds as directed.

(g) Proceedings; bad faith claims. Where the judgment creditor objects to a claim of exemption pursuant to subdivision (d) of this section and the court finds that the judgment creditor disputed the claim of exemption in bad faith, as provided in paragraph four of subdivision (c) of this section, the judgment debtor shall be awarded costs, reasonable attorney fees, actual damages and an amount not to exceed one thousand dollars.

(h) Rights of judgment debtor. Nothing in this section shall in any way restrict the rights and remedies otherwise available to a judgment debtor, including but not limited to, rights to property exemptions under federal and state law.

(i) The provisions of this section do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice contains a legend at the top thereof, above the caption, in sixteen point bold
type with the following language: “The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.”

Since the Judgment-Debtor retains most of the information relative to whether amounts in a bank account are exempt, a Judgment-Creditor objecting to claimed exemptions is entitled to a hearing on this issue. The Court can deny the objection and uphold the restraint and/or execution on the bank account if the Judgment-Debtor repeatedly fails to appear at the scheduled hearing.

4. Amended CPLR § 5230(a) to require additional language to the form notice which specifies amounts no longer subject to levy pursuant to CPLR § 5205. See “Income Execution” in the Forms section following this Part Two.

5. Amended CPLR § 5231(b) as indicated below. Note the underlined portions are the additions. See also “Affirmation in Support of Motion to Set Installment Payments” in the Forms section following this Part Two.

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor’s earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor’s earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less;

6. Amended CPLR § 5232, which governs levies on personal property, by adding three subdivisions as follows:

(e) Notwithstanding the provisions of subdivision (a) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subdivision (l) of section fifty-two hundred five of this article were made to the judgment debtor’s account during the forty-five day period preceding the date that the execution notice was served on the garnishee banking institution, then a garnishee banking institution shall not execute, levy, attach, garnish or otherwise restrain or encumber two thousand five hundred dollars [now $2,625] in the

45 CPLR 5222.

judgment debtor’s account. Notwithstanding the provisions of subdivision (a) of this section, an execution shall not apply to an amount equal to or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable (as published on the websites of the United States department of labor and the state department of labor) except such part thereof as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred sixteen dollars on the effective date of this subdivision, and shall rise to seventeen hundred forty dollars on July twenty-fourth, two thousand nine, and shall rise thereafter in tandem with the minimum wage. Nothing in this subsection shall be construed to limit a banking institution’s right or obligation to restrain, remove or execute upon such funds from the judgment debtor’s account if required by 42 U.S.C. § 659 or 38 U.S.C. § 5301 or by a court order. Nothing in this subdivision shall alter the exempt status of funds that are protected from execution, levy, attachment, garnishment, or other legal process, under section fifty-two hundred five of this article or under any other provision of state or federal law, or affect the right of a judgment debtor to claim such exemption.

(f) Fee for banking institution’s costs in processing a levy by service of execution when account contains only exempt, direct deposit or electronic payments. In the event that a banking institution cannot lawfully garnish or execute upon a judgment debtor’s banking institution account or funds are garnished or executed upon in violation of any section of this chapter, the banking institution shall charge no fee to the judgment debtor regardless of any terms of agreement, or schedule of fees, or other contract between the judgment debtor and the banking institution.

(g) Where a levy by execution pursuant to this section is made against a natural person’s account at a banking institution, the sheriff or support collection unit shall serve the banking institution with the exemption notice and two exemption claim forms prescribed in subdivision (b) of section fifty-two hundred twenty-two-a of this article. The notice and forms must be served upon the banking institution simultaneously with the execution and section fifty-two hundred twenty-two-a of this article shall apply, and all procedures stated therein must be followed. The banking institution shall not transfer the funds in the account to the sheriff or support collection unit for at least twenty-seven days. If, after thirty days, the banking institution has not received an exemption claim form from the judgment debtor, or a court order directing otherwise, it may thereafter transfer the funds to the sheriff or support collection unit.

In place of a printed form, the restraining notice, with the consent of a third party, may be in the form of a magnetic tape.\(^{47}\) As a practical matter, this provision applies to banks and large institutions and is designed to assist them as well as the judgment creditor. However, even if the third party authorizes the use of magnetic tape, any required notice to the judgment debtor must be in the written form required by the statute.\(^{48}\)

\(^{47}\) CPLR 5222(g).

\(^{48}\) CPLR 5222(d).
III. UPDATED FEDERAL REGULATIONS

Pursuant to a Final Rule (31 C.F.R. Part 212), effective June 28, 2013, garnishment (including restraints) of accounts containing certain protected federal benefits are subject to the review procedures. Sections 212.2 and 212.3 provide that the following constitute protected “benefit payments” if they are duly deposited by a benefit agency:

1. Social Security and Supplemental Security Income benefits;
2. Veterans benefits;
3. Federal Railroad Retirement, Unemployment, Sickness benefits;

Section 212.3 confirms that a financial institution must check to ensure that both the XX encoding and the number 2 in ACH batch header record are present to confirm that there has been a direct deposit of such protected benefit payments.

Section 212.4 provides that within two business days of receipt of a “garnishment order” (defined in section 212.3 to include a writ, order, summons, judgment, levy or similar written instruction issued by a court, a state or state agency, a municipality or municipal corporation, or a child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account to effect a garnishment against a debtor—e.g., levy, restraining notice, attachment or other legal process), the depository institution must determine if the order was issued by the United States or a child support enforcement agency. If so, the regulations’ account review provisions do not apply, but only if a Notice of Right to Garnish Federal Benefits is included (Form Appendix B). The regulation allows for the language in such notice to “be included” in the levy, or separately, on the organization’s letterhead.

Otherwise, the depository institution must take the following steps relative to the garnishment order:

1. Section 212.5. Within two business days after receipt of the order, the institution must conduct a review of prior two-month account activity (lookback period, starting with the date preceding the review) to determine if a protected benefit was directly deposited. Section 212.3 has been clarified to confirm that the account review applies to the subaccount that contains the protected benefit payment (not the whole master account; i.e., sub-accounts with no protected benefit payments directly deposited need not be reviewed pursuant to the federal regulation but remain subject to state law review).

2. Section 212.6. If protected benefits have been deposited within the lookback period, the account owner must have access to the “protected amount” equal to the lesser of the sum of such protected benefits between the close of business on the beginning of the lookback period and the open of business on the ending date of the lookback period (basically including intraday items and not necessarily the regulation CC funds availability balance), or current balance at the time of account review. If such protected benefits have been directly deposited, any future deposits are not subject to current garnishment order (there would need to be a new order or process issued). No fee for compliance can be assessed against protected funds, but a fee by the financial institution may be charged up to five business days after the account review only to the extent of unprotected funds.
3. Section 212.7. Within three business days of the account review, if there have been such direct deposits of protected funds, and there are funds above the protected amount, issue a notice to the account holder. Institutions are encouraged to use the model notice provided in appendix A of the regulations. Prior to the 2013 final regulation, the notice needed to be sent whether or not there were any unprotected funds being restrained or levied.

4. Section 212.11. Keep records of account review for a two-year period.

IV. SUBPOENAS

Basically, there are two kinds of subpoenas available to develop information concerning a judgment debtor’s assets: attendance subpoenas and information subpoenas.

A. Attendance Subpoena

A subpoena can be issued requiring the attendance of the debtor or a third party for the taking of a deposition concerning the judgment debtor’s assets or ability to pay. This subpoena can be in the form of a subpoena duces tecum requiring the production of books and records concerning the debtor’s assets, ability to pay or disposition of assets. Assuming they are relevant to the satisfaction of the judgment, a person served with a subpoena duces tecum in New York must produce documents within his or her control even if those documents are outside the state. The form may also incorporate a restraining notice, which restrains the person served from disposing of, transferring or interfering with, any of the judgment debtor’s assets. This subpoena must be served in the same manner as a summons.

The Uniform Rules for City Courts and District Courts require that any subpoena made returnable in those courts must have endorsed on its face, in bold type, the words: “This subpoena or process (as the case may be) requires your personal appearance at the time and place specified. Failure to appear may subject you to fine and imprisonment for contempt of court.”

B. Information Subpoena

An Information Subpoena can be served upon the judgment debtor or a third party by registered or certified mail, or in the same manner as a summons. The person served must respond to the questions enclosed with the subpoena within seven days of its receipt. This subpoena also may incorporate the restraining notice authorized by CPLR 5222, which restrains the recipient from disposing of, transferring or interfering with, any of the judgment debtor’s assets for a one-year period, except by

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49 CPLR 5224(a).
50 See “Questionnaire for Bank or Financial Institution” in the Forms section following this Part Two for an example of the kinds of questions that can be asked at the deposition.
51 See “Subpoena Duces Tecum with Restraining Order to Judgment Debtor” in the Forms section following this Part Two.
52 See CPLR 5224(a-1) added in 2006 (2006 N.Y. Laws ch. 257, § 1 (eff. Aug. 25, 2006)).
53 CPLR 5222.
55 See “Information Subpoena with Restraining Notice” in the Forms section following this Part Two.
56 CPLR 5224(a)(3); see “Questionnaire for Bank or Financial Institution—Questions and Answers in Connection with Information Subpoena Regarding Judgment Debtor” in the Forms section following this Part Two for an example of a form of questionnaire that can be sent with the subpoena. Other questionnaires can be devised for different situations.
court order or by direction of the sheriff. See sample forms in the Forms section following this Part Two. See also amendments reported in II. above (Restraining Notices).

Where a judgment debtor moves to quash an information subpoena served upon him or her, and the judgment creditor prevails, a trial court may award the judgment creditor attorneys fees if the underlying action was based upon an agreement containing provisions for same.57

A violation of an Information Subpoena is no longer technically treated as a contempt of Court, as CPLR 5224(a)(3)(iv) provides that CPLR 2308(b) will apply to enforcement of an Information Subpoena. Section 2308(b) applies to non-judicial Subpoenas, and first requires a Motion to obtain an Order to Compel Compliance with an Information Subpoena. If a person fails to comply with a Subpoena Duces Tecum, Restraining Notice or Order, an application to punish him or her for contempt may be made to the court.58 The application may be on motion or by order to show cause and must contain on its face the following legend in at least eight-point bold type:

**WARNING: YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT.59**

If the judgment debtor appears on the return date and satisfies the court that he or she has no means of property or income that could be levied upon, the court shall deny the application to punish for contempt.60 However, if the application is granted, a final order directing punishment and commitment is issued and must contain a provision granting the offender leave to purge himself or herself of a contempt within 10 days after personal service of the order.61 A warrant for the offender’s arrest can only be issued after proof by affidavit that the offender was served and failed to comply with the order within the 10-day period.62

V. ORDERS FOR PAYMENT OR DELIVERY OF PROPERTY

A request for an installment payment order against the judgment debtor and a proceeding to compel a judgment debtor to deliver property or pay money to the judgment creditor are each commenced by notice of motion served in the same manner as the summons, or by registered or certified mail, return receipt requested.63

This device can also enable a judgment creditor (JC) to reach more than 10% of the judgment debtor’s (JD) income than permitted by CPLR 5231. To succeed the JC must show that more than 10% of the JD’s income is available after his or her family’s needs have been determined. An in-depth discussion of the procedure and considerations can be found in *Balanoff v. Niosi*.64 In determining how much the judgment debtor should pay, the court can consider misrepresentation of income by rendering services for inadequate compensation.65

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58 CPLR 5223, 5210.
60 Judiciary Law § 770.
61 Judiciary Law § 772; see “Final Order of Contempt” in the Forms section following this Part Two.
62 Judiciary Law § 772; see “Warrant of Commitment/Affidavit” in the Forms section following this Part Two.
63 CPLR 5226; CPLR 5225(a); see “Notice of Motion to Set Installment Payments” in the Forms section following this Part Two.
64 16 A.D.3d 53, 791 N.Y.S.2d 553 (2d Dep’t 2005).
It is also possible to obtain an Order requiring turnover of property located outside of New York State, if a court has personal jurisdiction over the third party in possession of the property, as in *Koehler v. Bank of Bermuda Ltd.* This decision raises the question of whether there can be an attachment of bank accounts located outside of New York State where the bank is subject to New York jurisdiction (e.g., has New York branches), without this court directly answering the question. The Court of Appeals has confirmed that a turnover of funds on deposit with a third-party bank’s subsidiary was not required by said third-party bank, since constructive possession (or control) alone was not sufficient to constitute possession or custody of a judgment-debtor’s funds as required by CPLR 5225.

A proceeding to compel a third party to deliver property or to pay money or a debt belonging to or owed to the judgment debtor is commenced by a special proceeding. Both CPLR 5225(b) and 5227 authorize a hearing to be held to resolve any dispute between the judgment debtor, the third party and the adverse claimant. The court may permit adverse claimants to intervene in the proceeding to determine their rights. Special proceedings are commenced by the filing of a petition alone. A notice of petition or order to show cause is required to effect service. Service of a notice of petition, petition and supporting affidavits is made in the same manner as a summons.

A special proceeding envisioned by these sections is required to be brought in the county in which the respondent has his or her residence or regular employment or within the city if he or she is a resident or is regularly employed in the city of New York. A special proceeding under CPLR 5225 can also be used to set aside a fraudulent transfer.

**VI. PERSONAL PROPERTY EXECUTIONS**

**A. Forms**

1. **Property Executions**

   The form of a property execution is specified in CPLR 5230. This form of execution is used by the enforcement officer as a demand against a judgment debtor and a levy on property in the possession of, or under the control of, the judgment debtor. If the judgment is based upon an order of attachment, the execution must contain a description of the property subject to the order of attachment.

2. **Property Execution with Notice to Garnishee**

   A property execution with notice to garnishee is a property execution plus a notice to the enforcement officer to make the demand upon a person, other than the judgment debtor, who owes a debt to

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67 Doubet, LLC v Trustees of Columbia Univ. in the City of N.Y., 32 Misc. 3d 1209(A), aff’d, 99 A.D.3d 433, 952 N.Y.S.2d 16 (1st Dep’t 2012).
69 CPLR 304.
70 CPLR 403; see “Notice of Petition” in the Forms section following this Part Two.
71 CPLR 403.
72 CPLR 5221.
74 See “Property Execution” in the Forms section following this Part Two.
the judgment debtor or who has property in its possession or custody in which the judgment debtor has an interest. This person is known as a garnishee, and the name and address of that garnishee must be included in the execution together with a description of the property that he or she owes to, or has of, the judgment debtor. The form and procedures were amended effective January 1, 2009.

B. Property Subject to Execution

A money judgment may be enforced against any debt that is past due or that is yet to become due, certainly or upon demand, and against any property that could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested. The practitioner should carefully read CPLR 5201(c), which specifies the proper garnishee for particular property or debt, to ensure that the proper person is served with the execution. For instance, where the debt is evidenced by a negotiable instrument, the person holding the negotiable instrument is the proper garnishee.

C. Exempt Property

Section 5205 of the CPLR specifies the items of personal property that are exempt from satisfaction of a money judgment (except where the judgment is for the purchase price or repair of the exempt property). New York has dramatically modified the exemptions both as to the satisfaction of judgments and bankruptcy. Effective January 21, 2011, CPLR 5205(a) now provides:

The following personal property when owned by any person is exempt from application to the satisfaction of a money judgment except where the judgment is for the purchase price of the exempt property or was recovered by a domestic, laboring person or mechanic for work performed by that person in such capacity:

1. all stoves and home heating equipment kept for use in the judgment debtor’s dwelling house and necessary fuel therefor for one hundred twenty days; one sewing machine with its appurtenances;

2. religious texts, family pictures and portraits, and school books used by the judgment debtor or in the family; and other books, not exceeding five hundred dollars in value, kept and used as part of the family or judgment debtor’s library;

3. a seat or pew occupied by the judgment debtor or the family in a place of public worship;

4. domestic animals with the necessary food for those animals for one hundred twenty days, provided that the total value of such animals and food does not exceed one thousand dollars; all necessary food actually provided for the use of the judgment debtor or his family for one hundred twenty days;

5. all wearing apparel, household furniture, one mechanical, gas or electric refrigerator, one radio receiver, one television set, one computer and associated equipment, one

75 CPLR 105(i).

76 CPLR 5232(a); see “Property Execution with Notice to Garnishee” in the Forms section following this Part Two.

77 See II.B., paragraph 4, and “Property Execution” in the Forms section following this Part Two.

78 CPLR 5201.
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cellphone, crockery, tableware and cooking utensils necessary for the judgment debtor and the family; all prescribed health aids;

6. a wedding ring; a watch, jewelry and art not exceeding one thousand dollars in value;

7. tools of trade, necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furniture and library, not exceeding three thousand dollars in value, together with the necessary food for the team for one hundred twenty days, provided, however, that the articles specified in this paragraph are necessary to the carrying on of the judgment debtor's profession or calling;

8. one motor vehicle not exceeding four thousand dollars in value above liens and encumbrances of the debtor; if such vehicle has been equipped for use by a disabled debtor, then ten thousand dollars in value above liens and encumbrances of the debtor; provided, however, that this exemption for one motor vehicle shall not apply if the debt enforced is for child support, spousal support, maintenance, alimony or equitable distribution, or if the state of New York or any of its agencies or any municipal corporation is the judgment creditor; and

9. if no homestead exemption is claimed, then one thousand dollars in personal property, bank account or cash.

Additionally, there is a section 5253 of the CPLR that provides for automatic cost-of-living adjustments to the exemptions for both personal and real property. The adjustments were to have been made initially on April 1, 2012, and then at three-year intervals. The Superintendant of Banks (now Department of Financial Services) is required to determine the adjustment amount based upon the change in the regional Department of Labor’s Consumer Price Index, rounded to the nearest $25. Said Superintendant shall publish the exemption amounts commencing April 1, 2012.

D. Enforcement of Execution

1. Demand for Payment

Upon receiving a property execution, the enforcement officer is responsible for visiting the judgment debtor’s personal or business premises as soon as possible, making a demand for payment and levying any assets that may be available. However, if the demand is not successful and the enforcement officer cannot find any assets, he or she will probably return the execution unsatisfied without further effort. Therefore, the practitioner should provide as much information to the enforcement officer as is available. The information about the type, location and value of the judgment debtor’s assets should be provided to the enforcement officer either upon the issuing of the execution or as soon as the information becomes available. For the practitioner’s sake, it is advisable to conduct a search of the various records maintained in connection with personal property (such as motor vehicles) and business assets (such as equipment, furniture fixtures and inventory) to determine if they are subject to a superior lien or interest. If the enforcement officer receives written direction to levy on specific assets and fails to do so, the enforcement officer may be liable if the assets are dissipated.
2. Levy

a. Levy by Seizure

Section 5232(b) of the CPLR indicates that the enforcement officer will levy by seizure where the property is capable of delivery. There must be both a physical taking and exercise of control over the assets levied upon. A valid levy is made when the enforcement officer asserts dominion and control of the judgment debtor’s property by (1) unequivocally asserting the creditor’s rights to the assets by virtue of the execution; (2) inventorying the merchandise and goods so levied upon; (3) affixing a copy of the execution, either on the assets or in their immediate proximity; and (4) leaving a copy of the execution with whoever has custody of the assets levied upon. If the enforcement officer does these things, he or she has a valid levy on all the goods acquired by the judgment debtor that are within the jurisdiction of the enforcement officer during the life of the execution. Such execution cannot be destroyed except by sale to a bona fide purchaser. Case law clearly indicates that an enforcement officer cannot successfully levy upon the contents of a room unless he or she steps into that room and can, in fact, touch and see the assets.

Once a valid levy has been made, a determination then must be made as to whether the property will be removed for safekeeping or left on the judgment debtor’s premises. If it is to be removed, the enforcement officer will require payment in advance for the expenses of moving and storing the assets pending the sale. If they are not to be removed from the premises, the enforcement officer will require a release from liability in case the assets disappear. An execution to be made upon personal property capable of delivery becomes void 60 days after issuance if no specific property is levied upon. Courts have held that executions are intended to produce payment of judgments and not the creation of long-term liens. The judgment creditor’s attorney may extend the validity of the execution for an additional 60 days and thereafter may further extend the 60-day period, unless another judgment creditor has issued an execution to the same officer against the same debtor.\textsuperscript{79}

For some tips on how to make certain you achieve and keep priority over other judgment creditors, review \textit{Kitson & Kitson v. City of Yonkers}.\textsuperscript{80}

b. Levy by Service

If the property to be levied upon is not capable of delivery, the enforcement officer may serve a copy of the execution in the same manner as a summons upon the debtor or upon the person having the property in his or her custody. The forms and procedures involving levies on the bank accounts of judgment debtors changed effective January 1, 2009 (see II.B. and “Property Execution” in the Forms section following this Part Two). This type of levy is valid for 90 days, unless the debt is paid or property is turned over to the enforcement officer. A judgment creditor may apply to the court to secure an extension on the levy.\textsuperscript{81} For example, if such a levy is made upon an insurance claim or other evidence of indebtedness that allows payment in the indefinite future, the judgment creditor’s attorney will need to secure a court order to ensure the continuance of such levy and payment when due. When seeking to levy on the intangible assets of a judgment debtor, the judgment creditor should also consider applying for the appointment of a receiver.\textsuperscript{82}

\textsuperscript{79} CPLR 5230(c).
\textsuperscript{80} 10 A.D.3d 21, 778 N.Y.S.2d 503 (2d Dep’t 2004).
\textsuperscript{81} CPLR 5232(a).
\textsuperscript{82} For a discussion, see infra XIV.
E. Notice to Judgment Debtor

Where an execution is served upon a garnishee, the judgment debtor must receive a notice specified in CPLR 5222(e). If the judgment debtor does not receive such a notice within one year of the levy, such notice must be served upon the judgment debtor no later than four days after service of the execution upon a garnishee. The manner of service is specified in CPLR 5232(c).

F. Sale Under Property Execution

All execution sales must be made by public auction after public notice is posted except in New York City, where notices may be published. The sale notice must be given at least six days prior to the sale and posted at three places in the town or city where the sale is to be held. However, sufficient additional time should be requested and allowed if the creditor or its attorney desires to solicit bidders to be at the sale. Unless otherwise ordered by the court, the property to be sold must be in the view of the bidders, and the normal procedure is to utilize the technique of an auctioneer to secure the best price available. The correct procedure is to have a bulk bid made and, thereafter, a piecemeal bid made for the various lots established by the auctioneer.

G. Entry to Premises

An enforcement officer may make forcible entry into a business premises, safe or locker owned by the judgment debtor but cannot make a forcible entry into the judgment debtor’s home or dwelling. An enforcement officer should take every precaution to avoid damage to the premises and should secure a locksmith to assist in opening the premises without damage and securing it after removal of the assets levied upon.

An enforcement officer has no right to close a business or padlock a business unless the judgment debtor consents.

VII. INCOME EXECUTIONS

A. Form

The form of an income execution is set forth in CPLR 5231. It operates as a means of obtaining a levy of not more than 10% of a judgment debtor’s wages, earnings or other income. An income execution applies not only to regular earnings but also to overtime, commissions or other irregular payments. The federal limitations on wage garnishment were incorporated into CPLR 5231, with the result that no amount may be withheld, pursuant to an income execution, for any week unless the disposable earnings of the judgment debtor for that week exceed 30 times the federal minimum hourly wage, prescribed in the Fair Labor Standards Act of 1938 as in effect at the time the earnings are payable.

All income executions must contain the statutory notice set forth in CPLR 5231(g). This notice must give information concerning the current minimum wage, and care should be taken to keep the forms current with changes in the minimum wage law.

83 See the Forms section following this Part Two.
84 CPLR 5233(b).
85 CPLR 5233(a).
86 But see infra XIII., “Sheriff’s Fees and Poundage.”
87 See “Income Execution” in the Forms section following this Part Two.
Pursuant to the Hatch Act, garnishing the wages of federal employees is permissible. Persons who are receiving welfare assistance however, may not have their income garnished.

B. Procedure

The income execution must be issued and delivered to the enforcement officer of the county in which the judgment debtor resides. The judgment debtor must be given an opportunity to voluntarily make payments on the income execution before it is placed with his or her employer. Therefore, within 20 days, the enforcement officer serves a copy of the income execution upon the judgment debtor in the same manner as a summons, or by certified mail, return receipt requested, provided an additional copy is sent by regular mail to the debtor. If the judgment debtor fails to pay installments for a period of 20 days, or if the enforcement officer is unable to serve the income execution upon the judgment debtor, then the income execution shall be served upon the employer. If the employer is employed in a different county than the judgment debtor, the enforcement officer will return the execution with his or her notations as to service and the execution may then be issued to the enforcement officer of the county where the employee is employed; that enforcement officer may directly serve the employer, without any further notice to the judgment debtor.

If the employer fails to withhold money from the judgment debtor and pay it over to the sheriff, that employer will be liable to the judgment creditor, who may commence a special proceeding against him or her for accrued installments. An employer is prohibited from discharging, laying off or disciplining any employee because income executions or wage assignments are filed against that employee. In fact, an employee can recover damages against an employer who discriminates because of income executions.

Income executions are also available for support enforcement. Practitioners involved in this area of the law should read the statutes very carefully for their applicability and limitations, including substantial changes to CPLR 5241 effective April 27, 2014. These sections are significant in a debt collection case because executions issued pursuant to them have priority over any other wage assignment or execution.

VIII. TRANSCRIPTS OF JUDGMENT

A judgment is transcribed from one court to another to make it enforceable within the jurisdiction of the latter court. For instance, the lower courts, such as the city courts in and outside the city of New York and the district courts, cannot issue executions against real property. Also, executions issued out

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89 N.Y. Social Services Law §§ 137, 137-a.
90 CPLR 5231(b).
91 CPLR 5231(d), (e).
92 CPLR 5231(j).
93 CPLR 5231(f).
94 CPLR 5252.
95 CPLR 5252(2).
96 CPLR 5241, 5242.
97 CPLR 5241(h).
of the lower courts are limited to levies within the counties where the city courts or district courts are located or, in the case of New York City, within the city of New York.

On the other hand, no execution shall issue out of a city court outside the city of New York after a transcript has been issued. Therefore, if the practitioner desires to use the enforcement officers of those city courts for an income execution or personal property execution, he or she should issue those executions before a transcript of the judgment is filed in any other jurisdiction.

The effect of transcribing a judgment with the county clerk is to create a lien on the real property of the defendant within that county. The lien will be valid for 10 years, or longer if extended by motion. Therefore, as a practical matter, a judgment should be transcribed in any county where the defendant has an interest in real property. The lien may be renewed by an action upon the judgment pursuant to CPLR 5014.

If judgment was taken in a lower court and the defendant resides outside that county or subsequently moves outside that county, the judgment should be transcribed to a county clerk so that an execution can be issued to the sheriff. Once a transcript is filed with a county clerk, an execution against personal property may be issued to any sheriff in any county. An execution against real property can only be issued to the sheriff of a county where the judgment is transcribed.

A judgment of the supreme court does not require a docketing with the county clerk of the court of entry, as it is automatically docketed in that county. However, to become a lien against real property in another county, it must be transcribed to the county clerk of that county.

IX. EXECUTIONS AGAINST REAL PROPERTY

A real property execution is a device for levying upon real property pursuant to a judgment other than a judgment for any part of a mortgage debt. If a judgment is properly docketed and the enforcement officer acts within 10 years after the entry of judgment, he or she may proceed to advertise and sell the judgment debtor’s interest in the real property without formal levy or seizure. A court may extend the 10-year lien upon motion by the judgment creditor for a period no longer than necessary to complete the advertisement and sale, or the judgment may be renewed for an additional 10 years by an action upon the judgment pursuant to CPLR 5014. After the 10-year period, unless extended or renewed, the judgment is no longer a lien; and if a judgment creditor issues an execution to sell real property (within the 20-year life of a judgment), the sheriff must levy pursuant to the execution by filing a copy of the execution and a description of the real property with the county clerk.

Because of the expense and severity of this remedy, it is usually resorted to only after the failure of all other attempts to persuade the judgment debtor to pay the judgment. The practitioner should obtain a title search and an appraisal of the property to determine the extent of the judgment debtor’s equity and the existence of other liens against the property. Prior mortgagees and judgment creditors should be contacted to determine the amount of their claims. This investigation should be completed before the execution is issued so that the practitioner can determine if there is sufficient equity to satisfy its judgment, if the property can be sold in parcels, and, if the property is occupied by the judgment debtor as a principal residence, whether there is sufficient equity over and above the homestead exemption.

98 N.Y. Uniform City Ct. Act § 1501.
99 CPLR 5203.
100 CPLR 5018.
101 CPLR 5235.
A. Homestead Exemption

Real property owned and occupied as a personal residence, and not exceeding $75,000 ($150,000 for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; $125,000 for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster), and as adjusted pursuant to CPLR 5253, in value above liens and encumbrances, is exempt from sale by judgment execution, unless the judgment was recovered for the purchase price of the property. If the homestead is owned jointly or owned in common, each owner who is a judgment debtor is entitled to the applicable real property exemption. Accordingly, if a husband and wife are judgment debtors and the owners of a homestead, the total exemption is twice the applicable exemption amount. Included in the exemption are shares of stock in a cooperative apartment, units of a condominium apartment and mobile homes. This exemption is automatic, and there are no filing or recording requirements necessary to make it effective. The exemption continues after death for the benefit of the children and spouse until the youngest surviving child reaches majority and the surviving spouse dies.103

While the lien of the judgment attaches to the value of the homestead real property in excess of the exempt amount, in order for the judgment creditor to enforce that lien by execution sale, he or she must commence a special proceeding in the county in which the homestead is located. If the court orders an execution sale, it must order distribution according to the interests of the person’s right and interest in the property sold. The judgment debtor receives the applicable real property exemption amount over and above prior liens and encumbrances, and that amount remains exempt from execution for one year.104

It should be noted that the courts are reluctant to sell the principal residence of a judgment debtor. The court can invoke its protective and supervisory powers under CPLR 5240 to require that other remedies be exhausted first.

B. Procedures for Advertisement and Sale

Section 5236 of the CPLR contains detailed provisions concerning advertisement, notice of sale and time of sale. The practitioner should read these provisions very carefully to ensure that there is a valid sale at which a purchaser will obtain good title.

The proceeds from a real property execution sale are distributed, after deductions for fees, expenses and taxes, to the judgment creditors who have delivered executions against the judgment debtor to the sheriff, in the order of their priority. Any excess is paid over to the judgment debtor.105

X. RETURN OF EXECUTIONS

There is a general requirement that a personal property execution be returned to the clerk of the court from which it was issued within 60 days after its issuance. The attorney for the judgment creditor may extend the time for additional periods of not more than 60 days each, without a court order, unless there are intervening executions.106 An exception to that requirement is when a levy is being

102 CPLR 5206(a).
103 CPLR 5206(b).
104 CPLR 5206(e).
105 CPLR 5236(g).
106 CPLR 5230(c).
made against personal property not capable of delivery or a debt is owed to the judgment debtor. In that instance, if further action is necessary, it must be taken by the judgment creditor within 90 days after the levy has been made, or the levy will become void. The further action may consist of a special proceeding to compel transfer, payment or delivery by the garnishee; or the judgment creditor can request an order extending the 90-day period. At the expiration of the 90-day period (or the court-ordered extension), the levy is void.

There is no limited statutory period established for the return of an income execution; once placed and effective, it continues until satisfied, returned unsatisfied in whole or part because the employment has been terminated or the judgment debtor has retired or passed away, modified by court order, or voided in a subsequent bankruptcy proceeding.

XI. PRIORITIES AMONG EXECUTIONS

A. Personal Property Executions

1. Executions Delivered to the Same Enforcement Officer

Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to the same enforcement officer, they should be satisfied out of the proceeds of the personal property or debt levied upon by the officer in the order in which they were delivered. It is necessary for priority purposes that there be a levy under the first execution before the delivery of or levy upon a second or subsequent execution. If the levy is made under a junior judgment and the judgment debtor’s property is sold, the judgment creditor who first delivered his or her execution will retain his or her priority status; if his or her priority is not honored, the senior execution creditor may assert his or her rights to the proceeds under CPLR 5239 by commencing a special proceeding. If an execution sale has been held, a judgment creditor may realize a share of the proceeds by delivering his or her execution to the enforcement officer before the proceeds are distributed, provided there are sufficient assets to satisfy the previously delivered executions.

An order of support collection unit generally has priority over any other assignment, levy or process. However, the lien of an attorney under Judiciary Law § 475 stays with the proceeds of a personal injury settlement and is paid first therefrom. The same holds true of a workers’ compensation lien which is second only to the attorney’s lien.

2. Executions Delivered to Different Enforcement Officers

Where two or more executions or orders of attachment against the same judgment debtor and in favor of different judgment creditors are delivered to different enforcement officers where each of the officers has jurisdiction, the first levied execution secures priority. Thus, if one execution is delivered to a city court marshal’s office and another to a sheriff’s office, the officer who levies first would secure priority for his or her judgment creditor; any excess should be distributed to the other officer upon demand to satisfy the junior execution.

107 CPLR 5232(a).
108 CPLR 5234(b).
109 Id.
110 Id.
112 CPLR 5234(b).
If an order has been obtained and filed directing the delivery, transfer or payment of personal property, or if a receiver has been ordered and that order filed before the property or debt has been levied upon, the judgment creditor who secured the order has priority as far as the proceeds of the levy are concerned. Where there are two or more such orders, the date of filing determines the priorities. A judgment creditor who obtained an order then has 60 days (unless extended) within which delivery or transfer of the property must be made or payment must be received, or he or she will lose priority status.\textsuperscript{113}

B. Income Executions

If two or more income executions are delivered to the same or different enforcement officers, specifying the same judgment debtor and the same person from whom the money is to be received, they are to be satisfied in the order in which they are delivered.\textsuperscript{114} If the enforcement officer cannot locate the person from whom the judgment debtor is to receive wages, the execution will be returned unsatisfied, either in whole or in part; if the execution is then delivered within 20 days to the officer where the person who owes the judgment debtor can be found, priority for the income execution will be based upon the delivery date to the first officer.

C. Real Property Executions

The priority of judgment liens against real property is established by the date the judgment was docketed with the clerk of the county in which the property is located.\textsuperscript{115} Therefore, the first judgment transcribed takes priority over a subsequent judgment transcribed, even if the subsequent judgment creditor is the first to issue an execution against the real property. Docketing procedures are covered by CPLR 5018. In order to share in proceeds of a real property execution sale, the judgment creditor must deliver an execution to the sheriff before the sale.\textsuperscript{116}

D. Tax Liens

Federal tax liens and state tax liens become effective against personal property if unpaid after demand and take priority over personal property executions unless there was a valid levy made before the tax lien came into existence.\textsuperscript{117} For individuals, tax liens against personal property should be filed in the county clerk’s office of the debtor’s residence or where the property is located; but for corporations, the notice must be filed with the secretary of state in Albany to become a lien on the debtor corporation’s property.\textsuperscript{118}

Tax liens are subordinate to the interests of purchasers, mortgagees, mechanic lienors and judgment lien creditors until notice is filed.\textsuperscript{119} Notice must be filed in the office of the county clerk in each county where the real property is located, with exceptions affecting Kings, Queens, New York and Bronx counties.\textsuperscript{120}

\textsuperscript{113} CPLR 5234(c).
\textsuperscript{114} CPLR 5231(j).
\textsuperscript{115} CPLR 5203(a).
\textsuperscript{116} CPLR 5236(g).
\textsuperscript{117} 26 U.S.C. § 6321; N.Y. Tax Law § 692.
\textsuperscript{118} N.Y. Lien Law § 240(2).
\textsuperscript{119} 26 U.S.C. § 6323(a).
\textsuperscript{120} Lien Law § 240(1).
E. Attorney Liens

While CPLR 5234(b) gives an order issued by a support collection unit a super priority over any levy or assignment, it does not take precedence over an attorney fee lien on the proceeds of a personal injury settlement. The Fourth Department made such determination upon reasoning that such lien stems from section 475 of the Judiciary Law and not CPLR 5234(b).121

XII. DETERMINATION OF ADVERSE CLAIMS

Judgment creditors can resolve disputes regarding rights and property or debts under CPLR 5239. This section must be invoked prior to the distribution or application of property or debt by the enforcement officer by commencing a special proceeding against the judgment creditor or other person with whom the dispute exists.

XIII. SHERIFF’S FEES AND POUNDAGE

The practitioner should remember that once an execution or other process is issued to the sheriff or other enforcement officer, such officer is entitled to certain fees, expenses and poundage. Sections 8011, 8012 and 8013 of the CPLR itemize the fees, expenses and poundage that the sheriff is entitled to receive. Civil Practice Law and Rules 8011 fixes the fees of sheriffs. Unless otherwise provided by law, the marshals of city courts are entitled to receive the same fees, expenses and poundage.122 Section 8014 of the CPLR provides that such fees can be collected from the judgment debtor under an execution against property, unless the statute requires that the fees be paid by a particular person. Mileage fees are covered by CPLR 8012(a). Fees for particular services are itemized in CPLR 8011, and the enforcement officers will not act until their fees are paid in advance or a deposit is made for their prospective expenses. The judgment creditor is liable to the enforcement officer for his or her earned fees if not paid in advance.

The enforcement officer is also entitled to a poundage of 5% of the first $250,000 collected and 3% of the excess (for counties in the city of New York, the poundage is 5% on all sums collected).123 The enforcement officer is entitled to this poundage as long as he or she acts pursuant to an execution. He or she does not have to levy and sell the defendant’s property to be entitled to poundage if he or she refrained from doing so because of the defendant’s promise to pay voluntarily. However, if the enforcement officer merely receives an execution and does nothing, and the defendant voluntarily pays the plaintiff without an attempt to collect by the enforcement officer, he or she is not entitled to poundage because the money was not collected by virtue of the execution. Once the enforcement officer has levied, however, his or her right to poundage impresses itself immediately on the full value of the property levied. A judgment creditor who interferes with the enforcement officer’s efforts or satisfies the judgment without taking the poundage into consideration may become personally liable to the enforcement officer for the poundage.124 An enforcement officer need not release his or her levy until the poundage is paid.125

121 See Daniels v. Monroe County Child Support Collection Unit, 11 A.D.3d 944, 783 N.Y.S.2d 443 (4th Dep’t 2004).
122 N.Y. City Civil Court Act § 1609.
123 CPLR 8012(b)(1).
124 See County of Westchester v. Riechers, 6 Misc. 3d 584, 785 N.Y.S.2d 892 (Sup. Ct., Westchester Co. 2004).
125 CPLR 8012(b)(3).
When settlement is made following a levy pursuant to an execution, the enforcement officer is still entitled to his or her poundage upon the value of the property levied upon, not exceeding a sum at which the settlement is made.\textsuperscript{126} The practitioner should remember to include such poundage in his or her agreement of settlement with the judgment debtor, lest the practitioner or his or her client be held accountable to the enforcement officer. When an execution is vacated or set aside, the enforcement officer is still entitled to poundage upon the value of the property levied upon, not exceeding the amount of the execution, and may order the party liable therefore to pay the same. Special rules affect the settlement or vacating of orders of attachment.\textsuperscript{127} Until his or her poundage is paid, the enforcement officer can retain the property upon which he or she levied.

The fact that the plaintiff issues an execution does not bar the enforcement of a judgment by other means. However, if the enforcement officer has levied on sufficient property to satisfy the execution, the plaintiff cannot enforce the judgment by other means without paying the poundage. If the enforcement officer has levied on property sufficient to satisfy a portion of the judgment, or collects only a portion of the judgment and makes no further levy, the enforcement officer is entitled to poundage only on such amounts collected by virtue of the execution. The plaintiff can collect the balance by such other means as are available, without being liable for poundage. The plaintiff’s attorney should act with care as long as an execution is outstanding; when in doubt, it is wise to communicate with the enforcement officer.

\textbf{XIV. CONTEMPT OF COURT}

Section 5210 of the CPLR provides that every court in which a special proceeding to enforce a money judgment may be commenced has the power to punish for contempt of court with respect to any enforcement procedure. This power applies to third parties who ignore restraining orders, subpoenas, executions or court orders, as well as to the judgment debtor.\textsuperscript{128}

\textbf{XV. RECEIVERS}

Under CPLR 5228, a judgment creditor may apply to the court to appoint a receiver of the judgment debtor’s assets. The receiver will be authorized to administer, collect, lease or sell any real or personal property of the judgment debtor to satisfy a judgment. Once a receiver has been appointed, other judgment creditors may move to have the receivership extended to their judgments. A receiver receives a maximum commission of 5\% of the moneys received and disbursed.

Receivership may be the best enforcement tool when attempting to levy on the judgment debtor’s intangible property. This was pointed out in \textit{Gasser Chair Co. v. Infanti Chair Manufacturing Corp.}\textsuperscript{129} There, New York Law was being applied where a judgment creditor sought to collect by the sale of a patent held by the judgment debtor. The court determined that a traditional levy would be ineffective as an execution sale would hardly bring in interested bidders. It determined the solution was to appoint a receiver to arrange a private sale of the patent so the judgment creditor could then make application under CPLR 5225 or 5227 for a turnover order and to compel the judgment debtor to execute whatever documents may be necessary to effect the transfer of ownership.

\textsuperscript{126} CPLR 8012(b)(2).

\textsuperscript{127} CPLR 8012(b)(3).

\textsuperscript{128} See CPLR 5251. \textit{But see} \textit{Tri-Global v. Richardson}, 25 A.D.3d 600, 807 N.Y.S.2d 638 (2d Dep’t 2006) (where a bank avoided a contempt charge because the restraining order server upon it failed to specify the judgment debtor’s account number).

\textsuperscript{129} 2006 WL 297451 (E.D.N.Y., Feb. 8, 2006).
XVI. CIVIL ARREST

Although the provisional remedy of arrest has been abolished, the post-judgment remedy of arrest continues.\(^{130}\) However, it is probably the least important and effective of the enforcement devices. In order to obtain an arrest, the judgment creditor must show that the judgment debtor is about to depart from the state or has kept himself or herself concealed and has property to satisfy the judgment.

XVII. MODIFICATION OR PROTECTIVE ORDER

Section 5240 of the CPLR is a major judicial tool to avoid injustice in the carrying out of the various enforcement devices contained in article 52. The power to modify, protect or supervise enforcement of judgments may be invoked by any party on motion or by the court \textit{sua sponte}. This section has been invoked where the family home has been levied on and where the defendant’s sole source of livelihood was subject to execution.

XVIII. SATISFACTIONS OF JUDGMENT

When a judgment has been satisfied, or partially satisfied, the person entitled to enforce it shall execute and file a satisfaction or partial-satisfaction piece, and must mail a copy to the judgment debtor within 10 days after the date of filing.\(^{131}\) An enforcement officer who receives payment is required to return the execution to the clerk of the court in which it was issued and to note thereon whether the execution is wholly or partly satisfied and, upon request, shall deliver a copy thereof to the person making payment.\(^{132}\) If a transcript of the judgment was filed in other counties, then a certificate of disposition must also be filed in those counties.\(^{133}\) CPLR 5020(c) imposes a $100 penalty for failure to file a satisfaction of judgment in accordance with the statute.

XIX. CONCLUSION

The successful consummation of a debt collection case requires a good system and constant follow-up. Each procedure outlined above should be closely monitored, from the day the summons is filed until the judgment is collected. The practitioner should make sure the process server acts promptly; the judgment should be entered as soon as it is due, and the enforcement procedure should be started promptly after the entry of judgment. There is no election of, or limitation on, which enforcement devices can be used. Use as many enforcement devices, simultaneously, as the situation warrants. A restraining notice or subpoena may develop information that will help the enforcement officer with an execution. Continue renewing or issuing process until the claim is collected or is deemed uncollectible. Once it is decided the debt is uncollectible, close the case, as further expenditures of time or disbursements are uneconomical for both practitioner and client. Above all, keep the client or forwarder constantly informed. A well-informed client is more likely to send new business.

\(^{130}\) CPLR 5250.
\(^{131}\) CPLR 5020.
\(^{132}\) CPLR 5021(b).
\(^{133}\) CPLR 5020(d).
JUDGMENT ENFORCEMENT FORMS
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* All the forms contained in this monograph are included on the forms CD accompanying this publication.
STATE OF NEW YORK
COUNTY OF:

Plaintiff-Judgment-Creditor,
vs.
Defendant(s)-Judgment-Debtor(s).

INFORMATION SUBPOENA
WITH RESTRAINING NOTICE

Index No.

RE:

SSN:

THE PEOPLE OF THE STATE OF NEW YORK

TO:

WHEREAS, in the above-captioned action between the parties listed above, a Judgment was entered on in, in favor of said Judgment-Creditor and against said Judgment Debtor(s) in the amount of, of which remains due, plus interest at from.

NOW, THEREFORE WE COMMAND YOU, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying this Subpoena, each answer referring to the question to which it responds; and that you return the answers together with the original of the questions within seven (7) days after your receipt of the questions and this Subpoena.

AND WHEREAS, it appears that you owe a debt to the judgment debtor or are in possession or in custody of property in which the judgment debtor has an interest, including, but not limited to any and all bank accounts, deposits, and/or depository accounts. TAKE NOTICE that pursuant to subdivision (b) of §5222 of the Civil Practice Law and Rules, which is set forth herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt, except as therein provided.

CIVIL PRACTICE LAW AND RULES

Section 5222(b) - Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that
the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE NOTICE THAT DISOBEDIENCE OF THIS RESTRAINING NOTICE OR FALSE SWEARING OR FAILURE TO COMPLY WITH THIS SUBPOENA MAY SUBJECT YOU TO FINE AND IMPRISONMENT FOR CONTEMPT OF COURT. NON-COMPLIANCE WITH THE INFORMATION SUBPOENA SHALL FIRST SUBJECT YOU TO THE PENALTIES UNDER CPLR 2308(b).

I hereby certify that this Information Subpoena complies with rule 5224 of the Civil Practice Law and Rules and Section 601 of the General Business Law, and that I have a reasonable belief that the party receiving this Subpoena has in their possession information about the debtor that will assist the creditor in collecting the Judgment. The ground(s) of this reasonable belief:
EXAMPLES- said party appears as a depository institution of the Judgment-Debtor(s) on Debtor’s application for credit, response to subpoena, prior payment, or lender/creditor from information received from a credit reporting agency.

Dated:

____________________________________
Attorney for Judgment-Creditor

Our file number- ©
STATE OF NEW YORK  
COURT  COUNTY OF

QUESTIONS AND ANSWERS  
IN CONNECTION WITH  
INFORMATION SUBPOENA

Plaintiff/Judgment Creditor,

-vs-

Defendant/Judgment Debtor.

Index No. 

Re:  
(Designated as Judgment Debtor)

THE PEOPLE OF THE STATE OF NEW YORK

TO:  
ADDRESS:  Attn: Legal Processing

STATE OF NEW YORK  )
) SS.:  
COUNTY OF  )

, being duly sworn deposes and says; that deponent is the of , the recipient of an information subpoena herein and of the original and a copy of questions accompanying said subpoena. The answers set forth below are made from information obtained from the records of the recipient.

Q. No. 1  Do you have a record of any account in which the judgment debtor may have an interest, whether under the name of the debtor, under a trade or corporate name, or in association with others, as of the date of the subpoena or within 1 year prior thereto?

Answer 1

Q. No. 2  As to each such account, what is the exact title of the account, account number, the date opened, amounts presently on deposit, date closed?

Answer 2

<table>
<thead>
<tr>
<th>TITLE</th>
<th>ACCT NO.</th>
<th>DATE OPENED</th>
<th>AMT ON DEPOSIT</th>
<th>DATE CLOSED</th>
</tr>
</thead>
</table>
Q. No. 3  Do you have a record of any safe deposit box in which the judgment debtor may have an interest, whether under the name of the debtor, under a trade or corporate name, or in association with others, as of the date of the subpoena or within 1 year prior thereto?

Answer 3

Q. No. 4  As to each such box what is the exact designation of the lessees thereof, the date hired, the date discontinued, the names of those having access?

Answer 4

<table>
<thead>
<tr>
<th>LESSEES</th>
<th>DATE HIRED</th>
<th>DATE DISCONTINUED</th>
<th>THOSE HAVING ACCESS</th>
</tr>
</thead>
</table>

Q. No. 5  Do you hold collateral in which the debtor has or may have an interest?

Answer 5

Q. No. 6  What is the description and value of each item of collateral?

Answer 6

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>VALUE</th>
</tr>
</thead>
</table>

Q. No. 7  What interest does the debtor appear to have in each item of collateral?

Answer 7

Q. No. 8  Is the judgment debtor indebted to you?

Answer 8
Q. No. 9  As to each indebtedness, what is the amount of the original indebtedness, the date incurred, amount repaid and date of such repayment?

Answer 9

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>DATE INCURRED</th>
<th>AMOUNT REPAID</th>
<th>DATE REPAID</th>
</tr>
</thead>
</table>

Q. No. 10  Do you hold any liens against property of the debtor?

Answer 10

Q. No. 11  What is the nature of each such lien, the full description of the property affected by the lien, the location and identity of the office of the filing or recording and full indexing information?

Answer 11

<table>
<thead>
<tr>
<th>LIEN</th>
<th>PROPERTY</th>
<th>WHERE RECORDED</th>
<th>OR FILED</th>
<th>BOOK AND PAGE NO.</th>
</tr>
</thead>
</table>

Q. No. 12  Are any of the assets of the debtor, in your possession or care, subject to liens, attachments or other encumbrances?

Answer 12

Q. No. 13  What are full details of the same in regard to each asset?

Answer 13

Q. No. 14  Do you have any other transactions with the debtor, directly or indirectly, as a result of which the debtor may now have, or may in the future become entitled to, money or credit?
Q. No. 15  Has the debtor given you a statement of his financial condition?
Answer 15

Q. No. 16  What assets are disclosed therein (or in the alternative supply a copy thereof)?
Answer 16

Q. No. 17  What is debtor's social security number and last place of employment?
Answer 17

________________________________________
Signature - Print or type name beneath

Sworn to before me this ___ day
of ___________________, 2006

__________________________
Notary Public

Return to: Attorney(s) for Judgment Creditor:
______________________________, Esq.

Post Office Address:
SAMPLE FORM OF NOTICE OF RIGHT TO GARNISH BENEFITS

The United States, or a State child support enforcement agency, certifying its right to garnish Federal benefits shall attach or include with a garnishment order the following Notice, on official organizational letterhead.

Information in brackets should be completed by the United States or a State child support enforcement agency, as applicable. Where the bracketed information indicates a choice of words, as indicated by a slash, the appropriate words should be selected from the options.

Notice of Right to Garnish Federal Benefits

Date: ____________________

[Garnishment Order Number] / [State Case ID]: ____________________

The attached garnishment order was [obtained by the United States, pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205, or the Mandatory Victims Restitution Act, 18 U.S.C. § 3613, or other Federal statute] / [issued by (name of the State child support enforcement agency), pursuant to authority to attach or seize assets of noncustodial parents in financial institutions in the State of (name of State), 42 U.S.C. § 666].

Accordingly, the garnishee is hereby notified that the procedures established under 31 CFR Part 212 for identifying and protecting Federal benefits deposited to accounts at financial institutions do not apply to this garnishment order.

The garnishee should comply with the terms of this order, including instructions for withholding and retaining any funds deposited to any account(s) covered by this order, pending further order of [name of the court] / [the name of the State child support enforcement agency].
MODEL NOTICE OF GARNISHMENT TO ACCOUNT HOLDER

A financial institution may use the following model notice to meet the requirements of § 212.7. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with § 212.7.

Information in brackets should be completed by the financial institution. Where the bracketed information indicates a choice of words, as indicated by a slash, the financial institution should either select the appropriate words or provide substitute words suitable to the garnishment process in a given jurisdiction.

Parenthetical wording in italics represents instructions to the financial institution and should not be printed with the notice. In most cases, this wording indicates that the model language either is optional for the financial institution, or should only be included if some condition is met.

MODEL NOTICE:

[Financial institution name, city, and State, shown as letterhead or otherwise printed at the beginning of the notice]

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Date:

Notice to:

Account Number:

Why am I receiving this notice?

On [date on which garnishment order was served], [Name of financial institution] received a garnishment order from a court to [freeze/remove] funds in your account. The amount of the garnishment order was for $[amount of garnishment order]. We are sending you this notice to let you know what we have done in response to the garnishment order.
What is garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your [bank]/[credit union] account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your [bank]/[credit union] to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

On [date of account review], we researched your account and identified one or more Federal benefit payments deposited in the last 2 months. In most cases, Federal benefit payments are protected from garnishment. As required by Federal regulations, therefore, we have established a “protected amount” of funds that will remain available to you and that will not be [frozen/removed] from your account in response to the garnishment order.

(Conditional paragraph if funds have been frozen) Your account contained additional money that may not be protected from garnishment. As required by law, we have [placed a hold on/removed] these funds in the amount of $[amount frozen] and may have to turn these funds over to your creditor as directed by the garnishment order.

The chart below summarizes this information about your account(s):

Account Summary as of [date of account review]

<table>
<thead>
<tr>
<th>Account number</th>
<th>Amount in account</th>
<th>Amount protected</th>
<th>Amount subject to garnishment (now [frozen/removed])</th>
<th>Garnishment fee charged</th>
</tr>
</thead>
</table>

(If the account holder has multiple accounts, add a row for each account)

Please note that these amount(s) may be affected by deposits or withdrawals after the protected amount was calculated on [date of account review].

Do I need to do anything to access my protected funds?

You may use the “protected amount” of money in your account as you normally would. There is nothing else that you need to do to make sure that the “protected amount” is safe.

Who garnished my account?

The creditor who obtained a garnishment order against you is [name of creditor].

What types of Federal benefit payments are protected from garnishment?
In most cases, you have protections from garnishment if the funds in your account include one or more of the following Federal benefit payments:
- Social Security benefits
- Supplemental Security Income benefits
- Veterans benefits
- Railroad retirement benefits
- Railroad Unemployment Insurance benefits
- Civil Service Retirement System benefits
- Federal Employees Retirement System benefits

(Conditional section if funds have been frozen) What should I do if I think that additional funds in my account are from Federal benefit payments?

If you believe that additional funds in your account(s) are from Federal benefit payments and should not have been [frozen/removed], there are several things you can do.

(Conditional sentence if applicable for the jurisdiction) You can fill out a garnishment exemption form and submit it to the court.

You may contact the creditor that garnished your account and explain that additional funds are from Federal benefit payments and should be released back to you.

(Conditional sentence if contact information is in the garnishment order) The creditor may be contacted at [contact information included in the garnishment order].

You may also consult an attorney (lawyer) to help you prove to the creditor who garnished your account that additional funds are from Federal benefit payments and cannot be taken. If you cannot afford an attorney, you can seek assistance from a free attorney or a legal aid society.

(Optional sentences) [Name of State, local, or independent legal aid service] is an organization that provides free legal aid and can be reached at [contact information]. You can find information about other free legal aid programs at [insert “www.lawhelp.org” or other legal aid programs website].

(Optional section) How to contact [name of financial institution].

This notice contains all the information that we have about the garnishment order. However, if you have a question about your account, you may contact us at [contact number].
STATE OF NEW YORK  
COUNTY OF : SUPREME COURT  

Plaintiff-Judgment-Creditor,  

INFORMATION SUBPOENA  
WITH RESTRAINING NOTICE  
Original Index No.  

Defendant(s).  

RE: , Judgment-Debtor(s)  
SSN (last 4 numbers):  

THE PEOPLE OF THE STATE OF NEW YORK  
TO JUDGMENT-DEBTOR(S):  

WHEREAS, in an action in , Index No. , (Assigned Judge- Hon. ), between the parties listed above, a Judgment was entered on , in favor of said Judgment-Creditor and against the Judgment Debtor(s), , in the amount of , of which remains due, plus interest at from .  

NOW, THEREFORE WE COMMAND YOU, that you answer in writing under oath, separately and fully, each question in the questionnaire accompanying this Subpoena, each answer referring to the question to which it responds; and that you return the answers together with the original of the questions within seven (7) days after your receipt of the questions and this Subpoena.  

TAKE FURTHER NOTICE that pursuant to subdivision (b) of §5222 of the Civil Practice Law and Rules, which is set forth herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt, except as therein provided.  

CIVIL PRACTICE LAW AND RULES  
Section 5222(b) - Effect of restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in
specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE THAT DISOBEDIENCE OF THIS RESTRAINING NOTICE OR FALSE SWEARING OR FAILURE TO COMPLY WITH THIS SUBPOENA MAY SUBJECT YOU TO FINE AND IMPRISONMENT FOR CONTEMPT OF COURT. NON-COMPLIANCE WITH THE INFORMATION SUBPOENA SHALL FIRST SUBJECT YOU TO THE PENALTIES UNDER CPLR 2308(b).

Dated:

____________________________

Attorney for Judgment-Creditor

Our file number- ©
1. **Q.** What is your full name? **A.**

2. **Q.** Where do you reside? **A.**

3. **Q.** Do you rent or own? **A.**

4. **Q.** If rent,
   (a) what is the landlord's name and address? **A.**
   (b) what is the monthly rent?
   (c) who pays the rent? **A.**
   (d) is it paid by cash or check?

5. **Q.** If own,
   (a) who are all parties holding title? **A.**
   (b) who holds mortgages and what are the current balances? **A.**
   (c) what are the monthly payments thereon? **A.**
   (d) if none of the monthly mortgage payments includes an escrow for taxes, what are the
annual property taxes? A.

(e) who pays the mortgages and taxes? A.

(f) are they paid by cash or check? A.

6. Q. What is your occupation or profession? A.

7. Q. Are you engaged in business in an individual, partnership or corporate form? A.

8. Q. If engaged in business give your business address and name of your firm. A.

9. Q. If employed give your employer's name and address. A.

10. Q. What is the average salary you receive or income you derive from your occupation or business on a monthly basis? A.

11. Q. When is your salary payable or when do you derive income from your business? A.

12. Q. Is it payable by check or in cash? A.

13. Q. What other any bonus or emolument do you receive from your business or employment? A.

14. Q. Do you receive any income from any other source, and if so, explain? A.

15. Q. What amount of income have you received from your trade or profession during each of the two years immediately preceding the entry of judgment in this action? A.
15a. Q. Advise your taxable and net income by attaching to your answers a copy the last two federal tax returns you filed, to include the W-2 forms and schedules. A. See attached tax returns.

16. Q. What amount of income have you received from other sources during each of these two years? A.

17. Q. Have you a bank, checking or savings account? A.

18. Q. If so, give names and addresses of banks where you have accounts. A.

19. Q. Have you closed any bank account since the summons in this action was served on you? A.

20. Q. If so, give name and address of bank. A.

21. Q. How much was on deposit at time the account was closed? A.

22. Q. Are you married? A.

23. Q. What is your spouse's full name? A.

24. Q. Is your spouse engaged in an independent business? A.

25. Q. What is the name and address of the business? A.
26. Q. What is the nature of the business? A.

27. Q. Is your spouse employed? A.

28. Q. What is the name and address of the employer? A.

29. Q. What salary does your spouse receive? A.

30. Q. Does your spouse own any real estate or have any interest in real estate? A.

31. Q. Does your spouse hold any chattel mortgages or security agreements? A.

32. Q. Does your spouse own an automobile, truck, airplane or boat? A.

33. Q. If so, what are the year make and model of each? A.

34. Q. Are any covered by a chattel mortgage, conditional sale or other security agreement? A.

35. Q. If so, for each who holds the security agreement and how much is the balance owed on the collateral? A.

36. Q. Has your spouse a bank, check or savings account? A.
37. Q. If so, at what banks?  A.

38. Q. Is your spouse an officer, director or stockholder in any corporation?  A.

39. Q. Does your spouse own any stocks, bonds, defense bonds or other securities?  A.

40. Q. Identify each such item.  A.

41. Q. How many children have you, and what are their ages?  A.

42. Q. Do you own an automobile, truck, airplane or boat?  A.

43. Q. If so, describe the make, year and model, serial and license number.  A.

44. Q. Are any covered by any chattel mortgage, conditional sales or other security agreement?  A.

45. Q. If so, for each who holds the security agreement and how much is the balance owed on the collateral?  A.

46. Q. Where do you keep those items?  A.

47. Q. Do you own any interest in real estate?  A.
48. Q. If so, identify each street address and describe the improvements thereon. A.

49. Q. Have you sold, conveyed or assigned any of your property real or personal within the past 2 years? A.

50. Q. If so, describe each item of property, indicate the name and address of the purchaser and the consideration received. A.

51. Q. Have you made a gift of any of your real or personal property to anyone since the summons in the above entitled action was served on you? A.

52. Q. If so, describe each item and provide the name, address and relationship of the recipient. A.

53. Q. Do you own any stocks, bonds, defense bonds or other securities? A.

54. Q. Describe each item. A.

55. Q. Are you an officer, director or shareholder in any corporation? A.

56. Q. If so, explain. A.

57. Q. Do you own any collections of art, stamps, coins, recordings, antiques or other collectibles? A.

58. Q. If so, describe each collection, specify its location and provided an estimate as to its current
value. A.

59. Q. What property have you in pawn and where was it pawned? A.

60. Q. Is there an income execution or wage assignment presently against your wages or has an installment payment order been granted directing you to make payments to any judgment creditor? A.

61. Q. If so, how much is so paid, how frequently, to whom and what is the current outstanding balance on the applicable debt? A.

62. Q. Do you receive any money from others to help support yourself? A.

63. Q. If so, what are the names and addresses of such persons. A.

64. Q. What are the amounts that such persons contribute for your support. A.

65. Q. Do you keep any records relating to your income and expenses? A.

66. Q. What is the name and address of your accountant? A.

67. Q. Have you been involved in any automobile accident, or in any way been injured through any person's fault, within the last three years? A.

68. Q. If so, give the date of the accident or injury, the name of the insurance company, and the name of
your attorney, if any. A.

69. Q. Are there any other judgments against you? A.

70. Q. If so, give the following information with respect to each judgment:

(a) Name of court and date of judgment.

(b) Name of plaintiff and amount of judgment.

71. Q. Are you presently making any payments pursuant to any court order or income execution? If so, explain fully. A.

72. Q. Does anyone owe you any money? A.

73. Q. If you answered Question 72 affirmatively, attach to your answers a list identifying each receivable by amount, due date and name and address of the party or entity which owes you the money.

74. Q. Detail what your average monthly expenses are by inserting and amount in the following list:

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>Mortgage or rent</td>
</tr>
<tr>
<td>$</td>
<td>Electricity and heating fuel</td>
</tr>
<tr>
<td>$</td>
<td>Water and sewer</td>
</tr>
<tr>
<td>$</td>
<td>Telephone</td>
</tr>
<tr>
<td>$</td>
<td>Cable TV</td>
</tr>
<tr>
<td>$</td>
<td>Auto payment or rental</td>
</tr>
<tr>
<td>$</td>
<td>Auto insurance</td>
</tr>
<tr>
<td>$</td>
<td>Auto maintenance and fuel</td>
</tr>
<tr>
<td>$</td>
<td>Life insurance</td>
</tr>
</tbody>
</table>
$ _______  Health insurance
$ _______  Homeowners' property insurance
$ _______  Property tax not included in mortgage
$ _______  Home maintenance and repair
$ _______  Food
$ _______  Clothing
$ _______  Laundry and dry cleaning
$ _______  Medical/dental expenses
$ _______  Recreation/clubs/newspapers/magazines
$ _______  Charitable contributions
$ _______  Other installment payments
$ _______  Alimony, maintenance and support payments
$ _______  Other (explain)

75. Q. How do you propose to satisfy this judgment?

Defendant is the recipient of an information subpoena herein, of the original and a copy of questions accompanying said subpoena and a prepaid self-addressed return envelope.

__________________________
Judgment Debtor

Sworn to before me this _________ day
of ______________, 20__.

__________________________
Notary Public
STATE OF NEW YORK
COURT : COUNTY OF

Plaintiff

vs.

Index No.
CORPORATE
QUESTIONNAIRE

Defendant/Judgment Debtor

1. Q. What is your full name and address? A.

2. Q. What office or position do you hold with the debtor? A.

3. Q. What are the names and address of the other corporate officers? A.

4. Q. What are the names and addresses of the shareholders and directors? A.

5. Q. When was the business of the debtor commenced? A.

6. Q. What is the nature of the business? A.

7. Q. What books of account does the judgment debtor maintain? A.

8. Q. By whom or under whose supervision have the books of account been kept? A.
9. Q. In whose possession are the books and records? A.

10. Q. What bank accounts has the debtor maintained during the past 2 years? A.

11. Q. Has debtor closed any bank account since the summons in this action was served? A.

12. Q. If so give name and address of bank. A.

13. Q. How much was on deposit at time the account was closed? A.

14. Q. Give date, name and address of payee of the last check drawn? A.

15. Q. What was the amount of said check and the consideration therefor? A.

16. Q. What safe deposit boxes or other depositories has the judgment debtor kept or used for the past 2 years? A.

17. Q. When was the last inventory of the debtor's property taken, by whom, and what was the total dollar value? A.

18. Q. Has the debtor issued any financial statements within the past two years and if so to whom issued, including mercantile and trade agencies? A.

19. Q. At what addresses does the debtor conduct its business? A.
20.Q. Which of these premises are under a written lease and which are owned by the debtor? A.

21.Q. What are the rents paid? A.

22.Q. Does the landlord hold any security? A.

23.Q. How much security? A.

24.Q. What assets does the debtor have at the present time? A.

25.Q. Where are these assets located? A.

26.Q. Are there any mortgages or other liens on the debtor's property? A.

27.Q. What repayments of loans has the debtor made within the past four months and to whom repaid? A.

28.Q. What payments of $100 have been made to any other creditor within the past 4 months? A.

29.Q. What property has the debtor transferred or otherwise disposed of during the past year other than in the usual course of business? A.

30.Q. Has the debtor assigned any of its accounts receivable and if so, to whom? A.
31.Q. Has any execution or attachment been levied against the debtor's property within the past four months and if so give particulars including property seized and at whose suit? A.

32.Q. Where did the debtor file its Federal and State income tax returns for the past 2 years? A.

33.Q. What personal withdrawals from the debtor have been made by each officer, director or managing executive of the debtor, during the past year? A.

34.Q. Does the debtor pay the premiums of any life insurance or annuities policies for any stockholder, officer, director or key employee or a member of the family of any such person? A.

35.Q. If so, what are the names of the companies and the numbers and amounts of each policy? A.

36.Q. Who are the beneficiaries in each policy? A.

37.Q. What is the present cash value of each such policy? A.

38.Q. Does the debtor own an auto, truck, trailer, tractor, airplane or boat? A.

39.Q. Is it covered by a chattel mortgage, conditional sale or other security agreement? A.

40.Q. Was it bought on the installment plan? A.
41.Q. Where is it kept? A.

42.Q. Does debtor own any real estate? A.

43.Q. Does debtor have shares or a proprietary lease in a cooperative or condominium? A.

44.Q. Does debtor own any chattel or real estate mortgages? A.

45.Q. Does debtor hold any participating interest in any real estate or chattel mortgage? A.

46.Q. Does debtor lease any other property? A.

47.Q. Does debtor own any stocks, bonds, defense bonds or other securities? A.

48.Q. Describe each item? A.

49.Q. Does debtor receive royalties from any patent, copyright or invention? A.

50.Q. Does debtor own a seat in any stock, cotton, produce, commercial or other exchange? A.

51.Q. Is the debtor a trustee or executor under any will or testament, insurance policy or trust agreement? A.
52. Q. Did debtor ever borrow money and pledge or deposit as collateral security any property, real or personal? A.

53. Q. If so, state names and addresses of persons with whom such security was deposited? A.

54. Q. Does debtor have an interest in any mortgage, mechanics lien or other lien on real property? A.

55. Q. Are there any judgments in debtor's favor? A.

56. Q. If so, state details and amounts. A.

57. Q. Does anybody owe debtor money? A.

58. Q. If so, give details? A.

59. Q. Are there any judgments against debtor? A.

60. Q. If so, state details and amounts. A.

61. Q. Has debtor ever before been examined by a judgment creditor? A.

62. Q. Has debtor any right or interest in any action now pending in any court? A.
63. Q. Is debtor a party to any action now pending in any court? A.

64. Q. Does anyone hold any property or money in trust for debtor? A.

65. Q. Has debtor borrowed money from any bank or other lending institution within the past 2 years? A.

66. Q. What deposits has debtor with any utility company? A.

67. Q. Does debtor have an interest in insurance or other claims now pending? A.

68. Q. If so, give details? A.

69. Q. How does the judgment debtor propose to satisfy the judgment?
   A.

________________________________________________________________________

Judgment Debtor

By:__________________________________

(Print name)________________________________

(Print title)________________________________

Sworn to before me this
_____ day of ____________, 20__.

________________________________________

Notary Public

IF ADDITIONAL SPACE IS NEEDED FOR ANY ANSWER, USE THE REVERSE SIDE.
STATE OF NEW YORK
COURT : COUNTY OF

Plaintiff

vs.

Defendant

Index No.
EMPLOYMENT
QUESTIONNAIRE

Re: _______________________
Judgment Debtor

Q1. Is the Judgment Debtor in your employ?
A1.

Q2. What are his/her current residence address and telephone number?
A2.

Q3. Is he/she paid a flat salary or at an hourly rate?
A3.

Q4. If a flat salary, state its terms.
A4.

Q5. If at an hourly rate, how much per hour and how many hours does he average per week?
A5.

Q6. If there is a current wage assignment, child support order or garnishment against his wages, state its original amount, the date placed with the company and the current balance due on same, and attach a copy of same to your responses.
A6.
Q7. What is the judgment debtor's social security number?

A7.

Q8. If the judgment debtor receives any additional benefits or emolument (e.g. company car, life insurance, bonuses) what are the specifics of same?

A8.

Q9. What were the judgment debtor's gross wages for the previous year?

A9.

Q10. If the judgment debtor has been but is no longer in your employ, what was the last date of employment?

A10.

By: ________________________________
(Print name: ________________________________)
(Print title: ________________________________)

Sworn to before me this

____ day of ________________________, 20____.

Notary Public
PART TWO: JUDGMENT ENFORCEMENT

WARNING: YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT.

NOTICE: The purpose of the hearing is to punish you for a contempt of court. Such punishment may consist of fine or imprisonment, or both, according to law.

At a Special Term of the Court held at the Court House, on ______________

STATE OF NEW YORK
____________________COURT : COUNTY OF _______________

Plaintiff,

vs.

Defendant, ASSIGNED JUDGE:

ORDER TO SHOW CAUSE TO PUNISH FOR CONTEMPT
Index No.

On the annexed Subpoena, the annexed Affidavit showing due service of the Subpoena, and upon the Affirmation of ______________________, Esq., dated _______________ , 20___, by which it appears that __________________________ failed to comply with said Subpoena.

IT IS ORDERED, that ____________________ appear before me or one of the Justices of this Court, at a Special Civil Term, to be held at the Court House,__________________________, ______________________, NY on________________ at _____________ a.m. of that day and show cause why he/she should not be punished as and for contempt for violation of and non-compliance with the said Subpoena, to include a fine up to

Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
$250 plus actual damages, and why he/she should not pay the costs of this motion, and why the
Plaintiff should not have such other and further relief as may be proper.

Personal service pursuant to CPLR 308 (1), (2) or (4), of a copy of this order and of the
papers upon which it is based, on said _____ at any time on or before ten (10) days prior to the
return date of this Motion, shall be deemed sufficient.

DATED: ___________________________________

HON.
STATE OF NEW YORK

Plaintiff,

vs.

Defendant,

ATTORNEY’S AFFIRMATION

Index No.

ASSIGNED JUDGE:

Hon. ______________________

_________________________, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff, ________________ and am duly authorized by the Plaintiff to bring this proceeding. A Subpoena (a copy of which is annexed hereto) was duly issued of this Court requiring ________________ (hereinafter “Contemnor”) to appear for the taking of a deposition and provide documentation relevant to the satisfaction of the judgment entered in this action.

2. As appears more fully in the affidavit of service annexed hereto, the subpoena was served on said Contemnor.

3. The Contemnor failed to so comply with said Subpoena.

4. The conduct of said Contemnor was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the judgment creditor herein, in that the judgment creditor has been unable to obtain information on matters relevant to the satisfaction of the judgment as authorized by law.
5. No previous application for an order to show cause relative to non-compliance with this Subpoena herein has been made.

**WHEREFORE**, your deponent prays for an order requiring __________________ to show cause why the above-referenced Contemnor should not be punished for contempt, to include a fine up to $250 *plus* actual damages, and granting to the judgment creditor such other and further relief as to the Court may seem just and proper, together with the costs of this motion.

DATED: ______________________, 20___

________________________, NY_______             ______________________

________________________

Attorney for Plaintiff

________________________

________________________

________________________
STATE OF NEW YORK
____________________COURT : COUNTY OF ________________

At a Special Term of the
_______________ Court
held at the Court House,
_______________, NY on
_______________, 20___.

STATE OF NEW YORK
____________________COURT : COUNTY OF ________________

Plaintiff,

vs.

Defendant,

ASSIGNED JUDGE:
Hon.

On reading and filing the Order to Show Cause herein, and the Affirmation of
_______________________________, attorney for the Plaintiff, and the Subpoena thereto
annexed; upon which papers the said Order to Show Cause was granted, and all of which were
read in support of the Motion; and on reading and filing due proof of the service of said Order to
Show Cause, and papers upon which the same was granted, as aforesaid, upon the Contemnor
herein, and after hearing ________________, attorney for the Plaintiff, in support of the
Motion, and no one having appeared in opposition thereto; and this Court, after due
consideration, being satisfied, and having found and decided that ___________
______________ (“Contemnor”) has committed the offense and is guilty of the misconduct

Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as
long as it accompanies the papers: a cover page, a litigation back or a separate certification.
and Contempt of Court charged against said Contemnor, in willfully disobeyed the provisions and requirements of the Subpoena duly served upon said Contemnor, and the Court having found and decided that the misconduct of ______________ was calculated to and did actually defeat, impair, impede, and prejudice the rights and remedies of the Plaintiff herein;

NOW, on Motion of ____________________, attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED, AND DECREED, that ______________ has committed the offense and is guilty of the misconduct and Contempt of Court charged against said Contemnor in having willfully disobeyed the provisions and requirements of the Subpoena duly served upon said Contemnor, and it is further

ORDERED, ADJUDGED, AND DECREED, that the misconduct of and the offense of ________________, as aforesaid, was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of the Plaintiff herein; and it appearing that the misconduct of said Contemnor consists of an omission to perform an act or duty which it is yet in said Contemnor’s power to perform, it is therefore, further

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff shall be entitled to recover a fine in the amount of $250.00, which hereby is imposed upon _________________ for the misconduct and Contempt of Court of which the Contemnor is found guilty, as aforesaid; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff shall be entitled to recover Motion costs in the amount of $50.00 from _____________________; and it is further
ORDERED, ADJUDGED, AND DECREED, that ________________________ may purge the fine imposed for the Contempt within ten (10) days after personal service of a copy of this Order on him/her by appearing at the offices of ________________________, Attorney for the Plaintiff at ________________, ________________, NY ______ any weekday at 10:00 a.m. and submitting to examination upon oral or written questions on all matters relevant to the satisfaction of this judgment, or by appearing before and satisfying this Court that said Contemnor is unable to pay the fine, or in the discretion of the Court, by giving an undertaking in a sum fixed by the Court conditioned upon payment of the fine plus costs and expenses of said Contemnor’s appearance and compliance with the aforementioned Subpoena; and it is further

ORDERED, ADJUDGED, AND DECREED, that upon proof by Affidavit that more than ten (10) have elapsed since personal service of a copy of this Order upon the Contemnor, and that the fine herein imposed has not been paid, and/or that said Contemnor has failed to comply with the aforementioned Subpoena; this Court may issue a Warrant upon application with notice by first class mail to the Contemnor; said Warrant shall be directed to the Sheriff or other enforcement officer of any jurisdiction in which said Contemnor may be found, commanding such officer to arrest said Contemnor forthwith and bring said Contemnor before this Court, or a Judge thereof, only while Court is in session, to be committed or for such other disposition as the Court in its discretion shall direct.

DATED: __________________, 20___

HON.________________________________

ATTORNEYS FOR PLAINTIFF

________________________________

________________________________

_________________, NY ___________
At a Special Term of the
Court
held at the Court House,
NY on
20___.

STATE OF NEW YORK
____________________COURT : COUNTY OF __________________

Plaintiff,

WARRANT OF COMMITMENT

vs.

Index No.

Defendant,

ASSIGNED JUDGE:
Hon.

________________________________________________________

Upon the certified copy of the Order holding __________ in Contempt of Court, upon the
Affidavit of personal service of said Order upon the Contemnor, and upon the attached
Affirmation of , Esq. affirming that the time to purge the Contempt has elapsed since the
personal service of the Order, and that the Contemnor has not both paid the fine and complied
with the Subpoena as requested,

NOW, THEREFORE, WE COMMAND THE SHERIFF OF ___________________
COUNTY, or any other County where the Contemnor is located, to arrest
_____________________ forthwith, and bring him/her before
this Court, or a Judge thereof, to be committed until payment of the fine and compliance with the
Subpoena as ordered by the Final Order of Contempt, or for such further disposition as the Court,
in its discretion, shall direct.

DATED: ____________________________   ______________________________
Hon.

Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
STATE OF NEW YORK
__________________________________________ COURT : COUNTY OF __________________


_______________________________, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff in the above-referenced proceeding, and as such, I am fully aware of the facts and circumstances herein.

2. As appears more fully in the affidavit of service annexed hereto, the Final Order of Contempt was served on _____________ (hereinafter “Contemnor”).

3. Pursuant to said Order, the Contemnor was required to pay a fine and comply with a Subpoena in lieu of commitment or other disposition.

4. To date, the time period for the Contemnor to pay the fine and comply with the subpoena has passed, and the Contemnor has failed to so comply with said Order.

WHEREFORE, it is respectfully requested that this Court issue a Warrant directed to the Sheriff or other enforcement officer of any jurisdiction in which the Contemnor may be found, commanding such officer to arrest the Contemnor, forthwith and bring him/her before this
Court, or a Judge thereof, to be committed or for such other disposition as the Court in its discretion shall direct.

DATED: ______________, 20___

______________, NY ______________________________

________________________, Esq.
STATE OF NEW YORK

____________________ COURT : COUNTY OF _______________________________

_________________________,

Plaintiff-Judgment-Creditor,

SUBPOENA DUCES TECUM

vs.

_________________________,

ASSIGNED JUDGE:

Defendant-Judgment-Debtor. Hon.

Index No.: RE: ___________________________, ____________________, ________________, NY _____

TO: _________________________________

WHEREAS, in the above-captioned action between the parties listed above, a Judgment
was entered on ______________ in _______________ Court in favor of said Judgment-Creditor
and against said Judgment Debtor in the amount of $ ____ , of which $______ remains due, plus
interest at 9% from ___________, 20;

NOW, THEREFORE WE COMMAND YOU, appear and attend before a person
authorized by the laws of the State of New York to administer oaths, at the offices of
________________ at _______________. __________,NY _____ on _______________. 20__ at __________p.m., and at any recessed or adjourned date for the taking of a deposition under oath
upon oral or written questions on all matters relevant to the satisfaction of such judgment; AND

WE FURTHER COMMAND YOU to produce for examination at such time and place the
following books, papers and records: any and all bank statements, payroll records, payroll
stubs, payroll receipts; copies of any loans, mortgages, notes, etc., and all other books, papers
and records in your possession or control which have or may contain information concerning the
Judgment – Debtor’s property, income or other means relevant to the satisfaction of the judgment, INCLUDING, BUT NOT LIMITED TO ALL DOCUMENTS REFERENCED IN SCHEDULE A (ATTACHED).

TAKE FURTHER NOTICE that pursuant to subdivision (b) of §5222 of the Civil Practice Law and Rules, which is set forth herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property or pay over or otherwise dispose of any such debt, except as therein provided.
CIVIL PRACTICE LAW AND RULES

Section 5222(b) Effect of restraint: prohibition of transfer; duration. A Judgment Debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other than the Judgment Debtor is effective only if, at the time of service, he owes a debt to the Judgment Debtor or he is in possession or custody of property in which he knows or has reason to believe the Judgment Debtor has an interest, or if the Judgment Creditor has stated in the notice that a specified debt is owed by the person served to the Judgment Debtor or that the Judgment Debtor has an interest in specified property in the possession or custody of the person served. All property in which the Judgment Debtor is known or believed to have an interest then in and thereafter coming into possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the Judgment Debtor, shall be subject to the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event first occurs. A Judgment Creditor who has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the Judgment Debtor, for any damages sustained by reason of the restraint. If a Garnishee served with a restraining notice withholds the payment of money belonging or owed to the Judgment Debtor in an amount equal to twice the amount due on the Judgment, the restraining notice is not effective as to other property or money.

TAKE FURTHER NOTICE THAT DISOBEDIENCE OF THIS RESTRAINING NOTICE OR FALSE SWEARING OR FAILURE TO COMPLY WITH THIS SUBPOENA MAY SUBJECT YOU TO FINE AND IMPRISONMENT FOR CONTEMPT OF COURT.

Dated: __________ , 20__. __________________________________________________________

Attorney for Judgment Creditor
SCHEDULE A

FOR THE PERIOD FROM 3 YEARS PRIOR TO THE DEPOSITION DATE TO SAID DEPOSITION DATE: _______

1. All savings bank books, records, accounts and memoranda, current as well as those that may have been cancelled or closed, whether in Defendant’s name individually, jointly, in trust, as custodian, as nominee, or in conjunction with any other person or persons, including but not limited to deposit slips, withdrawal slips, and money order or bank check stubs;

2. All records, papers and memoranda concerning all checking accounts in Defendant’s name individually, jointly, in trust, as custodian, as nominee or in conjunction with any other person or persons, including checkbooks, checkbook stubs, statements, cancelled checks and deposit slips, whether said accounts are current or may have been closed;

3. All stock certificates, bonds or other securities in Defendant’s name individually, jointly, in trust, as custodian, as nominee or in conjunction with any other person or persons, or which may be held in account individually or in conjunction with any other person or persons in any corporation, domestic and foreign, or issued by the federal government or by any state, municipal or other governmental agency;

4. All books, records, accounts, monthly statements, statements of transactions and all other papers and memoranda of stock brokerage accounts in Defendant’s name individually, jointly, in trust, as custodian, as nominee or in conjunction with any other person or persons;

5. All personal financial statements prepared on behalf of Defendant and all credit applications;

6. Copies of all Defendant(s)’ federal, state and city income tax returns together with the schedules, amendments and worksheets thereof and all other papers, documents and memoranda referring to any adjustments made in connection therewith, together with all 1099, W2 and K4 forms;

7. Any and all contracts for the rental and/or lease of safe deposit boxes or vaults by Defendant(s);

8. Any and all rental leases, and deeds or conveyances of real property in Defendant’s name individually, jointly, in trust, as custodian, as nominee, or in conjunction with any other accounts are current or may have been closed, together with any documentation relative to mortgages, real property taxes and other expenses and repairs relative to any real property in which Defendant may have an interest or had an interest within 6 years prior to the commencement of this action;

9. Copies of all corporate books, federal and state income tax returns together with the schedules and worksheets thereof and all other papers, documents and memoranda relative to any corporation in which Defendant was or is the owner of any stock;

10. Any records relative to transfers of personal property by Defendant(s) in excess of $500;
11. Any and all records, documents, papers and memoranda, including pay stubs, pertaining to monies received and/or being presently received from all sources by Defendant(s);

12. Any and all policies of insurance including but not limited to theft, floater, liability, health and accident and automobile, and all records showing payments for premiums therefore;

13. All records of Defendant(s)’ membership in and contributions to any charity or any other organizations or associations including private or professional clubs or associations;

14. Records of all credit card charges, or any other indebtedness incurred by Defendant;

15. Any and all Defendant(s)’ records, vouchers, documents, papers, or memoranda pertaining to monies, benefits or reimbursement, whether payable or due to Defendant for salaries, drawings, wages, travel and entertainment, automobile use or expense, dividends, bonuses, sick pay, pensions or other retirement accounts, annuities, welfare benefits, profit sharing, stock options; and

16. Any documents pertaining to any educational degrees or professional licenses of Defendant.

17. Any other records relative to Defendant’s assets, liabilities and expenses.
SIR:

PLEASE TAKE NOTICE that on the pleadings herein and the annexed affirmation of ________________, dated ____________, 20__, and on the judgment herein, dated ________________, 20__, and upon all the papers and proceedings hereinbefore had herein, the undersigned will move this Court at an All Purpose Term of the Court held at the Court House, ____________________, New York on _____________, 20__, for an order pursuant to CPLR 5226 directing the above named judgment debtor to pay monthly installments of $________ each to the above named judgment creditor until the judgment entered herein, plus interest costs and expenses of this motion, have been paid, and for such other and further relief as to the court may seem just and proper; and further

PLEASE TAKE NOTICE that this is a motion to require the defendant named to make regular monthly installment payments in satisfaction of the judgment of record; and further

PLEASE TAKE NOTICE that answering affidavits, if any, are required to be served seven (7) days prior to the return date of this motion.

Dated: ______________, New York
__________________________, 20__

Yours,
s/__________________________
(signing attorney’s name)
Address and phone number

TO:
__________________________
Attorney for Defendant,
Judgment-Debtor
P.O. Address
Tel. No.
SUPREME COURT
_________________ COUNTY

Plaintiff, INDEX NO.

-against-

AFFIRMATION IN
SUPPORT OF MOTION
TO SET INSTALLMENT
PAYMENTS

Defendant.

______________________________________, under penalties of perjury, affirms and says:

1. I am an attorney duly admitted to practice in this state and of counsel with ____________ 
__________, the attorney for the plaintiff herein. I am familiar with the facts set forth in this 
affirmation from my own knowledge or from the information contained in our file.

2. On _______________, 20__, judgment was entered in Supreme Court, _____________ County 
in favor of the plaintiff herein against the above named judgment debtor in the sum of $_________, 
including costs.

3. A number of payments on account have been made by the judgment debtor in satisfaction of the 
judgment on record, thereby leaving a balance due and owing in the sum of $_________ with interest 
thereon from ________________, 20__. A copy of the judgment creditor's ledger card is attached 
hereto and marked Exhibit "A."

4. On ________________, 20__, this office caused an information subpoena to be issued against 
the defendant. The defendant answered the questionnaire annexed thereto stating that he was a 
self-employed attorney earning approximately $________ per week. A copy of the answers annexed 
to the information subpoena are attached hereto and marked Exhibit "B."

5. The judgment creditor herein then obtained a current Assets and Income Report dated 
__________, 20__, which verified the answers as set forth above indicating the judgment debtor to be 
self-employed earning approximately $________ to $________ per year. A copy of the report is 
attached hereto and marked Exhibit "C."

6. It will be noted that by reason of the information found in the Current Assets and Income Report, 
it was discovered that the defendant resides with his mother at her home. In addition, it is suggested 
that the judgment debtor has no financial difficulties and apparently has the ability to make payments 
in satisfaction of the judgment herein.

7. It would appear that the judgment debtor is living well and that all of his reasonable needs are 
taken care of without difficulty and with little personal expense. Because of the nature of the judg-
ment debtor’s income, an income execution is not practicable. The judgment debtor has refused to 
make any effort to satisfy the balance due on his obligation, and the only recourse available to the 
judgment creditor is an order setting installment payments.
WHEREFORE I respectfully pray for an order directing __________________________________
to make regular monthly installment payments of $________ each to the judgment creditor, together
with such other and further relief as may seem proper.

Dated: _________________, New York

______________, 20__

s/___________________________
(signing attorney’s name)
Attorney for Plaintiff
Address and phone number
Plaintiff, INDEX NO.

-against-

INSTALMENT PAYMENT DEFENDANT

ORDER 1

PRESENT: HON. _____________________________________, Justice of the Supreme Court

The plaintiff above named having duly moved this Court at an All Purpose Term of the Court held at the Court House, _________________, New York, on ________________, 20__, the notice of motion dated ____________, 20__, under CPLR 5226 for an order directing the above-named judgment debtor to pay monthly installments of $________ each to the above-named judgment creditor;

Now, on reading and filing the complaint therein, the affirmation of _____________________, dated ______________, 20__, with proof of due service thereof, and after hearing _____________________, attorney for plaintiff, in support of said motion, and no one appearing in opposition thereto, and due deliberation having been had, on motion of _________________, attorney for plaintiff, it is

ORDERED that the said motion be, and the same hereby is granted, and it is further

ORDERED that the judgment debtor herein be and he hereby is, directed to pay the judgment creditor’s attorney, ______________________ at their offices located at __________________________, the sum of $________ per month, the first payment in such amount to be made on the first day of ________________, 20__ and such payments thereafter to be made on the first day of each succeeding month, or the next business day thereafter, until the balance due on the judgment herein in the sum of $________, with interest accruing thereon, is satisfied.

Dated: ______________, New York

____________________, 20__

JUSTICE OF THE SUPREME COURT

1 Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
NOTICE TO JUDGMENT DEBTOR OR OBLIGOR

Money or property belonging to you may have been taken or held in order to satisfy a judgment or order which has been entered against you. Read this carefully.

YOU MAY BE ABLE TO GET YOUR MONEY BACK

State and federal laws prevent certain money or property from being taken to satisfy judgments or orders. Such money or property is said to be "exempt". The following is a partial list of money which may be exempt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans benefits;
10. Ninety percent of your wages or salary earned in the last sixty days;
11. Twenty-six hundred twenty-five dollars ($2,625.00) of any bank account containing statutorily exempt payments that were deposited electronically or by direct deposit within the last forty-five days, including, but not limited to, your social security, supplemental security income, veterans benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement benefits, black lung benefits, or child support payments;
12. Railroad retirement; and

If you think that any of your money that has been taken or held is exempt, you must act promptly because the money may be applied to the judgment or order. If you claim that any of your money that has been taken or held is exempt, you may contact the person sending this notice.

Also, YOU MAY CONSULT AN ATTORNEY, INCLUDING ANY FREE LEGAL SERVICES ORGANIZATION IF YOU QUALIFY. You can also go to court without
an attorney to get your money back. Bring this notice with you when you go. You are allowed to try to prove to a judge that your money is exempt from collection under New York civil practice law and rules, sections fifty-two hundred twenty-two-a, fifty-two hundred thirty-nine and fifty-two hundred forty. If you do not have a lawyer, the clerk of the court may give you forms to help you prove your account contains exempt money that the creditor cannot collect. The law (New York civil practice law and rules, article four and sections fifty-two hundred thirty-nine and fifty-two hundred forty) provides a procedure for determination of a claim to an exemption.

Attorneys at Law

Our file number- ©
STATE OF NEW YORK
COUNTY OF : SUPREME COURT

, Plaintiff-Judgment-Creditor,                      INCOME EXECUTION
vs.                                                   Original Index No.
, Defendant(s).

RE: , Judgment-Debtor(s)
SSN:

EMPLOYER OR PAYER OF MONEY:

TO:  ENFORCEMENT OFFICER:

WHEREAS, in an action in , Index No. , (Assigned Judge- Hon. ), between the
parties listed above, a Judgment was entered on , in favor of said Judgment-Creditor and
against Judgment Debtor(s), , in the amount of , and the total principal Judgment balance
due is , plus interest from . A transcript of the Judgment was filed in the County Clerk’s
Office on .

Upon information and belief, the Judgment Debtor is receiving or will receive gross
income/disposable earnings/money in excess of $217.50 per week pay period from his/her
employer or payer of money. NOW THEREFORE, we direct that you satisfy the judgment
with interest thereon from the date of its entry together with your fees, out of all monies
now and hereafter due and owing to the said Judgment Debtor from the employer/payer
until this Execution and the expenses thereof are fully satisfied and paid, or until modified,
and on presentation of this Execution to the said employer/payer the same shall become a
lien and continuing levy upon such wages, salary, money or income to the amount
specified herein.

TO:  JUDGMENT-DEBTOR:

THIS EXECUTION requires you to pay to the Enforcement Officer who delivered it
to you a sum to be determined by law, from your gross wages, money and earnings each
time you are paid. If you fail to begin to make these payments within TWENTY (20) DAYS
after receiving this Execution, it will be served on your employer/payer who will deduct
these payments from your gross wages, money and earnings. Payments need not be made unless your disposable earnings exceed the amount exempt under State and Federal Law.

TO: EMPLOYER OR PAYER OF MONEY:

THIS EXECUTION requires you to withhold and pay over to the Enforcement Officer, who delivered it to you, payments each time you pay Judgment Debtor, an amount determined by law, from all gross wages, money and earnings of the Judgment Debtor until the amount of this Execution, plus interest at a rate of 3/4% on the unpaid balance each month, is fully paid. If Judgment Debtor is not in your employ, leaves employment or does not receive money from you, it is your duty to notify the Enforcement Officer at once.

IF YOU FAIL TO WITHHOLD and pay over the amount, determined by law, due and hereafter becoming due, you may be held personally responsible and be required to pay the sums which should have been withheld and may be subjected to enforcement proceedings or penalties.

UNDER STATE AND FEDERAL LAW WITHHOLDINGS NEED NOT BE MADE unless Judgment Debtor's disposable earnings for a weekly pay period exceed the greater of 30 times the current* Federal Minimum Hourly Wage prescribed in the Fair Labor Standards Act of 1938, or 30 times the State Minimum Hourly Wage prescribed in New York Labor Law §652. Disposable Earnings are the earnings left after deducting the amounts required by law to be withheld, i.e. Federal and State income taxes, Social Security taxes and Unemployment Insurance (15 U.S.C. 1671 et seq.). *(7.25 per hour effective July 24, 2009).

If the money due to the judgment debtor consists of salary or wages and his employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the debtor is reinstated or re-employed within ninety days after such termination, at which point deductions must begin again.

Dated:

_________________________________
Attorney for Judgment-Creditor

Our file number: ©
PART TWO: JUDGMENT ENFORCEMENT

NOTICE TO JUDGMENT DEBTOR RECEIVING INCOME EXECUTION

THIS INCOME EXECUTION DIRECTS THE WITHHOLDING OF TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME. IN CERTAIN CASES, HOWEVER, STATE OR FEDERAL LAW DOES NOT PERMIT THE WITHHOLDING OF THAT MUCH OF THE JUDGMENT DEBTOR'S GROSS INCOME. THE JUDGMENT DEBTOR IS REFERRED TO NEW YORK CIVIL PRACTICE LAW AND RULES §5231 AND 15 UNITED STATES CODE §1671 ET. SEQ.

I. LIMITATIONS ON THE AMOUNT THAT CAN BE WITHHELD.

A.) AN INCOME EXECUTION FOR INSTALLMENTS FROM A JUDGMENT DEBTOR'S GROSS INCOME CANNOT EXCEED TEN PERCENT (10%) OF THE JUDGMENT DEBTOR'S GROSS INCOME.

B.) IF A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS ARE LESS THAN THE GREATER OF THIRTY (30) TIMES THE CURRENT FEDERAL OR STATE MINIMUM HOURLY WAGE ($7.25 PER HOUR), OR $217.50, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

C.) A JUDGMENT DEBTOR'S WEEKLY DISPOSABLE EARNINGS CANNOT BE REDUCED BELOW THE AMOUNT ARRIVED AT BY MULTIPLYING THIRTY (30) TIMES THE GREATER OF THE CURRENT FEDERAL OR STATE MINIMUM HOURLY WAGE ($7.25 PER HOUR), OR $217.50, UNDER THIS INCOME EXECUTION.

D.) IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS EQUAL OR EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, NO DEDUCTION CAN BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION.

E.) IF DEDUCTIONS ARE BEING MADE FROM A JUDGMENT DEBTOR'S EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES, AND THOSE DEDUCTIONS ARE LESS THAN TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS, DEDUCTIONS MAY BE MADE FROM THE JUDGMENT DEBTOR'S EARNINGS UNDER THIS INCOME EXECUTION. HOWEVER, THE AMOUNT ARRIVED AT BY ADDING THE DEDUCTIONS FROM EARNINGS MADE UNDER THIS EXECUTION TO THE DEDUCTIONS MADE FROM EARNINGS UNDER ANY ORDERS FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES CANNOT EXCEED TWENTY-FIVE PERCENT (25%) OF THE JUDGMENT DEBTOR'S DISPOSABLE EARNINGS.

NOTE: NOTHING IN THIS NOTICE LIMITS THE PROPORTION OR AMOUNT WHICH MAY BE DEDUCTED UNDER ANY ORDER FOR ALIMONY, SUPPORT OR MAINTENANCE FOR FAMILY MEMBERS OR FORMER SPOUSES.

Pursuant to CPLR 5205(l), $2,625.00 of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in CPLR 5205(l)(2), is exempt from execution and that the garnishee cannot levy upon or restrain $2,625.00 in such an account. Pursuant to CPLR 5222(l), an execution shall not apply to an amount equal to or less than 90% of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in New York Labor Law §652 as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents.

II. EXPLANATION OF LIMITATIONS:

DEFINITIONS:

DISPOSABLE EARNINGS - DISPOSABLE EARNINGS ARE THAT PART OF AN INDIVIDUAL'S
EARNINGS LEFT AFTER DEDUCTING THOSE AMOUNTS THAT ARE REQUIRED BY LAW TO BE WITHHELD (FOR EXAMPLE, TAXES, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE, BUT NOT DEDUCTIONS FOR UNION DUES, INSURANCE PLANS, ETC.)

GROSS INCOME - GROSS INCOME IS SALARY, WAGES OR OTHER INCOME, INCLUDING ANY AND ALL OVERTIME EARNINGS, COMMISSIONS, AND INCOME FROM TRUSTS, BEFORE ANY DEDUCTIONS ARE MADE FROM SUCH INCOME.

ILLUSTRATIONS REGARDING EARNINGS:

IF DISPOSABLE EARNINGS IS:                        AMOUNT TO PAY OR DEDUCT FROM EARNINGS

(a) 30 TIMES GREATER OF FEDERAL OR STATE MINIMUM WAGE ($217.50) OR LESS  NO PAYMENT OR DEDUCTION ALLOWED

(b) MORE THAN 30 TIMES GREATER OF FEDERAL OR STATE MINIMUM WAGE ($217.50) AND LESS THAN 40 TIMES FEDERAL MINIMUM WAGE ($290.00)  THE LESSER OF: THE EXCESS OVER 30 TIMES THE GREATER OF FEDERAL OR STATE MINIMUM WAGE ($217.50) IN DISPOSABLE EARNINGS, OR 10% OF GROSS EARNINGS.

(c) 40 TIMES FEDERAL MINIMUM WAGE ($290.00)  THE LESSER OF: 25% OF DISPOSABLE EARNINGS, OR 10% OF GROSS EARNINGS.

III. NOTICE: YOU MAY BE ABLE TO CHALLENGE THIS INCOME EXECUTION THROUGH THE PROCEDURES PROVIDED IN CPLR §5231(I) AND CPLR §5240

IF YOU THINK THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD ACT PROMPTLY BECAUSE THE MONEY WILL BE APPLIED TO THE JUDGMENT. IF YOU CLAIM THAT THE AMOUNT OF YOUR INCOME BEING DEDUCTED UNDER THIS INCOME EXECUTION EXCEEDS THE AMOUNT PERMITTED BY STATE OR FEDERAL LAW, YOU SHOULD CONTACT YOUR EMPLOYER OR OTHER PERSON PAYING YOUR INCOME. FURTHER YOU MAY CONSULT AN ATTORNEY, INCLUDING LEGAL AID IF YOU QUALIFY. NEW YORK STATE LAW PROVIDES TWO PROCEDURES THROUGH WHICH AN INCOME EXECUTION CAN BE CHALLENGED.

CPLR §5231(I) MODIFICATION. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER MODIFYING AN INCOME EXECUTION.

CPLR §5240 MODIFICATION OR PROTECTIVE ORDER: SUPERVISION OF ENFORCEMENT. AT ANY TIME, THE JUDGMENT DEBTOR MAY MAKE A MOTION TO A COURT FOR AN ORDER DENYING, LIMITING, CONDITIONING, REGULATING, EXTENDING OR MODIFYING THE USE OF ANY POST-JUDGMENT ENFORCEMENT PROCEDURE, INCLUDING THE USE OF INCOME EXECUTIONS.
STATE OF NEW YORK
COUNTY OF : SUPREME COURT

, Plaintiff-Judgment-Creditor, PROPERTY EXECUTION
vs.
, Defendant(s).

Original Index No.

RE: , Judgment-Debtor(s)
SSN:

TO: ENFORCEMENT OFFICER:

WHEREAS, in an action in , Index No. , (Assigned Judge- Hon. ), between the parties listed above, a Judgment was entered on in favor of said Judgment-Creditor and against Judgment Debtor(s), , in the amount of , and the total principal Judgment balance due is , plus interest from . A transcript of the Judgment was filed in the County Clerk’s Office on .

NOW, THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the real and tangible and intangible personal property of the above-named Defendant; including, but not limited to all equipment, inventory, vehicles, certificates, cash, cash register, accounts and accounts’ receivables, and the following specified debt and property:

Any and all accounts
and that only the property in which said judgment debtor, who is not deceased, has an interest or the debts owed to him shall be levied upon or sold hereunder; AND TO RETURN this execution to the Clerk of the above-captioned Court within sixty (60) days after issuance unless service of this execution is made within that time or within extensions of that time made in writing by the attorney(s) for the judgment creditor.

The notice pursuant to CPLR 5222 (d) and (e) has been duly served upon the judgment debtor within one year from the issuance of this execution.

LEVY AND COLLECT ALL SUCH PROPERTY AS WITHIN DIRECTED with interest and fees, etc.

Pursuant to CPLR 5205(l), $2,625.00 of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in CPLR 5205(l)(2), is exempt from execution and that the garnishee cannot levy upon or restrain $2,625.00 in such an account. Pursuant to CPLR 5222(i), an execution shall not apply to an amount equal to or less than 90% of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in New York Labor Law §652 as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents.

Dated:

__________________________________________
Attorney for Judgment-Creditor
ENDORSEMENT

Please take notice that the following named defendants were not served with a summons herein, viz.:


and, that, as to them, the execution must be restricted as below prescribed.

An execution against property shall not be levied upon the sole property of such a defendant, but it may be collected out of real and personal property owned by him jointly with the other defendants who were summoned, or with any of them, and out of the real and personal property of the latter or any of them.

__________________________________________
Attorney's for

Address of Judgment Debtor:

__________________________________________
Location of Property

Index No. __________________________________ COURT

_________________________ COURT

COUNTY OF ______________________

__________________________________________
Plaintiff

against

__________________________________________
Defendant

EXECUTION
Against Property

Sheriff of any County

Levy and collect as within directed

$ ____________________________

with interest from __________, 20___ plus your fees and poundage, etc.

(Firm Name)
Attorneys for Plaintiff
Dated and time received

...................................................... Sheriff
STATE OF NEW YORK
COUNTY OF: SUPREME COURT

Plaintiff-Judgment-Creditor, 

PROPERTY EXECUTION

vs.

Original Index No.

Defendant(s).

RE: , Judgment-Debtor(s)
SSN:

TO: ENFORCEMENT OFFICER:

WHEREAS, in an action in , Index No. , (Assigned Judge- Hon. ), between the parties listed above, a Judgment was entered on in favor of said Judgment-Creditor and against Judgment Debtor(s), , in the amount of , and the total principal Judgment balance due is , plus interest from . A transcript of the Judgment was filed in the County Clerk’s Office on .

NOW, THEREFORE, WE COMMAND YOU to satisfy the said judgment out of the real and tangible and intangible personal property of the above-named Defendant; including, but not limited to all equipment, inventory, vehicles, certificates, cash, cash register, accounts and accounts’ receivables, and the following specified debt and property:

Any and all accounts

and that only the property in which said judgment debtor, who is not deceased, has an interest or the debts owed to him shall be levied upon or sold hereunder; AND TO RETURN this execution to the Clerk of the above-captioned Court within sixty (60) days after issuance unless service of this execution is made within that time or within extensions of that time made in writing by the attorney(s) for the judgment creditor.

The notice pursuant to CPLR 5222 (d) and (e) has been duly served upon the judgment debtor within one year from the issuance of this execution.

LEVEY AND COLLECT ALL SUCH PROPERTY AS WITHIN DIRECTED with interest and fees, etc.

NOTICE TO GARNISHEE

TO:

,
WHEREAS, it appears that you are indebted to the judgment debtor, above named, or in possession or custody of property in which the judgment debtor has an interest,

YOU ARE HEREBY REQUIRED by section 5232 of the New York Civil Practice Law and Rules (CPLR) forthwith to transfer to the sheriff all personal property in which the judgment debtor is known or believed to have an interest now in or hereafter coming into your possession or custody including any property specified in this notice; and to pay to the sheriff, upon maturity, all debts now due or hereafter coming due from you to the judgment debtor, including any debts specified in this notice; and to execute any documents necessary to effect such transfer or payment.

AND TAKE NOTICE that until such transfer or payment is made or until the expiration of ninety days after the service of this execution upon you or such further time as is provided by any order of the court served upon you whichever event first occurs, you are forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court;

AND TAKE NOTICE THAT at the expiration of ninety days after a levy is made by service of this execution, or of such further time as the court upon motion of the judgment creditor has provided, this levy shall be void except as to property or debts which have been transferred or paid to the sheriff or as to which a proceeding under sections 5225 or 5227 of the Civil Practice Law and Rules has been brought.

Pursuant to CPLR 5205(l), $2,625.00 of an account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments, as defined in CPLR 5205(l)(2), is exempt from execution and that the garnishee cannot levy upon or restrain $2,625.00 in such an account. Pursuant to CPLR 5222(i), an execution shall not apply to an amount equal to or less than 90% of the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in New York Labor Law §652 as in effect at the time the earnings are payable, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his or her dependents.

Dated:

________________________________________
Attorney for Judgment-Creditor

Our file number-©
APPLICATION OF ____________________

Petitioner, NOTICE OF PETITION

FOR A JUDGMENT PURSUANT TO CPLR 5227 TO COMPEL PAYMENT OF A DEBT OWED TO JUDGMENT DEBTOR,

v.

Respondent.

Upon the annexed petition of the judgment creditor verified on the ____________ day of __________________, 20___, an application will be made to this Court, Part __________, at the ____________________ Courthouse, ____________ Street, ______________, New York on the ____________ day of ____________, 20____ at _________a.m./p.m. for a judgment requiring the respondent to pay $___________ to the petitioner, the amount required to satisfy a judgment in an action whereby the petitioner is the judgment creditor and ____________________ is the judgment debtor, and for such other and further relief as to the Court may deem proper, and the costs and disbursements of this proceeding.

Answering and supporting affidavits, if any, are to be served in accordance with CPLR 403(b).

____________________ County is designated as the venue of this proceeding on the basis of:

_____________________

Dated: ______________, New York

______________________, 20___

s/ ____________________________________________

(signing attorney’s name)

Attorneys for Petitioner

Office & P.O. Address

____________________________________________

Tel. No. ______________________________

TO:

____________________

Respondent

Office & P.O. Address

____________________________________________
STATE OF NEW YORK
SUPREME COURT : COUNTY OF _______________

APPLICATION OF ___________________,

Petitioner,

FOR A JUDGMENT PURSUANT TO PETITION
CPLR 5227 TO COMPEL PAYMENT
OF A DEBT OWED TO JUDGMENT
DEBTOR,

v.

Respondent

Your petitioner alleges:

1. Petitioner resides at ___________ Street, ________________, New York.

2. Respondent resides at _________________ Street, ____________________, New York, (or is regularly employed, or regularly transacts business, at ________________ Street, ________________, New York).

3. In an action in the _______________ Court, County of _____________, a judgment was entered in favor of the petitioner as judgment creditor and against _____________________ as judgment debtor on the ________ day of _____________, 20____, in the sum of $________. The judgment was duly docketed in the ________________ County Clerk’s office on the _____ day of _____________, 20____.

4. The judgment remains wholly unpaid and wholly unsatisfied.

5. The respondent in this proceeding owes the judgment debtor the sum of $_______ arising out of the following circumstances: (set forth the circumstances of the indebtedness of the respondent to the judgment debtor).

WHEREFORE, the petitioner demands judgment requiring the respondent to pay $________ to the petitioner, the amount required to satisfy, or partly satisfy, the judgment in the above action, and to execute and deliver any documents necessary to effectuate payment and for such other and further relief and the costs and disbursements of this proceeding.

No previous application has been made for the relief requested herein.

_________________________________________
Petitioner

(Verification)

1 Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
At a ______ Part of the ________ Court of the State of New York, County of ______________ held at the __________________________ Courthouse, New York on the _____ day of ______________, 20__.  

PRESENT: HON.______________________________

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ____________

APPLICATION OF _________________________

Petitioner, JUDGMENT

FOR A JUDGMENT PURSUANT TO Index No. CPLR 5227 TO COMPEL PAYMENT OF A DEBT OWED TO JUDGMENT DEBTOR,

v.

Respondent.

Petitioner having brought this proceeding pursuant to CPLR 5227 for a judgment requiring the respondent to pay to the petitioner, as judgment creditor, $__________, the amount of the debt owed from the respondent to ________________, the judgment debtor, against whom petitioner recovered a judgment on the _______ day of _____________, 20____, for $________, no part of which has been paid or satisfied, and said application having come on to be heard before this Court on the _______ day of ____________, 20_____ and the petitioner having appeared by _____________ as counsel and the respondent having appeared by ____________________________ his/her counsel and there being no appearance by the judgment debtor (or the judgment debtor having appeared by ________________________ his/her counsel) and the parties having presented their testimony and evidence having been heard and the issues having been determined by this Court (or a jury rendered a verdict) on the ______________ day of ____________________, 20___ in favor of the petitioner, against the respondent, and directing the entry of judgment as stated, and the costs and disbursements of the petitioner having been taxed in the sum of $__________

NOW on motion of _____________________________________, attorney for the petitioner, it is

ADJUDGED:

1. That the respondent pay to the petitioner, because of a debt owed by the respondent to the judgment debtor __________________ the sum of $__________, with interest from the _____________ day of ________________, 20____, not exceeding however, the amount of the debt owed by the ________________________

1 Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1-a an attorney signature is required. An attorney can comply by signing one of the following, as long as it accompanies the papers: a cover page, a litigation back or a separate certification.
judgment debtor to the judgment creditor/petitioner.

2. Upon this payment by the respondent to the petitioner, the respondent is discharged from any liability to ______________________ the judgment debtor, upon the indebtedness of the respondent to the judgment debtor up to the amount of the payment made by the respondent to the petitioner/judgment creditor.

______________________________
Justice of the Supreme Court

ENTER:
EXEMPTION NOTICE

As required by New York Law

YOUR BANK ACCOUNT IS RESTRAINED OR "FROZEN"

The attached Restraining Notice or notice of Levy by Execution has been issued against your bank account. You are receiving this notice because a creditor has obtained a money judgment against you, and one or more of your bank accounts has been restrained to pay the judgment. A money judgment is a court's decision that you owe money to a creditor. You should be aware that FUTURE DEPOSITS into your account(s) might also be restrained if you do not respond to this notice.

You may be able to "vacate" (remove) the judgment. If the judgment is vacated, your bank account will be released. Consult an attorney (including free legal services) or visit the court clerk for more information about how to do this.

Under state and federal law, certain types of funds cannot be taken from your bank account to pay a judgment. Such money is said to be "exempt."

DOES YOUR BANK ACCOUNT CONTAIN ANY OF THE FOLLOWING TYPES OF FUNDS?

1. Social security;
2. Social security disability (SSD);
3. Supplemental security income (SSI);
4. Public assistance (welfare);
5. Income earned while receiving SSI or public assistance;
6. Veterans benefits;
7. Unemployment insurance;
8. Payments from pensions and retirement accounts;
9. Disability benefits;
10. Income earned in the last 60 days (90% of which is exempt);
11. Workers' compensation benefits;
12. Child support;
13. Spousal support or maintenance (alimony);
14. Railroad retirement; and/or
15. Black lung benefits.

If YES, you can claim that your money is exempt and cannot be taken.

To make the claim, you must
(a) complete the EXEMPTION CLAIM FORM attached;
(b) deliver or mail the form to the bank with the restrained or "frozen" account; and
(c) deliver or mail the form to the creditor or its attorney at the address listed on the form.
You must send the forms within 20 DAYS of the postmarked date on the envelope holding this notice. You may be able to get your account released faster if you send to the creditor or its attorney written proof that your money is exempt. Proof can include an award letter from the government, an annual statement from your pension, pay stubs, copies of checks, bank records showing the last two months of account activity, or other papers showing that the money in your bank account is exempt. If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days. You do not need an attorney to make an exemption claim using the form."
STATE OF NEW YORK  
COUNTY OF ________________  :  __________________________ COURT  

PLAINTIFF/PETITIONER  

Vs.  

DEFENDANT/RESPONDENT.  

EXEMPTION CLAIM FORM  
Index No.  

NAME AND ADDRESS OF JUDGMENT CREDITOR OR ATTORNEY  
(To be completed by judgment creditor or attorney)  
ADDRESS A  
_________________________________________________________LLP  
_____________________________, NY  ________  

NAME AND ADDRESS OF FINANCIAL INSTITUTION  
(To be completed by judgment creditor or attorney)  
ADDRESS B  
_____________________________ BANK  
_____________________________, NY  ________  

Directions: To claim that some or all of the funds in your account are exempt, complete both copies of this form, and make one copy for yourself. Mail or deliver one form to ADDRESS A and one form to ADDRESS B within twenty days of the date on the envelope holding this notice.  

** If you have any documents, such as an award letter, an annual statement from your pension, pay stubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly.  

I state that my account contains the following type(s) of funds (check all that apply):  

____ Social security Social security disability (SSD)  
____ Supplemental security income (SSI)  
____ Public assistance  
____ Wages while receiving SSI or public assistance  
____ Veterans benefits  
____ Unemployment insurance  
____ Payments from pensions and retirement accounts  
____ Income earned in the last 60 days (90% of which is exempt)  
____ Child support  
____ Spousal support or maintenance (alimony)  
____ Workers' compensation  
____ Railroad retirement or black lung benefits  
____ Other (describe exemption): ____________________________  

I request that any correspondence to me regarding my claim be sent to the following address:  

_________________________________________________________  

(FILL IN YOUR COMPLETE ADDRESS)  

I certify under penalty of perjury that the statement above is true to the best of my knowledge and belief.  

_________________________  
DATE  

_________________________  
SIGNATURE OF JUDGMENT DEBTOR
STATE OF NEW YORK  
COUNTY OF:

ORAL ARGUMENT NOT REQUESTED

, Plaintiff, 

NOTICE OF MOTION

vs. 

Index No.

, Defendant(s). 

ASSIGNED JUDGE:

Hon.

PLEASE TAKE NOTICE that upon the annexed Affirmation of , dated ; and upon all
other papers and proceedings previously had herein, the Plaintiff will move this Court at the
Courthouse thereof, located at , , on at in Special Term Part, on the papers alone, for
the following relief:

1. an Order pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b) to compel compliance
   with an Information Subpoena duly issued in this action, and granting costs to the
   Plaintiff in the amount of $50.00, together with a penalty in the amount of $50.00
   plus actual damages; and

2. for such other and further relief as to the court may seem just and proper.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served
upon the undersigned at least seven days before the return date of the motion.

DATED: Buffalo, New York 

Attorney(s) for Plaintiff

TO:
Attorney(s) for Defendant(s)

Our file number: ©
STATE OF NEW YORK
COUNTY OF:


Plaintiff,

vs.

,

Defendant(s).


ATTORNEY'S AFFIRMATION

Index No.


ASSIGNED JUDGE:

Hon.

, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff, , and as such I am familiar with the facts and circumstances herein.

2. I am duly authorized by the Plaintiff to bring this proceeding seeking an Order pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b).

3. A Subpoena (a copy of which is annexed hereto) was duly authorized and issued requiring to complete a questionnaire under oath relevant to the satisfaction of the judgment entered in this action.

4. The subpoena was duly served on said Defendant(s) (see attached copies of proof of service).

5. The Defendant(s) failed to so comply with said Subpoena.

6. The conduct of said Defendant(s) was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the judgment creditor herein, in that the judgment creditor has been unable to obtain information on matters relevant to the satisfaction of the judgment as authorized by law.
7. No previous application for the relief herein requested relative to this Subpoena has been made.

WHEREFORE, your deponent prays for an Order pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b) to compel compliance with an Information Subpoena duly issued in this action, and granting costs to the Plaintiff in the amount of $50.00, together with a penalty in the amount of $50.00 plus actual damages, and granting to the Plaintiff such other and further relief as to the Court may seem just and proper.

DATED: Buffalo, New York

Our file number: ©
STATE OF NEW YORK  
COUNTY OF  

  Plaintiff,  

vs.  

  Defendant(s)  
Hon.  

ORDER  
Index No.  
ASSIGNED JUDGE:  

The Plaintiff having moved this Court for an Order pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b) to compel compliance with an Information Subpoena duly issued in this action, and granting costs to the Plaintiff in the amount of $50.00, together with a penalty in the amount of $50.00 plus actual damages, and said motion having been submitted on the papers alone;  

NOW, on reading and filing the Notice of Motion dated , with proof of due service thereof, the Affirmation of , dated , and on the pleadings and proceedings in this action, in support of said Motion; and after hearing , attorney for the Plaintiff, in support of said Motion, and no one in opposition thereto; and due deliberation having been had thereon,  

NOW, on motion of , attorney for the Plaintiff, it is hereby  

ORDERED, that the said motion be and hereby is in all respects granted, and the Defendant(s), , within thirty (30) days after service of a copy of this Order upon the Defendant, with notice of entry thereof, shall comply with the Information Subpoena and serve proper responses to the Questionnaire attached to said Subpoena; and it is further  

ORDERED, that upon the failure of the Defendant(s), , to so comply with said
Subpoena, the Plaintiff shall have leave to move pursuant to 5224(a)(3)(iv) and CPLR 2308(b) for a Warrant directing a Sheriff to bring the said Defendant(s) before this Court for such disposition as this Court may direct; and it is further

ORDERED, that the Plaintiff be awarded the sum of $50.00 as civil penalty, and the sum of $50.00 as and for costs, to be paid by the Defendant(s), to the Plaintiff’s attorney within thirty (30) days after service of a copy of this Order.

DATED: ______________________________

HON.

ATTORNEYS FOR PLAINTIFF:

Our file number- ©
STATE OF NEW YORK
COUNTY OF: ________________________________

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION

vs.

Plaintiff,

Index No.

Defendant(s).

ASSIGNED JUDGE: Hon. ________________________________

PLEASE TAKE NOTICE that upon the prior Order of this Court, duly entered in the Clerk's Office; the annexed Affirmation of , dated ; and upon all other papers and proceedings previously had herein, the Plaintiff will move this Court at the Courthouse thereof, located at , on at , in Special Term Part, for the following relief:

1. issuance of a Warrant pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b)(1) directing the Sheriff of the County in which the Defendant(s), , may be found to apprehend the said Defendant(s), and bring him/her before this Court, or a Judge thereof, to comply with a Subpoena and Court Order previously issued herein;

2. an Order directing the entry of a money Judgment in favor of the Plaintiff and against the said Defendant(s) in the amount of $100.00, plus interest from the date that payment of the penalty and costs was due; and

3. for such other and further relief as to the court may seem just and proper.

The above-entitled action is for contract. Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of the motion.

DATED: Buffalo, New York ________________________________
Attorney(s) for Plaintiff

TO:

Attorney(s) for Defendant(s)

, 

Our file number- ©
STATE OF NEW YORK
COUNTY OF:


ATTORNEY’S AFFIRMATION

vs.


Index No.


Defendant(s).


ASSIGNED JUDGE:


, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff, , and as such I am familiar with the facts and circumstances herein.

2. The Defendant(s), , failed to comply with an Information Subpoena requiring information relative to satisfaction of a Judgment against the Defendant(s).

3. The Plaintiff duly moved for an Order compelling compliance with the Subpoena pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b)(1), and an Order was granted compelling the said Defendant(s) to comply with the Subpoena, with payment of penalty and costs, within 30 days after service of a copy of said Order (see annexed copy of Order).

4. On February 10, 2010, a copy of said Order with notice of entry was served by first class mail upon said Defendant.

5. The address of the said Defendant(s) appears unchanged from the date of service of this Order.

6. To date, the time period for said Defendant(s) to comply with the subpoena, and pay
the costs and penalty, has passed, and said Defendant(s) have failed to so comply with said Order.

7. My office has received no communication from the Defendant(s) relative to the Court’s Order.

WHEREFORE, it is respectfully requested that this Court issue a Warrant directing the Sheriff of the County in which the Defendant may be found to apprehend the Defendant(s), and bring him/her before this Court, or a Judge thereof, to comply with a Subpoena previously issued herein, and pay the aforementioned fine and penalty, and for such other and further relief as to the court may seem just and proper.

DATED:

Buffalo, New York  

-------------------------

Our file number: ©
STATE OF NEW YORK  
COUNTY OF :  

, Plaintiff,  

vs.  

, Defendant(s).  

ORDER  
Index No.  

ASSIGNED JUDGE:  

The Plaintiff having moved this Court for the issuance of a Warrant pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b)(1), and said motion having been submitted on the papers alone;

NOW, upon the prior Order of this Court duly entered in the Clerk's Office, and on reading and filing the Notice of Motion dated , with proof of due service thereof, the Affirmation of , dated , and on the pleadings and proceedings in this action, in support of said Motion; and after hearing , attorney for the Plaintiff, in support of said Motion, and no one in opposition thereto; and due deliberation having been had thereon,

NOW, on motion of , attorney for the Plaintiff, it is hereby

ORDERED, that the said motion be and hereby is in all respects granted, and it is further

ORDERED, that a Warrant issue to the Sheriff of County, or any County in New York State where the Defendant(s), , is located, to arrest said Defendant forthwith, and bring him/her before this Court, or a Judge thereof, to comply with the prior Order of this Court, or for such further disposition as the Court, in its discretion, shall direct; and it is further
ORDERED, that the Plaintiff have Judgment against the Defendant(s), , in the sum $100.00, plus interest at 9% from , and the clerk be directed to enter Judgment accordingly.

DATED: 

HON. 

Our file number- ©
At a Special Term of the held at the Court House, on.

STATE OF NEW YORK
COUNTY OF:

__________________________________________________________
', Plaintiff,  WARRANT OF COMMITMENT

vs.  Index No.

', Defendant(s).  ASSIGNED JUDGE:

Hon.  

________________________________                         

Upon the Order of this Court pursuant to CPLR 5224(a)(3)(iv) and CPLR 2308(b)(1) directing that a Warrant be issued to apprehend the Defendant to obtain compliance with a previous Order of this Court,

NOW, THEREFORE, WE COMMAND THE SHERIFF OF COUNTY, or any other County in New York State where the Defendant is located is located, to arrest forthwith, and hold in a secure facility within County, and bring him/her before this Court or a Judge thereof as soon as possible, to comply with the prior Order of this Court, and properly answer the attached Questionnaire served with the Information Subpoena previously issued herein, or for such further disposition as the Court, in its discretion, shall direct.

________________________________  
Hon.  

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WILLIAM ILECKI, ESQ.

William Ilecki is a partner in the firm of Chiari & Ilecki, practicing in the areas of commercial litigation, creditors’ rights, bankruptcy and general practice. A 1989 graduate of the State University of New York at Buffalo School of Law, he received his undergraduate education at Canisius College, graduating in 1986 (magna cum laude, All-College Honors Program). Mr. Ilecki is admitted to practice law in all courts of the states of New York and Pennsylvania, as well as the United States District Court and Bankruptcy Court for the Western District of New York. He is a member of the American and the New York State Bar Associations, the Bar Association of Erie County (Banking and Commercial Law Committee), and is past president of the Erie County Bar Foundation. He has frequently lectured to various groups regarding collections and bankruptcy law.