

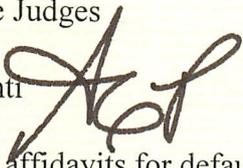


*New York State
Unified Court System
25 Beaver Street
New York, New York 10004*

*A. Gail Prudenti
Chief Administrative Judge*

212-428-2120

September 15, 2014

TO: Administrative Judges
FROM: A. Gail Prudenti 
SUBJECT: New rules and affidavits for default judgment applications in consumer credit matters.

As you are aware, at this year's Court of Appeals Law Day ceremony, the Chief Judge announced that, following a public comment period, the court system would adopt major reforms addressing default judgment applications in consumer credit collection cases, including those commenced by third-party debt buyers. As described by the Chief Judge, the new rules and affidavits are intended to ensure a fair legal process and address a number of documented abuses (including entry of default judgments despite insufficient or incorrect factual proof, expiration of the applicable statute of limitations, and failed service of process).

This memorandum outlines the new requirements for default judgment applications in consumer credit collection cases where such applications are made to the clerk under CPLR 3215(a). Effective October 1, 2014, the rules will apply in the Supreme Court, New York City Civil Court, City Courts outside New York City, and District Courts. In debt buyer actions, the new rules will require plaintiffs to submit specific affidavits and documentation, including affidavits from original creditors and intervening debt buyers, that are based on personal knowledge and meet substantive legal and evidentiary standards for entry of a default judgment under New York law. In addition, plaintiffs must submit to the court an additional notice of a consumer credit action which is to be mailed by the court to the debtor at the address where process was served. The administrative order promulgating these new rules and affidavits is attached (Att.1).

Applicability of new affidavit requirements and effective dates

The new rules apply to default judgment applications in consumer credit transactions, defined as revolving or open-end credit extended by a financial institution to an individual primarily for personal, family or household purposes, with terms that include periodic payment provisions, late charges and interest accrual. This definition applies to credit card debt. It does not apply to debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.

Plaintiffs seeking a default judgment in consumer credit cases must submit the following affidavits, in addition to any other affidavits presently required to obtain a default judgment under New York law.

(1) In original creditor actions, the AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR, **effective October 1, 2014**.

(2) In debt buyer actions involving **debt purchased from an original creditor on or after October 1, 2014**, the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF, the AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR and, if applicable, the AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER.

While the new affidavit rules do not immediately apply to debt buyer actions involving debt purchased from an original creditor **before October 1, 2014**, the rules do require debt-buyer plaintiffs to affirm that the debt at issue was purchased from the original creditor before October 1, 2014. Furthermore, **effective July 1, 2015**, the new affidavit requirements will apply in **all** debt buyer actions, irrespective of when the debt at issue was purchased from an original creditor.

(3) In all original creditor and debt buyer actions, the AFFIRMATION OF NON-EXPIRATION OF STATUTE OF LIMITATIONS, **effective October 1, 2014**.

In summary, different affidavit requirements apply depending on whether the plaintiff is an original creditor or a debt buyer. Moreover, in debt buyer actions, the new affidavit requirements initially take effect prospectively (except for the affirmation of non-expiration of statute of limitations). However, on July 1, 2015, the new affidavits will be required in **all** debt buyer actions, irrespective of when the debt was purchased from an original creditor.

While the foregoing affidavits may not be combined, individual affidavits may be augmented as necessary to provide explanatory details and supplemental affidavits may be filed for the same purpose. The affidavits in debt buyer actions must be supported by exhibits, including copies of the credit agreement, the bill of sale or written assignment of the account and relevant business records of the Original Creditor that set forth the name of the Consumer, the last four digits of the account number, the date and amount of the charge-off balance, the date and amount of the last payment, and the balance due.

Please note that section 202.6(b) of the Uniform Rules for Supreme Court and County Court has also been amended to require a party to file a Request for Judicial Intervention when making an application for a default judgment in a consumer credit matter in Supreme Court.

Additional Notice Requirement

Section 208.6(h) of the Rules of the New York City Civil Court is being amended and expanded to the Supreme Court and County Court, City Courts outside New York City, and District Courts, **effective October 1, 2014**. The amended rule will require plaintiffs, when filing proof of service of the summons and complaint, to submit to the clerk a stamped envelope containing an additional notice of a consumer credit action addressed to the defendant at the address where process was served. The face of the envelope shall contain as a return address the appropriate clerk's office to which the defendant should be directed. The additional notice is to be mailed promptly by the court to the defendant. No default judgment may be entered unless there has been compliance with this requirement and at least 20 days have elapsed from the date of mailing. The court may not enter a default judgment if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the defendant's address on record with the New York State Department of Motor Vehicles.

Please note that the content of the additional notice for the New York City Civil Court differs from the additional notice applicable in other courts.

Affidavits

Form affidavits for use by plaintiffs seeking default judgments in consumer credit cases pursuant to these rule changes will be made available on the UCS website and should be made available in the clerk's office for the convenience of litigants. In addition, the Office of the Statewide Director of Access to Justice Programs has developed special forms for use by unrepresented litigants in consumer credit actions which will be distributed shortly.

* * *

If you have questions about the new rules please contact Antonio Galvao of Counsel's Office at (914) 824-5443. Please distribute this memorandum further as you deem appropriate.

cc: Hon. Lawrence K. Marks
Hon. Fern A. Fisher
Hon. Michael V. Coccoma
Ronald P. Younkings, Esq.
Eugene Myers
Maria Logus
Maria Barrington
District Executives
NYC Chief Clerks
County Clerks

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate, effective October 1, 2014, the following court rules relating to the proof of default judgment in consumer credit matters (as further set forth in Exh. A appended hereto)

- § 202.27-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the Supreme Court and the County Court);
- § 202.27-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the Supreme Court and the County Court);
- § 208.6(h) Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the New York City Civil Court);
- § 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);
- § 210.14-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (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);
- § 212.14-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the District Courts);
- § 202.6 Request for judicial intervention (Uniform Civil Rules for the Supreme Court and the County Court).

In addition, I hereby promulgate, also effective October 1, 2014, the following forms for use in implementing these rules (Exh. B):

1. Affidavit of Facts by Original Creditor (Original Creditor Actions);
2. Affidavit of Facts and Sale of Account by Original Creditor (Debt Buyer Actions);
3. Affidavit of Purchase and Sale of Account by Debt Seller (Debt Buyer Actions);
4. Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff (Debt Buyer Actions); and
5. Affirmation of Non-Expiration of Statute of Limitations (All Actions).



Chief Administrative Judge of the Courts

Dated: September 15, 2014

AO/185/14

EXHIBIT A

§ 202.27-a. Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the Supreme Court and the County Court)

§ 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) Definitions.

(1) For purposes of this section a consumer credit transaction means a revolving or open-end credit transaction wherein credit is extended by a financial institution, which is in the business of extending credit, to an individual primarily for personal, family or household purposes, the terms of which include periodic payment provisions, late charges and interest accrual. A consumer credit transaction does not include debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.

(2) Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense.

(3) Debt buyer means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney for collection litigation.

(4) Credit agreement means a copy of a contract or other document governing the account provided to the defendant evidencing the defendant's agreement to the debt, the amount due on the account, the name of the original creditor, the account number, and the name and address of the defendant. The charge-off statement or the monthly statement recording the most recent purchase transaction, payment or balance transfer shall be deemed sufficient evidence of a credit agreement.

(b) Applicability. Together with any other affidavits required under New York law, the following affidavits shall be required as part of a default judgment application arising from a consumer credit transaction where such application is made to the clerk under CPLR 3215(a).

(1) In original creditor actions, the affidavit set forth in subsection (c), effective October 1, 2014.

(2) In debt buyer actions involving debt purchased from an original creditor on or after October 1, 2014, the affidavits set forth in subsection (d).

(3) Except as set forth in paragraph four of this subsection, the affidavits set forth in subsection (d) shall not be required in debt buyer actions involving debt purchased from an original creditor before October 1, 2014. The plaintiff shall be required to affirm in its affidavit of facts that the debt was purchased from the original creditor before October 1, 2014 and attach proof of that fact.

(4) Effective July 1, 2015, the affidavits set forth in subsection (d) shall be required in all debt buyer actions notwithstanding that the debt was purchased from an original creditor before October 1, 2014.

(5) In all original creditor and debt buyer actions, the affidavit of non-expiration of statute of limitations set forth in subsection (e), effective October 1, 2014.

(c) Where the plaintiff is the original creditor, the plaintiff must submit the AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR.

(d) Where the plaintiff is a debt buyer, the plaintiff must submit the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF, the AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR and, if applicable, the AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER for each debt seller who owned the debt prior to the plaintiff.

(e) In all applications for a default judgment arising from a consumer credit transaction, the plaintiff must submit the AFFIRMATION OF NON-EXPIRATION OF STATUTE OF LIMITATIONS executed by counsel.

(f) The affidavits required by this section may not be combined. Affidavits may be augmented to provide explanatory details, and supplemental affidavits may be filed for the same purpose.

(g) The affidavits required by this section shall be supported by exhibits, including a copy of the credit agreement as defined in this section, the bill of sale or written assignment of the account where applicable, and relevant business records of the Original Creditor that set forth the name of the defendant; the last four digits of the account number; the date and amount of the charge-off balance; the date and amount of the last payment, if any; the amounts of any post-charge-off interest and post-charge-off fees and charges, less any post-charge-off credits or payments made by or on behalf the defendant; and the balance due at the time of sale.

(h) If a verified complaint has been served, it may be used as the plaintiff's affidavit of facts where it satisfies the elements of the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF.

(i) The County Clerk or clerk of the court shall refuse to accept for filing a default judgment application that does not comply with the requirements of this section.

(j) Nothing in this section is intended to impair a plaintiff's ability to make a default judgment application to the court as authorized under CPLR 3215(b).

Section 202.6 Request for judicial intervention.

(a) At any time after service of process, a party may file a request for judicial intervention. Except as provided in subdivision (b) of this section, in an action not yet assigned to a judge, the court shall not accept for filing a notice of motion, order to show cause, application for ex parte order, notice of petition, note of issue, notice of medical, dental or podiatric malpractice action, statement of net worth pursuant to section 236 of the Domestic Relations Law or request for a preliminary conference pursuant to section 202.12(a) of this Part, unless such notice or application is accompanied by a request for judicial intervention. Where an application for poor person relief is made, payment of the fee for filing the request for judicial intervention accompanying the application shall be required only upon denial of the application. A request for judicial intervention must be submitted, in duplicate, on a form authorized by the Chief Administrator of the Courts, with proof of service on the other parties to the action (but proof of service is not required where the application is ex parte).

(b) A request for judicial intervention shall be filed, without fee, for any application to a court not filed in an action or proceeding, as well as for a petition for the sale or finance of religious/not-for-profit property, an application for change of name, a habeas corpus proceeding where the movant is institutionalized, an application under CPLR 3102(e) for court assistance in obtaining disclosure in an action pending in another state, a retention proceeding authorized by article 9 of the Mental Hygiene Law, a proceeding authorized by article 10 of the Mental Hygiene Law, an appeal to a county court of a civil case brought in a court of limited jurisdiction, an application to vacate a judgement on account of bankruptcy, **an application for a default judgment in a consumer credit matter pursuant to section 202.27-a of this Part**, a motion for an order authorizing emergency surgery, or within the City of New York, an uncontested action for a judgment for annulment, divorce or separation commenced pursuant to article 9, 10 or 11 of the Domestic Relations Law.

(c) In the counties within the City of New York, when a request for judicial intervention is filed, the clerk shall require submission of a copy of the receipt of purchase of the index number provided by the County Clerk, or a written statement of the County Clerk that an index number was purchased in the action. Unless otherwise authorized by the Chief Administrator, the filing of a request for judicial intervention pursuant to this section shall cause the assignment of the action to a judge pursuant to section 202.3 of this Part. The clerk may require that a self-addressed and stamped envelope accompany the request for judicial intervention.

Additional Notice of Consumer Credit Action

§ 208.6(h) Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the New York City Civil Court)

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

(1) At the time of filing with the clerk 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 unsealed** 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. _____

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 money 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

PRECAUCIÓN: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe dirigirse a las ventanillas del secretario del tribunal, localizada en la dirección enumerada en el frente del sobre que recibió, tan pronto como le sea posible, para responder a la demanda presentando una "contestación." Quizás usted quiera comunicarse con un abogado. Si usted no presenta una contestación, el tribunal puede emitir un fallo monetario en contra suya. Una vez emitido, ese fallo es válido y puede ser

utilizado contra usted por un período de veinte años, y contra su propiedad personal y su dinero, incluyendo una porción de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Además, un fallo monetario afecta su crédito y puede afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un préstamo para comprar un automóvil. Usted no puede ser arrestado ni apresado por adeudar dinero.

Es importante que se dirija a las ventanillas del secretario judicial antes mencionado tan pronto como pueda. Usted debe presentar esta notificación y cualesquiera documentos legales que haya recibido. Puede obtener información adicional en el sitio web del sistema: www.nycourts.gov.

The face of the envelope shall be addressed to the defendant at the address at which process was served, 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. No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

§ 202.27-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the Supreme Court and the County Court)

§ 210.14-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the City Courts Outside the City of New York)

§ 212.14-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the District Courts)

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

(1) At the time of filing with the clerk 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 unsealed** envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

SUPREME/DISTRICT/CITY COURT. COUNTY/CITY 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 respond to the lawsuit as soon as possible by filing an "answer." You may wish to contact an attorney. If you do not respond to the lawsuit, the court may enter a money 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. Additional information can be found on the court system's website at: www.nycourts.gov

PRECAUCIÓN: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe, tan pronto como le sea posible, responder a la demanda presentando una "contestación." Quizás usted quiera comunicarse con un abogado. Si usted no presenta una contestación, el tribunal puede emitir un fallo monetario en contra suya. Una vez

emitido, ese fallo es válido y puede ser utilizado contra usted por un período de veinte años, y contra su propiedad personal y su dinero, incluyendo una porción de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Además, un fallo monetario afecta su crédito y puede afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un préstamo para comprar un automóvil. Usted no puede ser arrestado ni apresado por adeudar dinero. Puede obtener información adicional en el sitio web del sistema: www.nycourts.gov.

The face of the envelope shall be addressed to the defendant at the address at which process was served, 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. No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

EXHIBIT B

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

The undersigned, being duly sworn, deposes and says:

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

2. Plaintiff and Defendant entered into a credit agreement ("Agreement"). Defendant agreed to pay Plaintiff for all goods, services and cash advances provided pursuant to the Agreement. The amount of the last payment, if any, made by Defendant was \$_____, made on _____ [*date*]. Defendant is now in default and demand for payment has been made. A true and correct copy of the Agreement is attached as an exhibit to this affidavit.

3. [*Complete 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. On or about _____ [*date*], Plaintiff sent one or more account statements relating to the Account to Defendant stating the amount due as \$_____. The account statement(s) were mailed to Defendant's last known address and Plaintiff's records do not reflect that the statement(s) were returned by the post office or that the Defendant objected to them. A true and correct copy of the final account statement(s) is attached as an exhibit to this affidavit.

4. At this time, Defendant owes \$_____ on the Account. This amount includes a charge-off balance of \$_____, post-charge-off interest of \$_____, post-charge-off fees and charges of \$_____, less any post-charge-off credits or payments made by or on behalf of the Defendant of \$_____.

WHEREFORE, deponent demands judgment against Defendant 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 _____ [*employee/officer/member*] of _____ [*original creditor*] (“Original Creditor”), and I have personal knowledge of and access to Original Creditor’s books and records (“Business Records”), including electronic records, relating to a pool of charged-off consumer credit accounts sold or assigned by _____ [*original creditor*] to _____ [*debt buyer*] (“Debt Buyer”), on _____ [*date*] (the “Sale”), which included the account (“Account”) of the consumer (“Consumer”) identified in the exhibits attached hereto and incorporated herein. As part of the Sale, Original Creditor assigned all of its interest in the Account, including the right to any proceeds from the Accounts, to Debt Buyer, and it transferred Business Records relating to the Account to Debt Buyer. A true and correct copy of the bill of sale or written assignment of the Account is attached as an exhibit to this affidavit.

2. In my position, I also have personal knowledge of Original Creditor’s procedures for creating and maintaining its Business Records, including its procedures relating to the sale and assignment of consumer credit accounts. Original Creditor’s Business Records were made in the regular course of business and it was the regular course of such business to make the Business Records. The Business Records were made at or near the time of the events recorded. Based on my knowledge of Original Creditor’s Business Records, I have personal knowledge of the facts set forth in this affidavit.

3. Original Creditor and Consumer were parties to a credit agreement (“Agreement”). Consumer agreed to pay Original Creditor for all goods, services and cash advances provided pursuant to the Agreement. The date and the amount of the last payment, if any, made by Consumer are set forth in an exhibit attached hereto and made a part hereof. Consumer defaulted and a demand for payment was made by Original Creditor. A true and correct copy of the Agreement is attached as an exhibit to this affidavit.

4. [*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 Consumer’s Account to Consumer on the date(s) and for the amount(s) due set forth in an exhibit attached hereto and made a part hereof. The account statement(s) were mailed to Consumer’s last known address and Original Creditor’s Business Records do not reflect that the statement(s) were returned by the post office or that the Consumer objected to them. A true and correct copy of the most recent account statement(s) generated and mailed by Original Creditor is attached as an exhibit to this affidavit.

5. At the time of Sale, Consumer owed the amount set forth in the exhibits attached hereto and made a part hereof, which also set forth the name of the Consumer; the last four digits of the Account number; the date and amount of the charge-off balance; the date and amount of the last payment, if any; the total amounts, if applicable, of any post-charge-off interest and post-charge-off fees and charges; any post-charge-off credits or payments made by or on behalf of the Consumer; and the balance due at the time of the Sale. 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 _____ [*employee/officer/member*] of _____ [*debt seller*] (“Debt Seller”) and I have personal knowledge of and access to Debt Seller’s books and records (“Business Records), including electronic records, relating to a pool of charged-off consumer credit accounts purchased by or assigned to the Debt Seller from _____ [*original creditor or prior debt seller*] on _____ [*date*] (the “Purchase”), which included the account (“Account”) of the consumer (“Consumer”) identified in the exhibits attached hereto and incorporated herein. As part of the Purchase, _____ [*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, and it transferred Business Records relating to the Account to Debt Seller.

2. In my position, I also have personal knowledge of Debt Seller’s procedures for creating and maintaining its Business Records, including its procedures relating to the purchase, sale and assignment of consumer credit accounts. Debt Seller’s Business Records were made in the regular course of business and it was the regular course of such business to make the Business Records. The Business Records were made at or near the time of the events recorded. Based on my knowledge of Debt Seller’s Business Records, I have personal knowledge of the facts set forth in this affidavit.

3. On _____ [*date*], Debt Seller sold or assigned a pool of charged-off consumer credit accounts to _____ [*debt buyer*] (the “Sale”), which included the Account of the Consumer. 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, Business Records relating to the Account were transferred to _____ [*debt buyer*]. Prior to the Sale, those Business Records had been created and maintained in the ordinary course of Debt Seller’s business. A true and correct copy of the bill of sale or written assignment of the Account is attached as an exhibit to this affidavit.

4. At the time of Sale, Consumer owed the amount set forth in an exhibit attached hereto and made a part hereof, which also sets forth the amount of the charge-off balance and, the total amounts, if applicable, of any post-charge-off interest and post-charge-off fees and charges, less any post-charge-off credits or payments made by or on behalf of the Consumer.

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 _____ [*employee/officer/member*] of _____ [*debt buyer plaintiff*] ("Plaintiff") and I have access to Plaintiff's books and records ("Business Records"), including electronic records, relating to the account ("Account") of _____ [*name of Defendant*]. The last four digits of the Account number are _____. In my position, I also have personal knowledge of Plaintiff's procedures for creating and maintaining its Business Records, including its procedures relating to the purchase and assignment of consumer credit accounts. Plaintiff's Business Records were made in the regular course of business and it was the regular course of such business to make the Business Records. The Business Records were made at or near the time of the events recorded. Based on my knowledge of Plaintiff's Business Records, I have personal knowledge of the facts set forth in this affidavit.

2. On _____ [*date*], Plaintiff 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 Plaintiff. As part of the Purchase, Business Records relating to the Account were transferred to Plaintiff. Following the Purchase, those Business Records were maintained in the ordinary course of Plaintiff's business.

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

a. _____ [*original creditor and date of sale/assignment*]

b. _____ [*debt seller and date of sale/assignment*]

c. _____ [*debt seller and date of sale/assignment*]

4. At this time, Defendant owes \$_____ on the Account. This amount includes the charge-off balance of \$_____, post-charge-off interest of \$_____, and post-charge-off fees and charges of \$_____, less post-charge-off credits or payments made by or on behalf of the Defendant of \$_____.

WHEREFORE, deponent demands judgment against Defendant 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

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

[_____], Esq., pursuant to CPLR § 2106 and under the penalties of perjury, affirms as follows:

1. I am counsel for _____ [*Plaintiff*] in the instant action.
2. The cause(s) of action asserted herein accrued on _____ [*date of default*] in the state of _____. The statute(s) of limitations for the cause(s) of action asserted herein is/are _____ years. Based on my reasonable inquiry, I believe 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]