



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

April 30, 2014

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed reforms relating to consumer credit collection cases.

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The New York State Unified Court System has proposed the adoption of reforms in consumer credit collection cases to prevent unwarranted default judgments and ensure a fair legal process, including (1) requiring creditors to submit affidavits based on personal knowledge that meet the substantive and evidentiary standards for entry of a default judgment under New York law; (2) requiring that an additional notice of a consumer credit action be mailed to debtors in courts outside New York City; and (3) providing unrepresented debtors with additional resources and assistance. Public comment is invited on the following proposals:

(1) Amending the Rules of the New York City Civil Court, the City Courts outside New York City and the District Courts to require creditors to submit certain form affidavits when seeking a default judgment in a consumer credit matter. These amendments are intended to eliminate the practice of "robo-signing" affidavits and ensure that default judgments are based on non-hearsay allegations and personal review of debtor files. Creditors would be required to submit specific documentation, such as the original credit agreement, in support of default judgment applications to ensure that there is legally sufficient proof of the validity and ownership of the debt at issue (Exh. A);

(2) Expansion to courts outside New York City of 22 NYCRR § 208.6(h), which requires creditors to submit to the court an additional notice of a consumer credit action to be mailed by the court to the debtor at the address where process was served. The court will not enter a default judgment in any case where the additional notice is returned to the court because of a wrong or unknown address. Revisions have been proposed to the language of the additional notice to make it more comprehensible to the average person (Exh. B); and

(3) Expansion to all courts of certain forms now in use in the New York City Civil Court, including an answer form specially designed for unrepresented litigants containing a list of standard defenses that debtors can check off as applicable, and a form Order to Show Cause to Vacate a Default Judgment (Exh. C).

Persons wishing to comment on these proposals should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than May 30, 2014**.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration.

EXHIBIT A

SUMMARY OF PROPOSED AFFIDAVITS

Together with any other affidavits required under New York law, the following affidavits would be required as part of an application for a default judgment in a consumer credit case.

A. Original Creditor Actions

In an action by an original creditor to collect on a consumer credit debt, the plaintiff must submit the following affidavits based on personal knowledge containing the following information as part of an application for a default judgment:

1. Affidavit of Facts by Original Creditor

- a. Facts constituting the asserted cause of action: name of debtor, last four digits of account, date and terms of original agreement, date and amount of last payment;
 - b. If the complaint asserts an account stated cause of action, a statement indicating that an accounting was sent to the debtor and the debtor retained the accounting without objection;
 - c. Summary of amount debtor allegedly owes, including an itemization of how the amount was calculated based on principal, interest and fees and charges; and
2. A True and Correct Copy of Original Agreement governing the account upon which the action is based, and any amendments thereto, shall be attached to the Original Creditor's Affidavit of Facts.
3. Affidavit of Non-Expiration of Statute of Limitations (All Actions). An affidavit from plaintiff or plaintiff's counsel setting forth where and when the cause of action accrued, the statute of limitations for New York and any other jurisdiction where the cause of action accrued, and stating that after reasonable inquiry the plaintiff has reason to believe that the statute of limitations has not expired.

B. Debt Buyer Actions

In an action by a debt buyer plaintiff to collect on a consumer credit debt, the plaintiff must submit the following affidavits based on personal knowledge containing the following information as part of an application for a default judgment.

1. Affidavit of Facts and Sale of Account by Original Creditor (Debt Buyer Actions). An affidavit based on personal knowledge from the original creditor setting forth:
 - a. Facts constituting the asserted cause of action;
 - b. If the complaint asserts an account stated cause of action, a statement indicating

that an accounting was sent to the debtor and the debtor retained the accounting without objection;

- c. Statement that the debt was assigned to the debt buyer (or intermediary debt buyer) and date of assignment;
 - d. Statement that records specific to the debt at issue were created and maintained in the ordinary course of the original creditor's business and subsequently transferred to the debt buyer (or intermediary debt buyer); and
 - e. Statement of the amount owed to the original creditor at the time of assignment.
2. Affidavit of Purchase and Sale of Account by Debt Seller (Debt Buyer Actions). An affidavit based on personal knowledge from any debt seller who owned the debt prior to the plaintiff, setting forth:
- a. Date that debt seller purchased the account and from whom it was purchased;
 - b. Date that debt seller sold the account and to whom it was sold;
 - c. Amount owed by the debtor at the time of sale, itemized by the amount owed at time of purchase, plus post-purchase interest, fees and charges, less post-purchase payments by the debtor; and
 - d. Statement that records pertaining to the debt were maintained in the ordinary course of the debt seller's business and such records were subsequently transferred along with the debt to the debt buyer.
3. Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff (Debt Buyer Actions). An affidavit based on personal knowledge from plaintiff's representative setting forth:
- a. Facts constituting the asserted cause of action;
 - b. Date that debt buyer purchased the account and from whom it was purchased;
 - c. Summary of the complete chain of title of the debt;
 - d. Summary of the amount allegedly owed to the debt buyer, itemized by the amount owed at the time of purchase, plus post-purchase interest, fees and charges, less post-purchase payments by the debtor; and
4. A True and Correct Copy of Original Agreement governing the account upon which the action is based, and any amendments thereto, shall be attached to the Affidavit of Facts

and Sale of Account by Original Creditor.

5. True and Correct Copies of All Written Assignments of the Account shall be attached to the Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff.
6. Affidavit of Non-Expiration of Statute of Limitations (All Actions). An affidavit from plaintiff or plaintiff's counsel setting forth where and when the cause of action accrued, the statute of limitations for New York and any other jurisdiction where the cause of action accrued, and stating that after reasonable inquiry the plaintiff has reason to believe that the statute of limitations has not expired.

Proposed Court Rules

§ 208.14-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the New York City Civil Court)

§ 210.14-a Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the City Courts Outside the City of New York)

§ 212.14-a Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the District Courts)

(a) Applicability. In any action arising from a consumer credit transaction, a default judgment shall not be entered against the defendant unless the plaintiff has complied with the requirements of CPLR 3215 and submitted the affidavits required under this section.

(b) Where the plaintiff is the original creditor, the plaintiff must submit the AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR and the AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS.

(c) Where the plaintiff has purchased the debt, the plaintiff must submit the AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR, the AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER for each debt buyer who owned the debt prior to the plaintiff, the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF and the AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS.

**AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR
(Original Creditor Actions)**

The undersigned, being duly sworn, deposes and says:

1. I am a/an _____ [title: *employee/officer/member*] of Plaintiff herein and I have personal knowledge and access to plaintiff's books and records, including electronic records, relating to the account ("Account") of _____ [name of debtor] ("Debtor"). The last four digits of the account number of the Account are _____ [last four digits]. In my position, I also have personal knowledge of Plaintiff's procedures for creating and maintaining its books and records. Plaintiff's records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Plaintiff's books and records, I have personal knowledge of the facts set forth in this affidavit.

2. On or about _____ [date], Plaintiff and Debtor entered into a credit agreement ("Agreement"). Debtor agreed to pay Plaintiff for all goods, services and cash advances provided pursuant to the Agreement. The amount of the last payment made by Defendant was \$_____, made on _____ [date]. Debtor is now in default and demand for payment has been made.

3. [Include this paragraph if seeking judgment on an account stated cause of action.] I have personal knowledge of Plaintiff's procedures for generating and mailing account statements to customers. It is the regular practice of Plaintiff's business to provide periodic account statements to its customers. Plaintiff sent one or more account statements relating to the Account to Debtor and Debtor retained the account statement without objection.

4. At this time, Debtor owes \$_____ on the Account. This amount includes \$_____ in principal, \$_____ in interest, and \$_____ in fees and charges. A true and correct copy of the Agreement, as well as all documents modifying the interest rate or fees applicable to the Account, is attached as an exhibit to this affidavit.

WHEREFORE, deponent demands judgment against Debtor for \$_____ (plus interest from _____ [date], if applicable), together with the costs and disbursements of this action.

The above statements are true and correct to the best of my personal knowledge.

Dated: _____ [Name]

Sworn to before me this ___ day
of _____, 20__.

Notary Public

**AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR
(Debt Buyer Actions)**

The undersigned, being duly sworn, deposes and says:

1. I am a/an _____ [title: *employee/officer/member*] of _____ [original creditor] (“Original Creditor”) and I have personal knowledge and access to Original Creditor’s books and records, including electronic records, relating to the account (“Account”) of _____ [name of debtor] (“Debtor”). The last four digits of the original account number of the Account are _____ [last four digits of original account number]. In my position, I also have personal knowledge of Original Creditor’s procedures for creating and maintaining its books and records. Original Creditor’s records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Original Creditor’s books and records, I have personal knowledge of the facts set forth in this affidavit.

2. On or about _____ [date], Original Creditor and Debtor entered into a credit agreement (“Agreement”). Debtor agreed to pay Original Creditor for all goods, services and cash advances provided pursuant to the Agreement. The amount of the last payment made by Defendant was \$_____, made on _____ [date]. Debtor defaulted and a demand for payment was made by Original Creditor.

3. [Include this paragraph if seeking judgment on an account stated cause of action.] I have personal knowledge of Original Creditor’s procedures for generating and mailing account statements to customers. It is the regular practice of Original Creditor’s business to provide periodic account statements to its customers. Original Creditor sent one or more account statements relating to the Account to Debtor and Debtor retained the account statement without objection.

4. On or about _____ [date], Original Creditor sold or assigned the Account to _____ [debt buyer] (the “Sale”). At that time, Original Creditor assigned all of its interest in the Account, including the right to any proceeds from the Account, to _____ [debt buyer]. As part of the Sale, electronic and other records relating to the Account were transferred to _____ [debt buyer]. Prior to the Sale, those records had been created and maintained in the ordinary course of business of Original Creditor.

5. At the time of the Sale, Debtor owed \$_____ on the Account. This amount included \$_____ in principal, \$_____ in interest, and \$_____ in fees and charges. A true and correct copy of the Agreement, as well as all documents modifying the interest rate or fees applicable to the Account, is attached as an exhibit to this affidavit.

The above statements are true and correct to the best of my personal knowledge.

Dated: _____ [Name]

Sworn to before me this ____ day
of _____, 20 ____.

Notary Public

**AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER
(Debt Buyer Actions)**

The undersigned, being duly sworn, deposes and says:

1. I am a/an _____ [*title: employee/officer/member*] of _____ [*debt seller*] (“Debt Seller”) and I have personal knowledge and access to Debt Seller’s books and records, including electronic records, relating to the account (“Account”) of _____ [*name of debtor*] (“Debtor”). The last four digits of the original account number of the Account are _____ [*last four digits of original account number*]. In my position, I also have personal knowledge of Debt Seller’s procedures for creating and maintaining its books and records. Debt Seller’s records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Debt Seller’s books and records, I have personal knowledge of the facts set forth in this affidavit.

2. On or about _____ [*date*], Debt Seller purchased or was assigned the Account from _____ [*original creditor or previous debt seller*] (the “Purchase”). At that time, _____ [*original creditor or previous debt seller*] assigned all of its interest in the Account, including the right to any proceeds from the Account, to Debt Seller. As part of the Purchase, electronic and other records relating to the Account were transferred to Debt Seller. Following the Purchase, those records were maintained in the ordinary course of business of Debt Seller.

3. On or about _____ [*date*], Debt Seller sold or assigned the Account to _____ [*debt buyer*] (the “Sale”). At that time, Debt Seller assigned all of its interest in the Account, including the right to any proceeds from the Account, to _____ [*debt buyer*]. As part of the Sale, electronic and other records relating to the Account were transferred to _____ [*debt buyer*]. Prior to the Sale, those records had been created and maintained in the ordinary course of business of Debt Seller.

4. At the time of the Sale, Debtor owed \$ _____ on the Account. This amount includes the amount at the time of Purchase of \$ _____, plus post-Purchase interest of \$ _____ and post-Purchase fees and charges of \$ _____, less post-Purchase payments by the Debtor of \$ _____.

The above statements are true and correct to the best of my personal knowledge

Dated: _____ [Name]

Sworn to before me this ____ day
of _____, 20 ____.

Notary Public

**AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY
DEBT BUYER PLAINTIFF (Debt Buyer Actions)**

The undersigned, being duly sworn, deposes and says:

1. I am a/an _____ [title: *employee/officer/member*] of _____ [debt buyer plaintiff] (“Debt Buyer”) and I have personal knowledge and access to Debt Buyer’s books and records, including electronic records, relating to the account (“Account”) of _____ [name of debtor] (“Debtor”). The last four digits of the original account number of the Account is _____ [last four digits of original account number]. In my position, I also have personal knowledge of Debt Buyer’s procedures for creating and maintaining its books and records. Debt Buyer’s records were made in the regular course of business and it was the regular course of such business to make the records. The records were made at or near the time of the events recorded. Based on my review of Debt Buyer’s books and records, I have personal knowledge of the facts set forth in this affidavit.

2. On or about _____ [date], Debt Buyer purchased or was assigned the Account from _____ [original creditor or debt seller] (the “Purchase”). At that time, _____ [original creditor or debt seller] assigned all of its interest in the Account, including the right to any proceeds from the Account, to Debt Buyer. As part of the Purchase, electronic and other records relating to the Account were transferred to Debt Buyer. Following the Purchase, those records were maintained in the ordinary course of business of Debt Buyer.

3. As set forth in the affidavit(s) from _____ [original creditor and all debt sellers] submitted herewith, the complete chain of title of the Account is as follows:

- a. _____
- b. _____
- c. _____
- d. _____

True and correct copies of all written assignments of the Account are attached to this affidavit.

4. At this time, Debtor owes \$_____ on the Account. This amount includes the amount at the time of Purchase of \$_____, plus post-Purchase interest of \$_____ and post-Purchase fees and charges of \$_____, less post-Purchase payments by the Debtor of \$_____.

WHEREFORE, deponent demands judgment against Debtor for \$_____ (plus interest from _____ [date], if applicable), together with the costs and disbursements of this action.

The above statements are true and correct to the best of my personal knowledge

Dated: _____ [Name]

Sworn to before me this ___ day
of _____, 20____.

Notary Public

**AFFIDAVIT OF NON-EXPIRATION OF STATUTE OF LIMITATIONS
(All Actions)**

The undersigned, being duly sworn, deposes and says:

1. I am a/an _____ [*title: employee/officer/member/counsel; if counsel, indicate that deponent is counsel for plaintiff*] of _____ [*plaintiff or law firm*].

2. The cause(s) of action asserted herein accrued in New York and _____ [*other jurisdiction where cause of action accrued, if applicable*], where _____ [*original creditor*] resides. The cause(s) of action accrued on _____ [*date of default*]. The statute(s) of limitations for the cause(s) of action asserted herein is/are _____ [*years*] years for New York and _____ [*years*] years for _____ [*other jurisdiction where cause of action accrued, if applicable*]. Based on my reasonable inquiry, I have reason to believe that the applicable statute(s) of limitations for the cause(s) of action asserted herein has/have not expired.

The above statements are true and correct to the best of my personal knowledge

Dated: _____ [Name]

Sworn to before me this ___ day
of _____, 20____.

Notary Public

EXHIBIT B

Proposed Rule Relating to Additional Notice of Consumer Credit Action

(a) 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/DISTRICT/CITY COURT. CITY/COUNTY OF _____

COUNTY OF _____ INDEX NO. _____
Plaintiff _____ Defendant _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should go to the court clerk's office at the address listed on the face of the envelope as soon as possible to respond to the lawsuit by filing an "answer." You may wish to contact an attorney. If you do not respond to the lawsuit, the court may enter a judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment will affect your credit score and can affect your ability to rent a home, find a job, or take out a loan. You cannot be arrested or sent to jail for owing a debt.

It is important that you go to the court clerk's office listed above as soon as possible. You should bring this notice and any legal papers you may have received. Additional information can be found on the court system's website at: www.nycourts.gov

[INSERT SPANISH TRANSLATION]

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:

[INSERT APPROPRIATE COURT ADDRESS OR ADDRESSES]

(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.

EXHIBIT C

CIVIL COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----*

Plaintiff(s),

Index No. _____

- against -

**WRITTEN ANSWER
CONSUMER CREDIT
TRANSACTION**

Defendant(s).

-----*

ANSWER: (Check all that apply)

1. ___ General Denial: I deny the allegations in the Complaint.

SERVICE

2. ___ I did not receive a copy of the Summons and Complaint.

3. ___ I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4. ___ It is not my debt. I am a victim of identity theft or mistaken identity.

5. ___ I have paid all or part of the alleged debt.

6. ___ I dispute the amount of the debt.

7. ___ I had no business dealings with Plaintiff (Plaintiff lacks standing) and/or Plaintiff is not the legal owner of my debt.

8. ___ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt (only for cases filed in New York City).

9. ___ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City).

10. ___ Statute of limitations (the time has passed to sue on this debt).

11. ___ This debt has been discharged in bankruptcy.

12. ___ The collateral (property) was not sold at a commercially reasonable price.

13. ___ Failure to provide proper notice before selling collateral (property).

- 14. ___ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages).
- 15. ___ Unjust enrichment (the amount demanded is excessive compared with the original debt).
- 16. ___ Violation of the duty of good faith and fair dealing.
- 17. ___ Unconscionability (the contract is unfair).
- 18. ___ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).
- 19. ___ **OUTSIDE OF NEW YORK CITY ONLY:** Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed and you are not a resident of that city or (for all counties except Westchester and Nassau counties) you are not a resident of a town next to that city within the same county).

OTHER

20. ___ Other
 Reasons _____
 -

- 21. ___ Defendant is in the military
- 22. ___ Please take notice that my only source of income is _____, which is exempt from collection.

COUNTERCLAIM(S)

23. ___ Counterclaim(s): \$ _____ Reason:

VERIFICATION

State of New York, County of _____ ss:
 _____, being duly sworn, deposes and says: I have read the Answer in Writing and know the contents to be true from my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Sworn to before me this ___ day of _____, 20 ____.

Signature of Defendant

Notary/Court Employee

Defendant's address

This case is scheduled to appear on the calendar as follows:

Date: _____ Part: _____ Room: _____ Time: _____ Both sides notified _____

FREE CIVIL COURT FORM No fee may be charged to fill in this form.

CIV-GP- 58b Written Answer Consumer Credit (2/14) Form can be found at:
<http://www.nycourts.gov/courts/nyc/civil/forms/CIVGP58B.pdf>.

COURT

IndexNumber:

County of Part

ORDER TO SHOW CAUSE

To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow answer or dismissing the action

UPON the annexed affidavit of _____ sworn to on and upon all papers and proceedings herein:

Let the Plaintiff(s) or Plaintiff(s) attorney(s) show cause at:

Court: County

Court: Address:

Part

Room

on

At 9:30 AM

or as soon thereafter as counsel may be heard, why an order should not be made:

VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and /or allowing defendant to file an answer and/or dismissing the action if warranted, and/or granting such and further relief as may be just.

PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of Plaintiff(s), Plaintiff(s) attorney and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed.

SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, on the:

Plaintiff(s) or named attorney(s):

Sheriff or Marshal:

(Judge to Initial)

(Judge to Initial)

_____ by Personal Service by "In Hand Delivery"

_____ by Personal Service by "In Hand Delivery"

_____ by Certified Mail, Return Receipt Requested

_____ by Certified Mail, Return Receipt Requested

_____ by First Class Mail with official Post Office

_____ by First Class Mail with official

Certificate of Mailing

Certificate of Mailing

on or before _____, shall be deemed good and sufficient

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause.

Mail to Attorney or And Sheriff/Marshal _____

Date

Judge Signature

Civil Court of the City of New York
COUNTY OF _____

[PLEASE PRESS HARD]

Index No. _____

**AFFIDAVIT IN SUPPORT OF
ORDER TO SHOW CAUSE**

To Vacate a Default Judgment for
failure to appear and answer and to file
an answer or to dismiss the case

Plaintiff(s).

against

Defendant(s),

Address: _____

State of New York, County of _____ ss.:

_____, being duly sworn, deposes and says:

Put your initials in the sections that apply to you

1. _____ a) I am the party named as defendant in the above entitled action.
PARTY

2. _____ a) I was not served in the right way as required by the law with a summons and complaint in this action
SERVICE

- _____ b) I was not served a summons and complaint, and my first notice of legal action was
- _____ a notice from the Clerk's office
- _____ a notice of Default Judgment mailed to me.
- _____ a Restraining Notice on my bank account.
- _____ a copy of an Income Execution _____
- _____ Other: _____

3. _____
EXCUSABLE DEFAULT (You must tell the Judge a reason why you did not come to court to answer)

I did not come to court and answer in the Clerk's Office because: (Initial all sections that explain why you did not come to court)

- 1. I was sick _____ 2. I am disabled _____ 3. I had an illness in my family _____ 4. I had a death in the family _____ 5. I don't owe the money _____
- 6. I was out of town _____ 7. I did not receive the court papers _____ 8. I received the court papers too late _____
- 9. The plaintiff told me not to worry about the case or not to answer _____ 10. I was on military duty _____ 11. I receive exempt income (examples social security SSI, Public Assistance, Veteran's Benefits, Unemployment) _____

OTHER EXPLANATION (You can write down any other reason why you did not come to court to answer in your case: _____)

4. _____
DEFENSES (You must tell the Judge a reason or reasons why you should not have to pay the money the plaintiff is suing for.)
Look at the defense information sheet to see what defenses you may have and write them down here. **I have a good defense because:**

5. _____ a) I have not had a Order to Show Cause before in this case.
PRIOR APPLICATION _____ b) I have had a Order to Show Cause before in this case but I am making another application because _____

6. _____ I request that the Judgment be vacated. I ask that I be allowed to file an answer or this case be dismissed. I ask permission to serve these papers in person.

Sworn to before me this _____ day of _____, 20 _____

(Signature of Defendant)

(Signature of Court Employee and Title) _____

Order to Show Cause Information Sheet on Defenses

1. ___ General Denial: I deny the allegations in the Complaint.

SERVICE

2. ___ I did not receive a copy of the Summons and Complaint.

3. ___ I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4. ___ I do not owe this debt.

5. ___ It is not my debt. I am a victim of identity theft or mistaken identity.

6. ___ I have paid all or part of the alleged debt.

7. ___ I dispute the amount of the debt.

8. ___ I had no business dealings with Plaintiff (Plaintiff lacks standing) and/or Plaintiff is not the legal owner of my debt.

9. ___ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect debt (only for cases filed in New York City).

10. ___ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City).

11. ___ Statute of limitations (the time has passed to sue on this debt).

12. ___ This debt has been discharged in bankruptcy.

13. ___ The collateral (property) was not sold at a commercially reasonable price.

14. ___ Failure to provide proper notice before selling collateral (property).

15. ___ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages).

16. ___ Unjust enrichment (the amount demanded is excessive compared with the original debt).

17. ___ Violation of the duty of good faith and fair dealing.

18. ___ Unconscionability (the contract is unfair).

19. ___ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).

20. ___ **OUTSIDE OF NEW YORK CITY ONLY:** Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed and you are not a resident of that city or (for all counties except Westchester and Nassau counties) you are not a resident of a town next to that city within the same county).

21. ___ Defendant is in the military.

OTHER

22. ___ Other _____

23. ___ Please take notice that my only source of income is _____, which is exempt from collection.

For more information on defenses please see NYCourts.gov