



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

MEMORANDUM

JOHN W. MCCONNELL
Counsel

February 5, 2014

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed new 22 NYCRR § 202.9-a, relating to special proceedings authorized by UCC § 9-518(d) for expungement or redaction of falsely filed financing statements.

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Last November, Governor Cuomo signed into law chapter 490 of the Laws of 2013, addressing the retaliatory filing of false financing statements under the Uniform Commercial Code (“UCC”) by members of separatist groups against judges and other public officials (Exh. A). The purpose of the act is to discourage false filings and provide a meaningful, expeditious remedy for the persons most often harmed by these practices. Chapter 490 makes it a class E felony (effective Nov. 1, 2014) to commit the existing class A misdemeanor of Offering a False Instrument for Filing in the Second Degree. Chapter 490 also amends Judiciary Law § 212(2) and UCC § 9-518(d) to authorize the Chief Administrative Judge to establish rules for special proceedings that may be brought by state employees and some criminal defense attorneys to redact or expunge false financing statements filed against them in retaliation for the performance of their duties.

Proposed new section 202.9-a of the Uniform Civil Rules for the Supreme Court (Exh. B), which would implement Chapter 490, establishes venue for special proceedings, permits filing without a fee, sets forth detailed pleading requirements, authorizes appointment of a referee to hear and determine special proceedings, and provides for issuance of a judgment that may direct the expungement or redaction of false statements, injunctive relief and any additional relief authorized under the UCC. The proposed rules include a model petition and judgment.

Persons wishing to comment on this proposal should e-mail their submissions to OCARule202-9-a@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 March 7, 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. The issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the court system.

EXHIBIT A

BILL TEXT:

STATE OF NEW YORK

8013

2013-2014 Regular Sessions

IN ASSEMBLY

June 14, 2013

Introduced by M. of A. GABRYSZAK -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, the penal law and the uniform commercial code, in relation to financing statements falsely filed under the uniform commercial code

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature finds that the retaliatory filing of false financing statements under the uniform commercial code by members of separatist groups against New Yorkers in public service and private service is a growing and pernicious practice. As a result of the proliferation of such filings, the credit of New Yorkers in public service and private service has been impaired solely because they were doing their jobs on behalf of the citizens of the state. It is vital that all appropriate steps be taken to counter this practice. Accordingly, it is the objective of this act to discourage the filing of false financing statements and to provide a meaningful and expeditious remedy for those who have been harmed by such filings. It is also the objective of this measure to declare the state's interest in future effectuation of a second step: careful review of procedures authorizing the filing of financing statements under the uniform commercial code and subsequent modification of laws and procedures as may be necessary to ensure that the public is adequately protected against the kind of retaliatory filing of false financing statements to which this act is addressed.

2 § 2. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (s) to read as follows:

3 (s) Establish rules for special proceedings authorized by subsection (d) of section 9--518 of the uniform commercial code. Such rules may

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD08971-06-3

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1 authorize the court in which such a special proceeding is pending to
2 order a referee to hear and determine such special proceeding.

3 § 3. Section 175.35 of the penal law, as amended by chapter 99 of the
4 laws of 1998, is amended to read as follows:

5 § 175.35 Offering a false instrument for filing in the first degree.

6 A person is guilty of offering a false instrument for filing in the
7 first degree when[-]:

8 1. knowing that a written instrument contains a false statement or
9 false information, and with intent to defraud the state or any political
10 subdivision, public authority or public benefit corporation of the
11 state, he or she offers or presents it to a public office, public serv-
12 ant, public authority or public benefit corporation with the knowledge
13 or belief that it will be filed with, registered or recorded in or
14 otherwise become a part of the records of such public office, public
15 servant, public authority or public benefit corporation[-]; or

16 2. (a) he or she commits the crime of offering a false instrument for
17 filing in the second degree; and

18 (b) such instrument is a financing statement the contents of which are
19 prescribed by section 9--502 of the uniform commercial code, the collat-
20 eral asserted to be covered in such statement is the property of a
21 person who is a state or local officer as defined by section two of the
22 public officers law or who otherwise is a judge or justice of the
23 unified court system, such financing statement does not relate to an
24 actual transaction, and he or she filed such financing statement in
25 retaliation for the performance of official duties by such person.

26 Offering a false instrument for filing in the first degree is a class
27 E felony.

28 § 4. Section 9--518 of the uniform commercial code is amended by
29 adding a new subsection (d) to read as follows:

30 (d) Special proceeding to redact or expunge a falsely filed or amended
31 financing statement. (1) Provided he or she is an employee of the state
32 or a political subdivision thereof, a person identified as a debtor in a
33 financing statement filed pursuant to this subpart may bring a special
34 proceeding against the named filer of such statement or any amendment
35 thereof to invalidate the filing or amendment thereof where such state-
36 ment was falsely filed or amended; except that an attorney who is not an
37 employee of the state or a political subdivision thereof may also bring
38 a special proceeding hereunder where he or she represents or has repres-
39 ented the respondent therein in a criminal court. Such special proceed-
40 ing shall be governed by article four of the civil practice law and
41 rules, and shall be commenced in the supreme court of Albany county, the
42 county of the petitioner's residence or a county within the judicial
43 district in which any property covered by the financing statement is
44 located. No fee pursuant to article eighty of the civil practice law and
45 rules shall be collected in such special proceeding.

46 (2) The petition in a special proceeding hereunder shall plead that:

47 (A) the financing statement filed or amended by the respondent pursu-
48 ant to section 9--509 was falsely filed or amended to retaliate for: (i)
49 the performance of the petitioner's official duties in his or her capac-
50 ity as an employee of the state or a political subdivision thereof, or
51 (ii) in the case of a special proceeding brought by an attorney who is
52 not an employee of the state or a political subdivision thereof, to
53 retaliate for the performance of the petitioner's duties in his or her
54 capacity as an attorney for the respondent in a criminal court; and

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1 (B) such financing statement does not relate to an interest in a
 2 consumer-goods transaction, a commercial transaction, or any other actu-
 3 al transaction between the petitioner and the respondent; and

4 (C) the collateral covered in such financing statement is the property
 5 of the petitioner; and

6 (D) prompt redaction or invalidation of the financing statement is
 7 necessary to avert or mitigate prejudice to the petitioner.

8 (3) If the court makes a written finding that the allegations in para-
 9 graph two of this subsection are established, the court shall order the
 10 expungement of such statement or its redaction in the public records in
 11 the office in which the financing statement is filed, as appropriate,
 12 and may grant any additional relief authorized by section 9--625. In
 13 such case, the court shall cause a copy of its order to be filed with
 14 the secretary of state or other appropriate filing office pursuant to
 15 this chapter. Upon a finding that the respondent has engaged in a
 16 repeated pattern of false filings as found under this subsection, the
 17 court also may enjoin the respondent from filing or amending any further
 18 financing statement pursuant to this article without leave of the court.
 19 If the respondent is incarcerated at the time the court issues an order
 20 containing such an injunction, the court shall cause the head of the
 21 correctional facility in which the respondent is incarcerated to receive
 22 a copy of such determination. The head of such a facility shall cause a
 23 copy of such order to be provided to the respondent. In any instances of
 24 the issuance of such an injunction where the respondent has defaulted,
 25 the court shall direct service of such injunction upon the respondent.

26 § 5. This act shall take effect immediately; provided that section
 27 three of this act shall take effect on the first of November next
 28 succeeding the date on which it shall have become a law; provided,
 29 further, subdivision 2 of section 175.35 of the penal law, as added by
 30 section three of this act, shall apply solely to the filing or amendment
 31 of financing statements under subpart 1 of part 5 of article 9 of the
 32 uniform commercial code on or after such effective date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A8013**SPONSOR:** Gabryszak

TITLE OF BILL: An act to amend the judiciary law, the penal law and the uniform commercial code, in relation to financing statements falsely filed under the uniform commercial code

This measure is being introduced at the request of the Chief Administrative Judge to redress "paper terrorism" against judges and other public servants committed to harass them or to retaliate against them for discharge of their official duties. This is a growing problem, not just here in New York*, but across the Nation. See National Association of Secretaries of State, "State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings: A Report for State Business Filing Agencies," available at <http://nass.org/index.php?option=comcontent&view=article&id=329%3Anews-release-new-ucc-report-aug12&>

catid=964%3Auncategorized-news-releases&Itemid=1 (August 27, 2012).

The Uniform Commercial Code ("UCC") Article 9 provides a simple way for a creditor to record an interest in a debtor's property with the Department of State ("DOS"), thereby giving notice of that interest to the debtor's future creditors. Typically such a recording, termed a "financing statement" by the UCC, covers property purchased under a security agreement subject to attachment (e.g., a vehicle), and is necessary for a creditor to assert a claim. With the rise of the Internet and especially smart-phones, filers instantly can record financing statements, which promptly become publicly available by searchable online database. Using this database, financial institutions, prospective employers and members of the public can determine whether someone has debts recorded against him or her, and assess whether he or she may be a sound credit risk.

This UCC recording system, however, has been subject to much abuse. Often, members of separatist groups asserting sovereign status, prison inmates and others believing themselves to be victims of unjust government action use the system to retaliate against or harass the government officials behind that action. They do this by filing fraudulent financing statements against those officials thereby potentially creating serious personal financial difficulties for them. Such "paper terrorism" can take a variety of forms. These often include the filing of outright false financing statements, asserting claims that do not in fact exist. In New York, in particular, they also may include statements asserting infringement of a copyright enjoyed in one's name.** Moreover, whatever form the fraudulent filing takes, it invariably runs afoul of the requirement, under UCC section 9-509(a), that an alleged debtor authorize the filing of a financing statement memorializing a claim against him or her.

Under the UCC as now written, there is no easy means by which to deter or otherwise prevent such abuse. The DOS must accept each financing statement filed for recording and subsequently make it available for public viewing. The result: once a fraudulent financing statement is recorded - and if sufficient on its face when filed, it must be recorded - that statement can raise red flags that substantially prejudice the availability or price of credit, complicate employment prospects and sully a public servant's reputation.

To combat this abuse, this measure proposes amendments to the Penal Law and to the UCC. The former (see bill section three) would amend section 175.35 of the Penal Law (entitled "Offering a false instrument for filing in the first degree") to make it a class E felony offense to commit the existing class A misdemeanor offense of Offering a False Instrument for Filing in the Second Degree (see Penal Law § 175.30) through the knowing filing of a fraudulent UCC financing statement that identifies the debtor as a State or local officer under section two of the Public Officers Law, or a judge or justice of the Unified Court System, where that fraudulent filing is "in retaliation for the performance of official duties" by the affected public servant. This amendment is similar to Federal law making it a serious Federal offense "to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against...the property of (a Federal judge or Federal law enforcement officer), on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false ..." See 18 USC § 1521 (establishing the Federal offense of Retaliating Against A Federal Judge or Federal Law Enforcement Officer By False Claim Or Slander Of

Title).

The UCC amendments proposed by this measure (see bill section four) would create a court procedure to summarily invalidate fraudulent liens. Under this procedure, a State or local public employee or criminal defense lawyer who has represented the filer in criminal court - listed as the debtor in a financing statement containing a false statement or false information - may under certain circumstances commence a special proceeding for the expungement or redaction of the financing statement. In this special proceeding, which is exempt from court filing fees, the petitioner must plead that the offending financing statement was falsely filed or amended to retaliate for the petitioner's performance of official duties (or, where the petitioner is a lawyer who is not a public employee, for the petitioner's performance of his or her duties representing the filer in criminal court); that the financing statement is not one relating to an interest in a consumer transaction, a commercial transaction or any other transaction between petitioner and respondent; that the collateral covered in the financing statement is petitioner's property; and that prompt redaction or invalidation of the financing statement is necessary to avert or mitigate prejudice to the petitioner.

Where the court finds that the UCC financing statement at issue was falsely filed, the court may then direct expungement of the financing statement or redaction of appropriate portions thereof. In such event, the court must see that a copy of its order is filed with the Secretary of State; and, if the wrongful filer is incarcerated, with the head of the correctional facility. The court also may grant relief authorized by UCC section 9-625 and bar the respondent wrongful filer from filing other UCC statements without leave of court.

The special proceeding hereby authorized is narrowly-tailored so as not to otherwise call liens arising from commercial transactions or other valid liens into question, alter legitimate UCC incentives or impose burdens upon commercial enterprises. Moreover, it is carefully drawn to avoid placing burdens upon the DOS.

Finally, this measure also would direct the Chief Administrative Judge to adopt rules to govern the special proceeding authorized herein, including rules permitting the court to empower a referee to hear and determine the matter so as to minimize delay and assure its expeditious disposition (see bill section two).

As noted, this is by no means a problem that is unique to our State. Nor do the remedies proposed by this measure promise total protection for government officials here. Absent co-ordinated efforts by all states to identify and rebuff abuse of the UCC recording system, there is nothing New York can do to assure its public servants that they will not be victims of fraudulent filings in other states. This said, the instant measure is a significant first step in that it will give law enforcement authorities the tools needed to discourage fraudulent filings in New York; and public officials generally, along with certain others who play an active role in the administration of justice, the means by which to protect their credit and their good name in the public record.

This measure would have no fiscal impact upon the State or any of its political subdivisions. Bill sections one, two and four, addressed to establishment of special proceedings to expunge a wrongfully filed UCC financing statement, would take effect immediately. Section three, criminalizing as a felony the wrongful filing of such a statement under certain circumstances where the alleged debtor is a State or local officer under the Public Officers Law or a judge or justice of the Unified

Court System, would take effect November first next following the date on which this measure becomes a law.

LEGISLATIVE HISTORY:

None. New proposal.

*Here in New York we are receiving a growing number of reports of judges who have been victimized, and we are aware that there are many other State and local officials, in addition to criminal defense attorneys, who likewise have been targeted.

**A dubious claim at best: viz., it is legally impossible to assert a copyright in one's name against its use in a public proceeding.

CHAPTER TEXT:

LAWS OF NEW YORK, 2013

CHAPTER 490

AN ACT to amend the judiciary law, the penal law and the uniform commercial code, in relation to financing statements falsely filed under the uniform commercial code

Became a law November 13, 2013, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature finds that the retal-

iatory filing of false financing statements under the uniform commercial code by members of separatist groups against New Yorkers in public service and private service is a growing and pernicious practice. As a result of the proliferation of such filings, the credit of New Yorkers in public service and private service has been impaired solely because they were doing their jobs on behalf of the citizens of the state. It is vital that all appropriate steps be taken to counter this practice. Accordingly, it is the objective of this act to discourage the filing of false financing statements and to provide a meaningful and expeditious remedy for those who have been harmed by such filings. It is also the objective of this measure to declare the state's interest in future effectuation of a second step: careful review of procedures authorizing the filing of financing statements under the uniform commercial code and subsequent modification of laws and procedures as may be necessary to ensure that the public is adequately protected against the kind of retaliatory filing of false financing statements to which this act is addressed.

§ 2. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (s) to read as follows:

(s) Establish rules for special proceedings authorized by subsection (d) of section 9--518 of the uniform commercial code. Such rules may authorize the court in which such a special proceeding is pending to order a referee to hear and determine such special proceeding.

§ 3. Section 175.35 of the penal law, as amended by chapter 99 of the laws of 1998, is amended to read as follows:

§ 175.35 Offering a false instrument for filing in the first degree.

A person is guilty of offering a false instrument for filing in the first degree when~~[7]~~:

1. knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation~~[-]~~; or

2. (a) he or she commits the crime of offering a false instrument for filing in the second degree; and

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

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(b) such instrument is a financing statement the contents of which are prescribed by section 9--502 of the uniform commercial code, the collateral asserted to be covered in such statement is the property of a person who is a state or local officer as defined by section two of the public officers law or who otherwise is a judge or justice of the unified court system, such financing statement does not relate to an actual transaction, and he or she filed such financing statement in retaliation for the performance of official duties by such person.

Offering a false instrument for filing in the first degree is a class E felony.

§ 4. Section 9--518 of the uniform commercial code is amended by adding a new subsection (d) to read as follows:

(d) Special proceeding to redact or expunge a falsely filed or amended financing statement. (1) Provided he or she is an employee of the state or a political subdivision thereof, a person identified as a debtor in a financing statement filed pursuant to this subpart may bring a special proceeding against the named filer of such statement or any amendment thereof to invalidate the filing or amendment thereof where such statement was falsely filed or amended; except that an attorney who is not an employee of the state or a political subdivision thereof may also bring a special proceeding hereunder where he or she represents or has represented the respondent therein in a criminal court. Such special proceeding shall be governed by article four of the civil practice law and rules, and shall be commenced in the supreme court of Albany county, the county of the petitioner's residence or a county within the judicial district in which any property covered by the financing statement is located. No fee pursuant to article eighty of the civil practice law and rules shall be collected in such special proceeding.

(2) The petition in a special proceeding hereunder shall plead that:

(A) the financing statement filed or amended by the respondent pursuant to section 9--509 was falsely filed or amended to retaliate for: (i) the performance of the petitioner's official duties in his or her capacity as an employee of the state or a political subdivision thereof, or (ii) in the case of a special proceeding brought by an attorney who is not an employee of the state or a political subdivision thereof, to retaliate for the performance of the petitioner's duties in his or her capacity as an attorney for the respondent in a criminal court; and

(B) such financing statement does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the petitioner and the respondent; and

(C) the collateral covered in such financing statement is the property of the petitioner; and

(D) prompt redaction or invalidation of the financing statement is necessary to avert or mitigate prejudice to the petitioner.

(3) If the court makes a written finding that the allegations in paragraph two of this subsection are established, the court shall order the expungement of such statement or its redaction in the public records in the office in which the financing statement is filed, as appropriate, and may grant any additional relief authorized by section 9--625. In such case, the court shall cause a copy of its order to be filed with the secretary of state or other appropriate filing office pursuant to this chapter. Upon a finding that the respondent has engaged in a repeated pattern of false filings as found under this subsection, the court also may enjoin the respondent from filing or amending any further financing statement pursuant to this article without leave of the court. If the respondent is incarcerated at the time the court issues an order

containing such an injunction, the court shall cause the head of the correctional facility in which the respondent is incarcerated to receive a copy of such determination. The head of such a facility shall cause a copy of such order to be provided to the respondent. In any instances of the issuance of such an injunction where the respondent has defaulted, the court shall direct service of such injunction upon the respondent.

§ 5. This act shall take effect immediately; provided that section three of this act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, further, subdivision 2 of section 175.35 of the penal law, as added by section three of this act, shall apply solely to the filing or amendment of financing statements under subpart 1 of part 5 of article 9 of the uniform commercial code on or after such effective date.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

EXHIBIT B

DRAFT - 12/4/2013

§202.9-a. Special proceedings authorized by subsection (d) of section 9-518 of the Uniform Commercial Code.

(a) This section shall govern a special proceeding authorized by subsection (d) of section 9-518 of the Uniform Commercial Code for the redaction or expungement of a falsely-filed or amended financing statement. Except as otherwise provided in such subsection and in this section, such a special proceeding shall be subject to the provisions of article four of the CPLR and of section 202.9 of these rules.

(b) The following shall apply to a special proceeding governed by this section:

(1) Venue. Such a special proceeding shall be commenced in the Supreme Court in:

(i) Albany County; or

(ii) the County of the petitioner's residence; or

(iii) any County within a Judicial District in which any property covered by the financing statement is located.

(2) No fee required. Notwithstanding any provision of Article eighty of the CPLR, no fee shall be collected pursuant to such Article in such a special proceeding.

(3) Petitioner. In order to commence such a special proceeding, the petitioner must be:

(i) either (A) an employee of the State or of a political subdivision thereof, or (B) an attorney who represents or has represented the respondent in a criminal court; and

(ii) a person identified as a debtor in a financing statement filed pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code; and

(iii) bringing such special proceeding against the respondent to invalidate the false filing or amendment of such financing statement.

(4) Form and content of petition. A petition in such a special proceeding shall substantially conform to the model petition set forth in Appendix A of this section and shall allege that:

(i) the financing statement referred to in paragraph (3)(i) of this subdivision was falsely filed or amended to retaliate for the performance of the petitioner's official duties in his or her capacity as a public employee (or, if the petitioner is an attorney referred to in paragraph (3)(i)(B) of this subdivision, to retaliate for the performance of the petitioner's duties in his or her capacity as an attorney for the respondent in a criminal court); and

(ii) such financing statement does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the petitioner and the respondent; and

(iii) the collateral covered in the financing statement is the property of the petitioner; and

(iv) prompt redaction or invalidation of such financing statement is necessary to avert or mitigate prejudice to the petitioner.

The petition shall demand the expungement or redaction of such financing statement or, as appropriate, any amendment thereof, in the office in which the financing statement is filed; and may demand any additional relief authorized under section 9-625 of the Uniform Commercial Code.

(5) Use of Referee. The court may order a referee to hear and determine such a special proceeding.

(6) Judgment.

(i) Where the court (or a referee ordered by the court) makes a written finding that the allegations of the petition are established, it shall deliver a judgment, which shall include such finding and shall direct the expungement or redaction of the financing statement found therein to be falsely filed or amended in the public office in which it was filed; and may grant any additional relief sought that is authorized under section 9-625 of the Uniform Commercial Code. Where the court also finds that the respondent has engaged in a repeated pattern of falsely filing financing statements under Subpart one of Part five of Article nine of the Uniform Commercial Code, the court may enjoin the respondent from filing or amending any further financing statement without court leave; and, in such case, where respondent is incarcerated at the time such injunction issues, the court shall cause a copy thereof to be transmitted to the head of the correctional facility in which respondent is incarcerated.

(ii) In form, the judgment in such a special proceeding shall substantially conform to the model judgment set forth in Appendix B of this section.

APPENDIX A

PETITION IN SPECIAL PROCEEDING PURSUANT TO
SECTION 9-518(d) OF THE UNIFORM COMMERCIAL CODE

SUPREME COURT OF THE STATE OF NEW YORK

County of _____

[Caption Box]

PETITION
Index No.
Judge Assigned

Petitioner [*name of Petitioner*], by his [*or her*] undersigned [*attorney or attorneys*] alleges as follows:

NATURE OF THIS PROCEEDING

This is a Special Proceeding brought pursuant to section 9-518(d) of the Uniform Commercial Code to [*redact or expunge, as applicable*] a falsely-filed [*or -amended*] financing statement the contents of which are described in section 9-502 of the Uniform Commercial Code.

THE PARTIES

1. The Petitioner in this Special Proceeding, [*name of Respondent*], is [*an employee of the State of New York or an employee of a political subdivision of the State of New York or an attorney who represents or has represented the Respondent herein in a criminal court*]. [*add one of the following sentences, as applicable*:

(i) The Petitioner is employed by [*name the office of his or her New York State employment or, if appropriate, of his or her employment by a named political subdivision of the State*] as [*state the name/nature of this employment*]; or

(ii) The Petitioner was admitted to practice in [*state the year*] in the _____ Judicial Department.]

2. The Petitioner is identified as a debtor in a financing statement filed by or on behalf of the Respondent pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code.

3. The Respondent in this Special Proceeding is [*name of Respondent*]. [*If the Respondent is incarcerated, so state and identify the facility of incarceration*]

4. As authorized by section 9-518(d)(1) of the Uniform Commercial Code, the place of trial for this Special Proceeding is _____ County. [*if not Albany County, add one of the following sentences, as applicable*:

(i) The Petitioner resides at [*include Petitioner's address*] in such County; or

(ii) The property of the Petitioner covered by the financing statement specified in paragraph two hereof is located in such County.]

FIRST CAUSE OF ACTION

5. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through four above.

6. The Respondent in this Special Proceeding has filed [*or amended*] a financing statement under section 9-502 of the Uniform Commercial Code that identifies the Petitioner as a debtor and the collateral referred to in such financing statement is the property of the Petitioner.

7. The financing statement referred to in Paragraph six herein was falsely filed *[or falsely amended]* by or on behalf of the Respondent. On information and belief, this false filing *[or false amendment]* was to retaliate for the performance of the Petitioner's official duties in his *[or her]* capacity as a public employee as specified in Paragraph one herein *[or, if the Petitioner is an attorney who represents or has represented the Respondent herein in a criminal court, "this false filing statement [or amendment] was to retaliate for the performance of the Petitioner's duties in his [or her] capacity as an attorney for the Respondent in a [specify the case name and the name of the criminal court]. [add any essential facts forming the basis for information and belief]*

8. The financing statement referred to in Paragraph six herein and alleged to have been falsely filed or falsely amended does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the Petitioner and the Respondent.

9. The collateral covered in the financing statement referred to in Paragraph six herein is the property of the Petitioner.

10. Prompt redaction or invalidation of the financing statement *[or amendment to a financing statement]* is necessary to avert or mitigate prejudice to the Petitioner.

SECOND CAUSE OF ACTION *[if applicable]*

11. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through ten above.

12. On information and belief, the Respondent has engaged in a repeated pattern of falsely filing financing statements *[or amendments to financing statements]*. *[add any essential facts forming the basis for information and belief]*

There has been no previous application for the relief demanded in this proceeding in this or any other Court *[or, if there has been such an application, so state and specify new facts not previously shown, if any]*.

DEMAND FOR RELIEF

WHEREFORE, Petitioner demands judgment against the Respondent as follows:

a. On the First Cause of Action, for expungement *[or redaction]* of the financing statement *[or the amendment of the financing statement]* in the *[state the office in which the financing statement is filed]* pursuant to section 9-518(d)(3) *[Where redaction of the financing statement or an amendment thereto is demanded, specify the specify redaction sought] [and, where further relief is sought under section 9-625 of the Uniform Commercial Code, state such further relief]*.

b. On the Second Cause of Action *[if applicable]*, for an injunction barring the Respondent from filing or amending any further financing statements pursuant to article nine of the Uniform Commercial Code without leave of the Court.

c. Awarding Petitioner costs and disbursements of this proceeding.

d. Granting Petitioner such other and further relief as the Court deems just and proper.

.....
Attorney(s) for Petitioner

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK

County of _____

[Caption Box]

JUDGMENT

Index No.

Judge Assigned

The above-entitled special proceeding brought pursuant to section 9-518 of the Uniform Commercial Code having come on to be heard before the Honorable Justice _____ at Part ____ of this Court, held at the Courthouse at [include Courthouse address], on [include month, date and year], and the Petitioner having appeared by his [or her] attorney and the Respondent having [include, as applicable, "appeared by his [or her] attorney"/"failed to appear"], and the Court having, after due deliberation, found that:

___ the following allegations, as set forth in the Petition, have been established:

___ the allegations, as set forth in the Petition, have not been established,

Now, it is hereby

ORDERED, ADJUDGED AND DECREED, that:

___ the Petitioner have judgment against the Respondent and that the _____
[name of the office in which the financing statement to be expunged or redacted is filed] is directed to:

___ expunge from the public record _____

[describe the financing statement to be expunged]

___ redact on the public record _____

[describe the financing statement to be redacted and the specific redaction being ordered]

___ the Respondent have judgment against the Petitioner and that this Special Proceeding be dismissed.

___ the Petitioner have the following relief as authorized by section 9-625 of the Uniform Commercial Code:

___ the Respondent be enjoined from filing or amending any further financing statement pursuant to Article 9 of the Uniform Commercial Code without leave of this Court.

___ [describe such further relief as the Court is ordering]

Dated: [month, date, year]

Enter

.....

Justice, Supreme Court, _____ County