

**State of New York v Hendrickson**

2025 NY Slip Op 34041(U)

October 20, 2025

Supreme Court, New York County

Docket Number: Index No. 450520/2024

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 450520/2024

STATE OF NEW YORK

MOTION DATE 05/16/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

KIONNE JADEN HENDRICKSON,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - DEFAULT

APPEARANCES:

The Office of the Attorney General, Albany, NY (Thomas Joseph Schrempf, Esq.), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action to recover unpaid tuition, commenced by summons with notice, plaintiff STATE OF NEW YORK (plaintiff), on behalf of the State University of New York, University at Buffalo, moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for leave to enter a default judgment against defendant KIONNE JADEN HENDRICKSON (defendant). Defendant does not appear or submit opposition.

As explained below, the court dismisses the motion.

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the

court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). Generally, the proponent of a default judgment shall file proof of (1) service of the summons and complaint, of (2) the facts constituting the claim, and of (3) the default and the amount due (see CPLR § 3215 [f]; see also Allstate Ins. Co. v Austin, 48 AD3d 720 [2d Dept 2008]).

It is black letter law that, "personal service . . . shall be made by . . . delivering the summons within the state to the person to be served; or 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 person to be served and by either mailing the summons to the person to be served at his or her last known residence or . . . at his or her actual place of business . . . Proof of service shall identify such person of suitable age and discretion and state the date, time and place of service . . ." (CPLR § 308 [1]; [2]).

However, "[t]he process server must perform a proper inquiry to determine the defendant's actual place of business, dwelling place, or usual place of abode, which under CPLR § 308 must be correct" (Everbank v Kelly, 203 AD3d 138, 147 [2d Dept 2022]). Courts have held that a proper inquiry consists of inquiring of the person of suitable age and discretion as to

whether defendant lives or works at the service address (id.); or by conducting a search of the Department of Motor Vehicle records to determine defendant's address (Fontanez v PV Holding Corp., 182 AD3d 423 [1st Dept 2020]).

Here, the affidavit of service pursuant to CPLR § 308 (2) is defective (see NYSCEF Doc. No. 015, affirmation of service). The affirmation is silent as to whether plaintiff's process server performed a proper inquiry to determine whether the premises is defendant's "actual place of business, dwelling place, or usual place of abode" by either inquiring with the person served, or by conducting a search of the records of the Department of Motor Vehicles (see id. [providing, without specificity, that defendant was served by delivering a copy of the summons with notice to a person of suitable age and discretion, specifically "Jane Doe - name refused - co-tenant"]).<sup>1</sup> Therefore, without sufficient support demonstrating defendant's dwelling place, usual place of abode, or actual place of business, service of process pursuant to CPLR § 308 (2) is defective.

Notwithstanding the defect addressed above, plaintiff has not submitted proof of the facts constituting the claim (see

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<sup>1</sup> While plaintiff submits a LexisNexis public record report to demonstrate that the service address is defendant's residence (NYSCEF Doc. No. 17), a proper inquiry consists of questioning the person served, or conducting a search of the Department of Motor Vehicles.

CPLR § 3215 [f]). In a situation where there is a complaint verified by plaintiff, it can serve as proof of the facts constituting the claim (see Knudsen v Green Machine Landscaping, Inc., 223 AD3d 792 [2d Dept 2024]). However, plaintiff has not filed a complaint in this action, and the summons with notice states, in its entirety, "the nature of this action and the relief sought is to recover damages for Unpaid Suny Charges (tuition, room and/or board charges and fees, fines), Fall 2018, Spring 2019, SUNY Buffalo, for the principal sum of \$9,277.64" (NYSCEF Doc. No. 01, summons with notice, dated February 05, 2025).

Though a cause of action is not delineated in the summons with notice, it appears to allege a cause of action sounding in either breach of contract or account stated. However, plaintiff does not submit an affidavit of a person with personal knowledge of the facts constituting either claim. The supporting affirmations of Domenico Pirrotta, counsel in the office of the Attorney General, and Thomas J. Schrempf, counsel of record, who both attest to being "fully familiar with the facts and circumstances based upon a review of the official reports and records furnished by SUNY Buffalo", are insufficient (NYSCEF Doc. No. 08, affirmation of Domenico Pirrotta, Esq., and Doc. No. 13, Thomas J. Schrempf, Esq.). A review of another's file does not equate to "firsthand knowledge of the facts forming the

basis of the claim" (Guzetti v City of New York, 32 AD3d 234, 236 [1st Dept 2006]; see also William v N. Shore LIJ Health Sys., 119 AD3d 937 [2d Dept 2014] [plaintiff failed to proffer affidavit of the facts by a party with personal knowledge as required by CPLR § 3215 (f)]).

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 01), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendant; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

10/20/2025

DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE