

Your Court Street Lawyer's Quick Reference Guide

The Consumer Credit Fairness Act

By Richard A. Klass, Esq.



*“Credit buying is much like being a drunk. The buzz happens immediately, and it gives you a lift. The hangover comes the day after.”
— Dr. Joyce Brothers*

Richard A. Klass, Esq. maintains a law firm engaged in civil litigation in Brooklyn, New York. He may be reached by e-mail at richklass@courtstreetlaw.com or by phone at (718) COURT●ST with any questions. Prior results do not guarantee a similar outcome.

This book is designed for general information only. The information presented here should neither be construed to be formal legal advice nor the formation of a lawyer/client relationship.

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About Richard A. Klass, Esq.

- **PRACTICE AREAS:** Commercial Litigation; Real Estate Litigation; Legal Malpractice; General Practice
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BIO

Richard A. Klass is the quintessential “Court Street lawyer,” as defined by *The New York Times*, a “street-smart sharpie with verve, hustle and a striver’s charisma.” Practicing law much like a critical care doctor functions, Klass is the lawyer clients appreciate when the issue is so vital. Practicing primarily in the areas of commercial litigation, debt collection and enforcement of judgments, legal malpractice, and real estate litigation, his firm also represents clients in bankruptcy, civil appeals, and federal court litigation. Mr. Klass lectures and writes extensively for lawyers and industry professionals.

Mr. Klass serves as President of the Brooklyn Bar Association, Member of the Grievance Committee for the Appellate Division, Second Department, Former Chair of the General Practice Section of the New York State Bar Association, Co-Editor of the New York State Bar Association’s General Practice Section *One on One* Publication, and an Arbitrator, Small Claims Part of the Civil Court of the City of New York, County of Kings. Mr. Klass also serves as a Fee Arbitrator in the Part 137 Attorney-Client Fee Dispute Program. He has been selected for the New York Super Lawyers List.

In 1989, Mr. Klass received his Bachelor of Arts at Hofstra University and his Juris Doctorate at New York Law School in 1992. He was the Recipient of the American Jurisprudence Award in Conflict of Laws. Mr. Klass is admitted to the following jurisdictions: State of New York (1992); State of New Jersey (1993); U.S. District Court for the Eastern District of New York (1992); U.S. District Court for the Southern

District of New York (1992); U.S. District Court for the District of New Jersey (1993); U.S. Court of Appeals for the Second Circuit (1999); and the U.S. Supreme Court (1997).

Richard Klass has been a formative voice within New York law circles both for the high standards of his work as well as his extensive writings, lectures, and appearances in the media. He reaches an audience of lawyers and non-lawyers equally through publications which include his quarterly newsletter, *Law Currents* and his blogs *Law Currents* and *The Legal Malpractice Blog, New York*. His books include *Surplus Moneys Proceedings under RPAPL 1361 (2021)*; *Hug of War instead of Tug of War: RPAPL 993 (2020)*; *A Man’s Home is (Not Always) his Castle: RPAPL 881 Licenses (2019)*; *I Got Bloomed: Keeping Client Confidences and Loyalties (2018)*, *Killing the “Zombies”: Recent Changes to New York State’s Foreclosure Laws (2017)*, *Attorney’s Liens and Legal Fee Enforcement (2015)*, *Retention and Withdrawal of Counsel: a guide for attorneys (2015)*, and *Successfully Defending Your Credit Card Lawsuit (2013)*. The newsletter and blog, *Law Currents*, with tens of thousands of readers combined, is particularly popular. Written in a style that appeals to nearly anyone who likes a good story, this two-page illustrated quarterly features entertaining and informative case studies written in plain English.

Richard A. Klass, Esq.

Litigation for the Legal Profession:

Legal Malpractice

Attorney fee collection

Consultation on and litigation of attorney’s retaining and charging liens

Expert Witness analysis and testimony on reasonable attorney’s fees and award

The Consumer Credit Fairness Act of 2021:

The Consumer Credit Fairness Act of 2021 was enacted in order to address various substantive and procedural issues dealing with consumer debt lawsuits. The legislation was enacted in 2021 with an effective date of April 30, 2022. Much of the Consumer Credit Fairness Act (CCFA) was passed to provide debtors with additional protection concerning consumer debt claims brought against them. Highlights of the CCFA include:

New Statute of Limitations: Generally, most actions for breach of contract in New York State may be commenced within six years of the date of breach. Now, the statute of limitations within which to commence an action against a debtor on a consumer debt is three years. Further, the plaintiff-creditor must represent that it believes the statute of limitations has not expired.

Notice Requirements: Additional notices are to be served upon the defendant-debtor, including notice of the lawsuit to be served at the inception of the lawsuit and notice of the motion for summary judgment if and when brought by the plaintiff-creditor.

Detailed Affidavits: The CCFA added stringent requirements regarding affidavits to be filed when the plaintiff-creditor is applying for judgment, including allegations and exhibits required of an original creditor, a debt seller and a debt buyer.

Arbitration: Actions brought to confirm arbitration awards must now include additional proof.

Reduction of Rate of Interest: Deviating from longstanding New York State law in which the rate of interest on a money judgment is computed at nine percent per annum, the CCFA reduced the interest rate on consumer debt cases to two percent per annum.

Consumer Credit Reform Resources

Overview of Consumer Credit Reform

Additional Notice Forms:

- [Additional Notice of Lawsuit \[UCS-CCR1\]](#)
- [Additional Notice of Summary Judgment Motion \[UCS-CCR2\]](#)

Affidavit Forms:

- [Affidavit of Facts by Original Creditor \[UCS-CCR3\]](#)
- [Affidavit of Facts and Sale of Account by Original Creditor \[UCS-CCR4\]](#)
- [Affidavit of Purchase and Sale of Account by Debt Seller \[UCS-CCR5\]](#)
- [Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff \[UCS-CCR6\]](#)

Affirmation Form:

- [Affirmation of Non-Expiration of Statute of Limitations \[UCS-CCR7\]](#)

Confirmation of an Arbitration Award

Rate of Interest Applicable to Money Judgments for Consumer Debt:

- [Rate of Interest \[CPLR 5004\]](#)
- [Default Judgment and Judgment by Confession \[CPLR 3215 & 3218\]](#)
- [Execution of Judgment and Income Execution \[CPLR 5230 & 5231\]](#)
- [Restraining Notice \[CPLR 5222\]](#)

Overview of Consumer Credit Reform

On October 1, 2014, the court system adopted major reforms addressing default judgment applications in consumer credit cases, including those commenced by third-party debt buyers. The new rules required original creditor and debt buyer plaintiffs to submit specific affidavits and notices that meet substantive legal and evidentiary standards for entry of a default judgment under New York law. The rules were intended to ensure a fair legal process and address 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. The scope of these rules was limited to default judgment applications in consumer debt cases made to the clerk under CPLR 3215(a), and the rules applied a narrower definition of "consumer debt" than the CPLR, which limited their applicability to default judgment applications for credit card debt only.

On November 8, 2021, the Consumer Credit Fairness Act (CCFA) was signed into law. The provisions of the act take effect on May 7, 2022. The CCFA essentially mirrors the reforms implemented by court rule for credit card debt cases in 2014 and codifies them into the CPLR, thereby, extending them to all consumer debt actions.

On December 31, 2021, legislation amending the CPLR regarding the rate of interest applicable to money judgments for consumer debt was also signed into law. The amendments essentially lower the rate of interest for money judgments entered against a natural person in consumer debt cases from 9% to 2% beginning on April 30, 2022.

- **Legislation:**
 - Consumer Credit Fairness Act — [S153](#)
 - Rate of Interest Applicable to Money Judgments for Consumer Debt — [S5724-A](#)
- **Court Rules:**
 - New York City Civil Court: 22 NYCRR §§ [208.14-a](#) and [208.6\(h\)](#)
 - City Courts outside the City of New York: 22 NYCRR §§ [210.14-a](#) and [210.14-b](#)
 - Nassau and Suffolk District Courts: 22 NYCRR §§ [212.14-a](#) and [212.14-b](#)
 - Supreme & County Courts: 22 NYCRR §§ [202.27-a](#) and [202.27-b](#)
- **Administrative Orders:**
 - Administrative Order dated [May 4, 2022](#)
 - Administrative Order dated [December 23, 2014](#)
 - Administrative Order dated [September 15, 2014](#)

Additional Notices

The Consumer Credit Fairness Act requires two additional notices to the consumer defendant.

The **Additional Notice of Lawsuit [UCS-CCR1]** is required when proof of service of the summons & complaint is filed with the clerk. The plaintiff must submit the Additional Notice of Lawsuit, in both English and Spanish, with a stamped, unsealed envelope addressed to the defendant. The envelope must be addressed to the same address where the summons & complaint was served, including apartment number, if any, and must have the applicable court clerk's office as the return address. The Additional Notice of Lawsuit must be mailed promptly by the court clerk to the defendant, and no default judgment may be entered unless at least 20 days have elapsed from the date of mailing, or if returned to the court as undeliverable, unless the address matches the defendant's address on record with the New York State Department of Motor Vehicles. It is the plaintiff's responsibility to obtain and submit such proof of address to the court clerk.

- **Additional Notice of Lawsuit [UCS-CCR1]**

The **Additional Notice of Summary Judgment Motion [UCS-CCR2]** is required when a Summary Judgment motion or a Summary Judgment in Lieu of Complaint motion is filed by the plaintiff and the consumer defendant is not represented by an attorney. The plaintiff must submit the Additional Notice of Summary Judgment Motion, in both English and Spanish, with a stamped, unsealed envelope addressed to the defendant. The Additional Notice of Summary Judgment Motion must be mailed promptly by the court clerk to the defendant, and summary judgment based upon the defendant's failure to oppose the motion may not be entered unless at least 14 days have elapsed from the date of mailing, or at least 19 days have elapsed from the date of mailing if the plaintiff's motion demands additional time for service of responsive papers per CPLR §2214(b).

- **Additional Notice of Summary Judgment Motion [UCS-CCR2]**

Affidavits

The Consumer Credit Fairness Act requires plaintiffs to file certain affidavits when seeking a default judgment in any consumer debt case as follows:

- If the plaintiff is the original creditor, the application **MUST** include an **Affidavit of Facts by Original Creditor [UCS-CCR3]**.
- If the plaintiff is not the original creditor (AKA a debt buyer), the application **MUST** include:
 - **Affidavit of Facts and Sale of Account by Original Creditor [UCS-CCR4]** constituting the:
 - Debt;
 - Default in payment;
 - Sale or assignment of the debt; and
 - Amount due at time of sale or assignment;
 - **Affidavit of Purchase and Sale of Account by Debt Seller [UCS-CCR5]** completed by each subsequent debt seller if the account was re-sold and purchased by subsequent debt buyer(s); and
 - **Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff [UCS-CCR6]**, which includes a chain of title of the debt completed by the plaintiff or plaintiff's witness.

The required affidavit forms are provided in both fillable PDF and Word formats as follows:

Affidavit of Facts by Original Creditor [UCS-CCR3]

The following exhibits must be attached to the Affidavit of Facts by Original Creditor [UCS-CCR3]:

1. Agreement: Contract/Invoice or Charge-off Statement if the consumer debt is from a revolving credit account
2. Most recent Account Statement with a charge, payment and/or balance transfer
3. Additional books and records evidencing:
 - Defendant's full name
 - Balance due and last 4 digits of account number printed on the most recent monthly statement reflecting a charge, payment and/or balance transfer
 - Last payment date and amount
 - Charge-off date and amount
 - Delinquency date and amount
 - Post charge-off/delinquency interest and/or fees
 - Post charge-off/delinquency credits

Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.

Affidavit of Facts and Sale of Account by Original Creditor [UCS-CCR4]

The following exhibits must be attached to the Affidavit of Facts and Sale of Account by Original Creditor [UCS-CCR4]:

1. Bill of sale from original creditor to debt buyer
2. Agreement: Contract/Invoice or Charge-off Statement if the consumer debt is from a revolving credit account
3. Most recent Account Statement with a charge, payment and/or balance transfer
4. Additional books and records evidencing:
 - Debtor's full name

***Your Court Street Lawyer's Quick Reference Guide
The Consumer Credit Fairness Act***

- Balance due and last 4 digits of account number printed on the most recent monthly statement reflecting a charge, payment and/or balance transfer
- Last payment date and amount
- Charge-off date and amount
- Delinquency date and amount
- Post charge-off/delinquency interest and/or fees
- Post charge-off/delinquency credits
- Total balance at time of sale

Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.

Affidavit of Purchase and Sale of Account by Debt Seller [UCS-CCR5]

The following exhibits must be attached to the Affidavit of Purchase and Sale of Account by Debt Seller [UCS-CCR5]:

1. Bill of sale from debt seller to debt buyer
2. Additional business records evidencing:
 - Debtor's full name
 - Total balance and last 4 digits of account number at time of sale

Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.

Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff [UCS-CCR6]

The following exhibits must be attached to the Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff [UCS-CCR6]:

1. Bill of sale from debt seller to plaintiff
2. Most recent Account Statement with a charge, payment and/or balance transfer
3. Additional books and records evidencing:
 - Defendant's full name
 - Balance due and last 4 digits of account number printed on the most recent monthly statement reflecting a charge, payment and/or balance transfer
 - Last payment date and amount
 - Charge-off date and amount
 - Delinquency date and amount
 - Post charge-off/delinquency interest and/or fees
 - Post charge-off/delinquency credits

Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.

Affirmation

When applying to the clerk of the court for a default judgment for a sum certain in a consumer debt case, the plaintiff must include an affirmation stating that, after reasonable inquiry, he or she believes that the applicable statute of limitations has not expired.

- **Affirmation of Non-Expiration of Statute of Limitations [UCS-CCR7]**

Confirmation of an Arbitration Award

Under CPLR 7516, the court shall not grant a motion to confirm an arbitration award that is based upon a consumer credit transaction unless the moving party:

1. Pleads the actual terms and conditions of the arbitration agreement; and
2. Attaches the following to the petition:
 - Arbitration Agreement;
 - Demand for Arbitration or Notice of Intention to Arbitrate with proof of service; and
 - Arbitration Award with proof of service.
3. If the arbitration award does not contain a statement of:
 - Claims submitted for arbitration;
 - Claims ruled upon by the arbitrator; and
 - Figures used by the arbitrator to calculate the award;

then the petition **MUST** contain such a statement.

Rate of Interest Applicable to Money Judgments for Consumer Debt

Rate of Interest [CPLR 5004]

Effective April 30, 2022, the rate of interest for money judgments in consumer debt cases against a natural person (i.e., a human being) is 2% per year. For consumer debt judgments against a natural person entered before April 30th, the rate of interest for any unpaid balances becomes 2% per year beginning on April 30, 2022. For consumer debt judgments entered against a defendant that is not a natural person (i.e., a business or organization), the annual rate of interest remains at 9% per year irrespective of whether the judgment was entered before or after April 30th. The annual rate of interest remains at 9% per year for all other judgments, except for consumer debt judgments against a natural person.

For the purpose of money judgments in consumer debt cases against a natural person, “consumer debt” means any obligation or alleged obligation of any natural person to pay money arising out of a transaction in which the money, property, insurance or services with the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, a consumer credit transaction, as defined in CPLR §105(f) [*cited below*].

- *CPLR § 105(f) Consumer credit transaction. The term “consumer credit transaction” means a transaction wherein credit is extended to an individual and the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.*

For consumer debt judgments against a natural person entered before April 30th, a defendant is not entitled to a reduction of interest accrued or to a refund of interest or fee payments that were made at the higher 9% interest rate prior to April 30, 2022.

Default Judgment and Judgment by Confession [CPLR 3215 & 3218]

As of April 30, 2022, litigants in consumer debt cases against a natural person must now include an affidavit with a statement that the new 2% interest rate applies when filing a:

- Default Judgment
- Default Judgment for failure to comply with a Stipulation of Settlement
- Judgment by Confession
- Execution of Judgment

Execution of Judgment and Income Execution [CPLR 5230 & 5231]

Under CPLR 5230(a), an Execution of Judgment form must specify the applicable interest rate and the date as of which it applies. For consumer credit judgments against a natural person where the applicable interest rate changes as of April 30th from 9% to 2% while an Execution of Judgment is ongoing, the judgment creditor is responsible to provide an amended Execution of Judgment form.

Under CPLR 5230(b), issuance of an amended Execution of Judgment form must be affected by:

- The judgment creditor, as an officer of the court, within 60 days of the effective date (i.e., by June 29, 2022) for judgments entered in **Local Civil Courts**.
- Either the clerk of the court in the county where the judgment was first docketed *OR* the judgment creditor, as an officer of the court, within 60 days of the effective date (i.e., by June 29, 2022) for judgments entered in **Supreme, County or Family Courts**.

The sheriff must serve the amended execution within 45 days after it is delivered to him/her.

The above provisions of CPLR §5230 regarding Executions of Judgment also apply to Income Executions under CPLR §5231.

Restraining Notice [CPLR 5222]

For consumer credit judgments against a natural person where the applicable interest rate changes as of April 30th from 9% to 2% while a Restraining Notice is in effect, the judgment creditor, without leave of the court, must issue an amended restraining notice that includes the date as of which the new interest rate applies.

State of New York Department of Financial Services Industry Guidance, Subject: Compliance with 23 N.Y.C.R.R. §1.3(b) and the new Consumer Credit Fairness Act. See attached.

Please feel free to contact me with any questions.

— Richard A. Klass 



Additional Notice of Lawsuit

UCS-CCR1 (04/2022)

Page 1 of 2

nycourthelp.gov

Name of Court: _____
 County: _____
 Street Address: _____
 City, State, Zip Code: _____

Name of Defendant: _____
 Defendant Address: _____

Plaintiff: _____
 Defendant: _____
 Original Creditor: _____
 Index Number: _____

Attention: a lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt.

You may wish to contact an attorney.

You should respond to the lawsuit as soon as possible by filing an "answer" which may be done at the court clerk's office listed above.

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 may 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 at the New York State Court System website.

Sources of information and assistance:

The court encourages you to inform yourself about your options as a defendant in this lawsuit. In addition to seeking assistance from a private attorney or legal aid office, there are free legal assistance computer programs that you can use online to help you represent yourself in this lawsuit.

For further information, or to locate a legal aid program near you, you may visit the LawHelpNY website or the New York State Court System website, which has information for representing yourself and links to other resources at:

<https://www.nycourts.gov/courthelp/MoneyProblems/whenYouOwe.shtml>.



Notificación Adicional de Demanda

UCS-CCR1 (04/2022)

Page 2 of 2

nycourthelp.gov

Tribunal: _____

Condado: _____

Dirección: _____

Ciudad, estado, Código postal: _____

Nombre de la parte demandada: _____

Dirección: _____

Parte Demandante: _____

Parte Demandada: _____

Acreedor Original: _____

Número de causa: _____

Atención: Se ha entablado una demanda en su contra reclamándole una deuda de consumo.

Si quiere, consulte con un abogado.

Conteste a la demanda lo antes posible al entablar una “contestación” en la secretaría del tribunal arriba mencionado.

El tribunal podría emitir un fallo monetario en su contra si no contesta la demanda. Una vez que se emita el fallo, este tendrá validez y podría usarse en su contra por 20 años y le podrían quitar sus bienes personales y dinero, incluso una porción de su sueldo y/o cuenta bancaria. También, un fallo monetario podría afectar su puntuación crediticia y podría impactar su capacidad para alquilar una vivienda, conseguir empleo, o solicitar un préstamo.

NO se le arrestará ni encarcelará por deudas.

Para más información visite la página web del Sistema de los Tribunales del estado de Nueva York.

Fuentes de información y ayuda:

El tribunal le anima a informarse acerca de las opciones disponible como persona demandada. Además de buscar ayuda con abogados privados o la oficina de ayuda legal, sepa que existen programas de computadora de asesoría legal, en línea, a su disposición si se representará por derecho propio en esta demanda.

Para más información, o para localizar un programa de asesoría legal cercano a usted, visite la página web LawHelpNY o la página web del Sistema de los Tribunales del estado de Nueva York que ofrece información y enlaces para recursos de representación por derecho propio

<https://www.nycourts.gov/courthelp/MoneyProblems/whenYouOwe.shtml>.



IMPORTANT NOTICE: Motion for Summary Judgment

UCS-CCR2 (04/2022)
Page 1 of 2
nycourthelp.gov

_____ Court

County of _____

Plaintiff: _____

Defendant: _____

Index #: _____

The Plaintiff has asked the Court to enter judgment against you by making a Motion for Summary Judgment. Keep this Notice and the envelope it came in. The Motion for Summary Judgment was separately served on you. To avoid entry of judgment:

1. You must appear in court as directed below:

WHERE:

- Name of Court: _____
- Address: _____
- Part/Room Number: _____

WHEN:

- Date: _____
- Time: _____ AM PM

2. You should oppose the motion IN WRITING.

HOW TO OPPOSE THE MOTION:

1. State the legal reasons why the court should not enter judgment against you, including your defenses.
2. State the facts that support your defenses.
3. Attach affidavits and/or exhibits to support the facts you assert.
 - a. Affidavits are sworn statements of witnesses (including you) who state facts they know to be true. The affidavit should state the facts and how the witness knows them. Also, the affidavit should explain any exhibits. An affidavit of service is an affidavit that states how and when papers were served. An affidavit must be signed in front of a notary. Free forms are available on the New York State Court System website at: <http://ww2.nycourts.gov/RULES/CCR/selfforms.shtml>.
 - b. Exhibits are copies of documents. Exhibits are usually attached to affidavits.
4. Have someone (not you or another defendant in the lawsuit) mail a copy of your opposition to the plaintiff's attorney before your court date and have them prepare an affidavit of service by mail.
5. Bring a copy of your opposition and the affidavit of service to your court date.
6. Attend your court date.

IF YOU NEED MORE TIME:

If you need more time to prepare your written response, you should appear at your court date and ask the judge for more time. You can also ask the judge to refer you for legal help.

IF YOU NEED LEGAL HELP:

You may seek legal help from a private attorney or a legal aid office. Some courts have free legal assistance programs for people without lawyers. You can find resources on the New York State Court System website at: <https://www.nycourts.gov/courthelp/MoneyProblems/whenYouOwe.shtml>.





AVISO IMPORTANTE: Moción para un Fallo Sumario

_____ Court
 County of _____
 Plaintiff: _____
 Defendant: _____

Index #: _____

La parte demandante ha solicitado que el tribunal emita un fallo en su contra al presentar una moción para un fallo sumario. Guarde este aviso en el sobre recibido. Se le ha emplazado con la moción para un fallo sumario. Para evitar que se dicte un fallo:

1. Comparezca ante:
 - Tribunal: _____
 - Dirección: _____
 - Juzgado/No. de sala: _____
 - Fecha: _____
 - Hora: _____ AM PM

2. Presente su oposición POR ESCRITO.

CÓMO OponERSE A LA MOCIÓn:

1. Indique las razones legales por las cuales el tribunal no debería dictar un fallo en su contra e incorpore sus defensas.
2. Indique los hechos que respaldan sus defensas.
3. Adjunte las declaraciones juradas y/o pruebas que respaldan la información/los hechos que usted afirma.
 - a. Las declaraciones juradas aseguran la veracidad de lo declarado por testigos que testifican (incluso por usted). La declaración jurada indica los hechos tal y como los conoce los testigos. También, la declaración jurada deberá explicar toda prueba. Una declaración jurada de emplazamiento indica cómo y cuándo se entregaron los documentos. La declaración jurada debe firmarse ante un notario. Para formularios gratuitos visite: <http://ww2.nycourts.gov/RULES/CCR/selfforms.shtml>.
 - b. Las pruebas son copias de documentos. Generalmente las pruebas se adjuntan a las declaraciones juradas.
4. Pídale a alguien que le envíe por correo una copia de su oposición al abogado(a) de la parte demandante antes de comparecer en el tribunal (no podrá enviarlo ni usted ni la otra persona demandada) y pídale que prepare una declaración jurada de emplazamiento por correo.
5. Traiga una copia de su oposición y de la declaración jurada del emplazamiento a su comparecencia.
6. Acuda a su cita judicial.

SI NECESITA MÁS TIEMPO:

Si necesita más tiempo para preparar su respuesta por escrito, comparezca a su cita en la fecha indicada y pídale al juez tiempo adicional. Podrá pedirle al juez que le refiera para ayuda legal.

SI NECESITA AYUDA LEGAL:

Pídale ayuda legal a un abogado privado o a la oficina de asesoría legal. Algunos tribunales ofrecen programas gratuitos de ayuda legal para personas que no cuentan con abogados. Encontrará recursos en la página web del Sistema de los Tribunales del Estado de Nueva York:

<https://www.nycourts.gov/courthelp/MoneyProblems/whenYouOwe.shtml>.



Affidavit of Facts by Original Creditor

The undersigned, being duly sworn, deposes and says:

1. I, _____, [*Affiant name*] am a/an [employee officer member] of _____ [*place of employment/servicing*] ("Servicer"), servicer for _____ [*Original Creditor name*] ("Plaintiff"), and I have access to Plaintiff's books and records ("Business Records"), including electronic records, relating to the account ("Account") of _____ [*Defendant name*] ("Defendant"). The last four digits of the Account number are _____. In my position, I have personal knowledge of the procedures for creating and maintaining Plaintiff's 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. [**Check this paragraph if Servicer**]
Servicer is the servicer for the Plaintiff in the underlying action. Plaintiff has authorized Servicer to service and maintain the Business Records relating to the Account, along with giving testimony and executing affidavits, declarations, and certifications on behalf of Plaintiff regarding the Account.
3. 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 or document(s) evidencing the Agreement is/are attached as an exhibit to this affidavit.
4. [**Check 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.
5. [**Check this paragraph if seeking judgment on a revolving consumer credit account**]
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 \$_____.
6. [**Check this paragraph if seeking judgment on a non-revolving consumer credit account**]
At this time, Defendant owes \$_____ on the Account. As set forth in the exhibits attached hereto and made a part hereof, this amount is broken out by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges, less any credits or payments made by or on behalf of the Defendant of \$_____.



7. As set forth in New York CPLR Article 50, the interest rate applicable to the Account pursuant to section five thousand four of this chapter applies.

8. **[Check if not seeking post-judgment interest]**

Plaintiff explicitly disclaims any right to post-judgment interest on this Account.

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: _____

Affiant Signature

Affiant Name

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

Notary Public

Exhibits to be Attached to Affidavit

- 1. Agreement= Contract/Invoice or Charge-off Statement if revolving credit account**
- 2. Most Recent Charge/Payment/Balance Transfer Statement**
- 3. Additional Books and Records evidencing:**
 - a. Defendant's Full Name
 - b. Balance due and last 4 digits of Account Number printed on Most Recent Monthly Statement reflecting charge/payment/balance transfer
 - c. Last Payment Date and Amount
 - d. Charge-off/Delinquency Date and Amount
 - e. Post-Charge-off/Delinquency Interest and/or Fees
 - f. Post-Charge-off/Delinquency Credits

[Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.]



Affidavit of Facts and Sale of Account by Original Creditor

The undersigned, being duly sworn, deposes and says:

1. I, _____, [*Affiant name*] am a/an [employee officer member] of _____ [*place of employment/servicing*] (“Servicer”), servicer for _____ [*Original Creditor name*] (“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 defaulted/charged-off consumer credit accounts sold or assigned by Original Creditor to _____ [*Debt Buyer name*] (“Debt Buyer”), on _____ [*date*] (the “Sale”), which included the account (“Account”) of the consumer (“Consumer”) identified in the exhibits attached hereto and incorporated herein.
2. **[Check this paragraph if Servicer]**
Servicer is the servicer for the Original Creditor. Original Creditor has authorized Servicer to service and maintain the Business Records relating to the Account, along with giving testimony and executing affidavits, declarations, and certifications on behalf of Original Creditor regarding the Account.
3. As part of the Sale, Original Creditor assigned all of its interest in the Account, including the right to any proceeds from the Account, 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.
4. 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.
5. 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.
6. **[Check 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.



7. **[Check this paragraph if seeking judgment on revolving consumer credit account]**

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.

8. **[Check this paragraph if seeking judgment on a non-revolving consumer credit account]**

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 amount broken out by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges, less any credits or payments made by or on behalf of the Defendant of \$_____.

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

Dated: _____

Affiant Signature

Affiant Name

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

Notary Public

Exhibits to be Attached to Affidavit

- 1. Bill of Sale from Original Creditor to Debt Buyer**
- 2. Agreement= Contract/Invoice or Charge-off Statement if revolving credit account**
- 3. Most Recent Charge/Payment/Balance Transfer Statement**
- 4. Additional Books and Records evidencing:**
 - a. Debtor's Full Name
 - b. Balance due and last 4 digits of Account Number printed on Most Recent Monthly Statement reflecting charge/payment/balance transfer
 - c. Last Payment Date and Amount
 - d. Charge-off/Delinquency Date and Amount
 - e. Post-Charge-off/Delinquency Interest and/or Fees
 - f. Post-Charge-off/Delinquency Credits
 - g. Total Balance at time of Sale

[Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.]



Affidavit of Purchase and Sale of Account by Debt Seller

The undersigned, being duly sworn, deposes and says:

1. I, _____, [*Affiant name*] am a/an [employee officer member] of _____ [*place of employment*] (“Employer”). In my position, I was personally trained, and therefore have personal knowledge of, the policies and procedures of Employer, which training included the procedures surrounding its record keeping practices, and specifically the process surrounding the creation, maintenance and custody of all relevant systems, documents (both paper and/or electronic), data, and other books and records (collectively “Books and Records”) of _____ [*Debt Seller name*] (“Debt Seller”) regarding the account opened by _____ [*Original Creditor name*] (“Original Creditor”) ending in _____ [*last 4 digits of account #*] (“Account”) in the name of _____ [*Consumer name*] (“Consumer”). Debt Seller’s Books and Records were made in the regular course of business, and it was the regular course of such business to make the Books and Records. The Books and Records were made at or near the time of the events recorded.
2. My job responsibilities provide me with access to Books and Records of Debt Seller needed to validate the information in this affidavit. By virtue of my review of the Books and Records and my personal knowledge of the procedures for creating and maintaining them, I have personal knowledge of the Books and Records and the sale of the Account by Debt Seller to _____ [*Debt Buyer name*] (“Debt Buyer”) on _____ [*date*] (the “Sale”) as well as the procedures relating to the Sale.
3. **[Check this paragraph if Authorized Representative]**
Employer is the servicer for the Debt Seller in the underlying action. Debt Seller has authorized Employer to service and maintain the Books and Records relating to the Account, along with giving testimony and executing affidavits, declarations, and certifications on behalf of Debt Seller regarding the Account.
4. As part of the Sale, Debt Seller sold or assigned a pool of delinquent consumer credit accounts to Debt Buyer, which included the Account of the Consumer. A true and correct copy of the bill of sale or written assignment of the Account is attached as an exhibit to this affidavit.
5. As part of the Sale, Debt Seller assigned all its interests in and to the Account, including the right to any proceeds from the Account, to Debt Buyer, and it transferred its Books and Records relating to the Account to Debt Buyer. 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 Books and Records. The Books and Records were made at or near the time of the events recorded. To the extent that the Books and Records include records that were prepared by a third party, including but not limited to the Original Creditor, they are records that were incorporated into the Books and Records of Debt Seller and included in the Sale to Debt Buyer. The relevant Books and Records pertaining to the Account, including the amount owed by Consumer at the time of the Sale, are attached and made a part hereof.



6. [Check this paragraph if seeking judgment on a revolving consumer credit account]

The exhibits attached hereto set forth the name of the Original Creditor; 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, fees, and/or charges; any post charge-off credits and/or payments made by or on behalf of the Consumer; and the Account balance and last four digits of the Account number printed on the most recent monthly statement recording a purchase transaction, last payment, or balance transfer prior to charge-off of the Account.

7. [Check this paragraph if seeking judgment on a non-revolving consumer credit account]

The exhibits attached hereto set forth the name of the Original Creditor; the last four digits of the Account number; and the amount due at the time of sale or assignment broken out by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges, less post-sale 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: _____

Affiant Signature

Affiant Name

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

Notary Public

Exhibits to be Attached to Affidavit

- 1. Bill of Sale from Debt Seller to Debt Buyer**
- 2. Additional Business Records evidencing:**
 - a. Debtor's Full Name
 - b. Total Balance and last 4 digits of Account Number at time of Sale

[Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.]



Affidavit of Facts and Purchase of Account by Debt Buyer Plaintiff

The undersigned, being duly sworn, deposes and says:

1. I, _____, [*Affiant name*] am a/an [employee officer member] of _____ [*place of employment/servicing*] (“Servicer”), servicer for _____ [*Debt Buyer name*] (“Plaintiff”), and I have access to Plaintiff’s books and records (“Business Records”), including electronic records, relating to the account (“Account”) of _____ [*Defendant name*] (“Defendant”). The last four digits of the Account number are _____. In my position, I also have personal knowledge of the procedures for creating and maintaining Plaintiff’s Business Records, including its the 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. [**Check this paragraph if Servicer**]
Servicer is the servicer for the Plaintiff in the underlying action. Plaintiff has authorized Servicer to service and maintain the Business Records relating to the Account, along with giving testimony and executing affidavits, declarations, and certifications on behalf of Plaintiff regarding the Account.
3. Original Creditor and Defendant were parties to a credit agreement (“Agreement”). Defendant agreed to pay Original Creditor pursuant to the Agreement. The date and the amount of the last payment, if any, made by Defendant are set forth in an exhibit attached hereto and made a part hereof. Defendant defaulted on the Account and failed to pay the outstanding balance pursuant to the Agreement. A demand for payment was made, and a balance remained due and owing at the time of the sale. A true and correct copy of the Agreement or document(s) evidencing the Agreement is/are attached as an exhibit to this affidavit.
4. On _____ [*date*], Plaintiff purchased or was assigned the Account from _____ [*Debt Seller name*] (“Debt Seller”), and at that time, Debt Seller assigned all of its interest in the Account, including the right to any proceeds from the Account, to Plaintiff (the “Purchase”). As part of the Purchase, Business Records relating to the Account were transferred to Plaintiff and incorporated into Plaintiff’s Business Records. To the extent Business Records included records prepared by a third party, including but not limited to the Original Creditor, such records were incorporated into Plaintiff’s Business Records. Following the Purchase, those Business Records were maintained in the ordinary course of Plaintiff’s business.



5. As set forth in the attached affidavits submitted herewith, the complete chain of title, with the date of each sale or assignment of the Account, is as follows:

	Assignor	Date of Transfer	Amount at time of Transfer
Transfer 1:	_____	_____	_____
Transfer 2:	_____	_____	_____
Transfer 3:	_____	_____	_____
Transfer 4:	_____	_____	_____

6. **[Check this paragraph if seeking judgment on a revolving consumer credit account]**

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 \$_____.

7. **[Check this paragraph if seeking judgment on a non-revolving consumer credit account]**

At this time, Defendant owes \$_____ on the Account. As set forth in the exhibits attached hereto and made a part hereof, this amount is broken out by (i) principal; (ii) finance charge or charges; (iii) fees imposed by the original creditor; (iv) collection costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and charges, less post-sale credits or payments made by or on behalf of the Defendant of \$_____.

8. As set forth in New York CPLR Article 50, the interest rate applicable to the Account pursuant to section five thousand four of this chapter applies.

9. **[Check if not seeking post-judgment interest]**

Plaintiff explicitly disclaims any right to post-judgment interest on this Account.

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: _____

 Affiant Signature

 Affiant Name

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

 Notary Public

Exhibits to be Attached to Affidavit

- 1. Bill of Sale from Debt Seller to Plaintiff**
- 2. Most Recent Charge/Payment/Balance Transfer Statement**
- 3. Additional Books and Records evidencing:**
 - a. Defendant's Full Name
 - b. Balance due and last 4 digits of Account Number printed on Most Recent Monthly Statement reflecting charge/payment/balance transfer
 - c. Last Payment Date and Amount
 - d. Post-Charge-off/Delinquency Date and Amount
 - e. Post-Charge-off/Delinquency Interest and/or Fees
 - f. Post-Charge-off/Delinquency Credits

[Note: A Certificate of Conformity is only required for affidavits specific to real property transactions.]



Affirmation of Non-Expiration of Statute of Limitations

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

1. I am counsel for _____ [*plaintiff name*] 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 pursuant to CPLR § 214-i. Based upon 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: _____

Attorney Signature

Attorney Name



STATE OF NEW YORK

153

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the judiciary law, in relation to consumer credit transactions

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "consumer credit fairness act".

3 § 2. Section 105 of the civil practice law and rules is amended by
4 adding two new subdivisions (h-1) and (q-1) to read as follows:

5 (h-1) Finance charge. The term "finance charge" means the cost of
6 consumer credit as a dollar amount, includes any charge payable directly
7 or indirectly by the consumer and imposed directly or indirectly by the
8 creditor as an incident to or a condition of the extension of credit,
9 and does not include any charge of a type payable in a comparable cash
10 transaction.

11 (q-1) Original creditor. The term "original creditor" means the entity
12 that owned a consumer credit account at the date of default giving rise
13 to a cause of action.

14 § 3. Subdivision 2 of section 213 of the civil practice law and rules,
15 as amended by chapter 709 of the laws of 1988, is amended to read as
16 follows:

17 2. an action upon a contractual obligation or liability, express or
18 implied, except as provided in section two hundred thirteen-a or two
19 hundred fourteen-i of this article or article 2 of the uniform commer-
20 cial code or article 36-B of the general business law;

21 § 4. The civil practice law and rules is amended by adding a new
22 section 214-i to read as follows:

23 § 214-i. Certain actions arising out of consumer credit transactions
24 to be commenced within three years. An action arising out of a consumer

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

LBD00040-01-1

1 website, which has information for representing yourself and links to
2 other resources at: _____.

3 (b) The face of the envelope shall be addressed to the defendant at
4 the address at which process was served, and shall contain the defend-
5 ant's name, address (including apartment number) and zip code. The face
6 of the envelope also shall state the appropriate clerk's office as its
7 return address.

8 (c) The clerk promptly shall mail to the defendant the envelope
9 containing the additional notice set forth in subdivision (a) of this
10 section. No default judgment based on the defendant's failure to answer
11 shall be entered unless there has been compliance with this section, and
12 at least twenty days have elapsed from the date of mailing by the clerk.
13 No default judgment based on the defendant's failure to answer shall be
14 entered if the additional notice is returned to the court as undelivera-
15 ble. Receipt of the additional notice by the defendant does not confer
16 jurisdiction on the court in the absence of proper service of process.

17 (d) The chief administrative judge shall issue a Spanish translation
18 of the notice in subdivision (a) of this section and shall maintain and
19 publish the URL address for the web page containing consumer resources
20 for unrepresented litigants.

21 § 6. Subdivision (a) of section 3012 of the civil practice law and
22 rules is amended to read as follows:

23 (a) Service of pleadings. The complaint may be served with the
24 summons, except that in an action arising out of a consumer credit tran-
25 saction, the complaint shall be served with the summons. A subsequent
26 pleading asserting new or additional claims for relief shall be served
27 upon a party who has not appeared in the manner provided for service of
28 a summons. In any other case, a pleading shall be served in the manner
29 provided for service of papers generally. Service of an answer or reply
30 shall be made within twenty days after service of the pleading to which
31 it responds.

32 § 7. Rule 3016 of the civil practice law and rules is amended by
33 adding a new subdivision (j) to read as follows:

34 (j) Consumer credit transactions. In an action arising out of a
35 consumer credit transaction where a purchaser, borrower or debtor is a
36 defendant, the contract or other written instrument on which the action
37 is based shall be attached to the complaint, however, for the purposes
38 of this section, if the account was a revolving credit account, the
39 charge-off statement may be attached to the complaint instead of the
40 contract or other written instrument, and the following information
41 shall be set forth in the complaint:

42 (1) The name of the original creditor;

43 (2) The last four digits of the account number printed on the most
44 recent monthly statement recording a purchase transaction, last payment
45 or balance transfer;

46 (3) The date and amount of the last payment or, if no payment was
47 made, a statement that the purchaser, borrower or debtor made no payment
48 on the account;

49 (4) If the complaint contains a cause of action based on an account
50 stated, the date on or about which the final statement of account was
51 provided to the defendant;

52 (5) (A) Except as provided in subparagraph (B) of this paragraph, an
53 itemization of the amount sought, by (i) principal; (ii) finance charge
54 or charges; (iii) fees imposed by the original creditor; (iv) collection
55 costs; (v) attorney's fees; (vi) interest; and (vii) any other fees and
56 charges.

1 (B) If the account was a revolving credit account, an itemization of
2 the amount sought, by: (i) the total amount of the debt due as of
3 charge-off; (ii) the total amount of interest accrued since charge-off;
4 (iii) the total amount of non-interest charges or fees accrued since
5 charge-off; and (iv) the total amount of payments and/or credits made on
6 the debt since charge-off;

7 (6) The account balance printed on the most recent monthly statement
8 recording a purchase transaction, last payment or balance transfer;

9 (7) (A) Whether the plaintiff is the original creditor.

10 (B) If the plaintiff is not the original creditor, the complaint shall
11 also state (i) the date on which the debt was sold or assigned to the
12 plaintiff; (ii) the name of each previous owner of the account from the
13 original creditor to the plaintiff and the date on which the debt was
14 assigned to that owner by the original creditor or subsequent owner; and
15 (iii) the amount due at the time of the sale or assignment of the debt
16 by the original creditor; and

17 (8) Any matters required to be stated with particularity pursuant to
18 rule 3015 of this article.

19 § 8. Subdivision (e) of rule 3211 of the civil practice law and rules,
20 as amended by chapter 616 of the laws of 2005, is amended to read as
21 follows:

22 (e) Number, time and waiver of objections; motion to plead over. At
23 any time before service of the responsive pleading is required, a party
24 may move on one or more of the grounds set forth in subdivision (a) of
25 this rule, and no more than one such motion shall be permitted. Any
26 objection or defense based upon a ground set forth in paragraphs one,
27 three, four, five and six of subdivision (a) of this rule is waived
28 unless raised either by such motion or in the responsive pleading. A
29 motion based upon a ground specified in paragraph two, seven or ten of
30 subdivision (a) of this rule may be made at any subsequent time or in a
31 later pleading, if one is permitted; an objection that the summons and
32 complaint, summons with notice, or notice of petition and petition was
33 not properly served is waived if, having raised such an objection in a
34 pleading, the objecting party does not move for judgment on that ground
35 within sixty days after serving the pleading, unless the court extends
36 the time upon the ground of undue hardship. The foregoing sentence shall
37 not apply in any proceeding to collect a debt arising out of a consumer
38 credit transaction where a consumer is a defendant or under subdivision
39 one or two of section seven hundred eleven of the real property actions
40 and proceedings law. The papers in opposition to a motion based on
41 improper service shall contain a copy of the proof of service, whether
42 or not previously filed. An objection based upon a ground specified in
43 paragraph eight or nine of subdivision (a) of this rule is waived if a
44 party moves on any of the grounds set forth in subdivision (a) of this
45 rule without raising such objection or if, having made no objection
46 under subdivision (a) of this rule, he or she does not raise such
47 objection in the responsive pleading which, in any action to collect a
48 debt arising out of a consumer credit transaction where a consumer is a
49 defendant, includes any amended responsive pleading.

50 § 9. Rule 3212 of the civil practice law and rules is amended by
51 adding a new subdivision (j) to read as follows:

52 (j) Additional notice in any action to collect a debt arising out of
53 a consumer credit transaction where a consumer is a defendant.

54 1. At the time of service of a notice of motion any part of which
55 requests summary judgment in whole or in part, where the moving party
56 is a plaintiff and the respondent is a consumer defendant in an action

1 to collect a debt arising out of a consumer credit transaction, and
2 where the consumer defendant against whom summary judgment is sought is
3 not represented by an attorney, the plaintiff shall submit to the clerk
4 a stamped, unsealed envelope addressed to the defendant together with
5 the following additional notice in English and Spanish to be printed in
6 clear type no less than twelve-point in size:

7 IMPORTANT NOTICE

8 The Plaintiff has asked the Court to enter judgment against you by
9 making a Motion for Summary Judgment. Keep this Notice and the envelope
10 it came in. The Motion for Summary Judgment was separately served on
11 you. To avoid entry of judgment:

12 (1) You must appear in court as directed below:

13 WHERE: Name of Court, Street Address, Room Number

14 WHEN: Date and time

15 (2) You should oppose the motion IN WRITING.

16 HOW TO OPPOSE THE MOTION:

17 (1) State the legal reasons why the court should not enter judgment
18 against you, including your defenses.

19 (2) State the facts that support your defenses.

20 (3) Attach affidavits and/or exhibits to support the facts you assert.

21 (a) Affidavits are sworn statements of witnesses (including you) who
22 state facts they know to be true. The affidavit should state the facts
23 and how the witness knows them. Also, the affidavit should explain any
24 exhibits. An affidavit of service is an affidavit that states how and
25 when papers were served. An affidavit must be signed in front of a
26 notary. Free forms are available on the New York State Court system
27 website at: _____.

28 (b) Exhibits are copies of documents. Exhibits are usually attached to
29 affidavits.

30 (4) Have someone (not you or another defendant in the lawsuit) mail a
31 copy of your opposition to the plaintiff's attorney before your court
32 date and have them prepare an affidavit of service by mail.

33 (5) Bring a copy of your opposition and the affidavit of service to
34 your court date.

35 (6) Attend your court date.

36 IF YOU NEED MORE TIME:

37 If you need more time to prepare your written response, you should
38 appear at your court date and ask the judge for more time. You can also
39 ask the judge to refer you for legal help.

40 IF YOU NEED LEGAL HELP:

41 You may seek legal help from a private attorney or a legal aid office.
42 Some courts have free legal assistance programs for people without
43 lawyers. You can find resources on the New York State court system
44 website at: _____.

45 2. The clerk promptly shall mail to the defendant the envelope
46 containing the additional notice set forth in paragraph one of this
47 subdivision and note the date of mailing in the case record. Summary
48 judgment shall not be entered based on defendant's failure to oppose the
49 motion unless there has been compliance with this section and at least
50 fourteen days have elapsed from the date of mailing by the clerk or
51 nineteen days if the plaintiff's notice of motion demands additional
52 time under subdivision (b) of rule 2214 of this chapter.

53 3. The chief administrative judge shall issue a Spanish translation of
54 the notice in paragraph one of this subdivision and shall maintain and
55 publish the URL address for the web page containing consumer credit
56 resources for unrepresented litigants.

1 § 10. Section 3213 of the civil practice law and rules, as amended by
2 chapter 210 of the laws of 1969, is amended to read as follows:

3 § 3213. Motion for summary judgment in lieu of complaint. When an
4 action is based upon an instrument for the payment of money only or upon
5 any judgment, the plaintiff may serve with the summons a notice of
6 motion for summary judgment and the supporting papers in lieu of a
7 complaint. The summons served with such motion papers shall require the
8 defendant to submit answering papers on the motion within the time
9 provided in the notice of motion. The minimum time such motion shall be
10 noticed to be heard shall be as provided by subdivision (a) of rule 320
11 for making an appearance, depending upon the method of service. If the
12 plaintiff sets the hearing date of the motion later than the minimum
13 time therefor, he may require the defendant to serve a copy of his
14 answering papers upon him within such extended period of time, not
15 exceeding ten days, prior to such hearing date. No default judgment may
16 be entered pursuant to subdivision (a) of section 3215 prior to the
17 hearing date of the motion. If the motion is denied, the moving and
18 answering papers shall be deemed the complaint and answer, respectively,
19 unless the court orders otherwise. The additional notice required by
20 subdivision (j) of rule 3212 shall be applicable to a motion made pursu-
21 ant to this section in any action to collect a debt arising out of a
22 consumer credit transaction where a consumer is a defendant.

23 § 11. Subdivision (f) of section 3215 of the civil practice law and
24 rules, as amended by chapter 453 of the laws of 2006, is amended and a
25 new subdivision (j) is added to read as follows:

26 (f) Proof. On any application for judgment by default, the applicant
27 shall file proof of service of the summons and the complaint, or a
28 summons and notice served pursuant to subdivision (b) of rule 305 or
29 subdivision (a) of rule 316 of this chapter, and proof of the facts
30 constituting the claim, the default and the amount due by affidavit made
31 by the party, or where the state of New York is the plaintiff, by affi-
32 davit made by an attorney from the office of the attorney general who
33 has or obtains knowledge of such facts through review of state records
34 or otherwise. Where a verified complaint has been served, it may be used
35 as the affidavit of the facts constituting the claim and the amount due;
36 in such case, an affidavit as to the default shall be made by the party
37 or the party's attorney. In an action arising out of a consumer credit
38 transaction, if the plaintiff is not the original creditor, the appli-
39 cant shall include: (1) an affidavit by the original creditor of the
40 facts constituting the debt, the default in payment, the sale or assign-
41 ment of the debt, and the amount due at the time of sale or assignment;
42 (2) for each subsequent assignment or sale of the debt to another enti-
43 ty, an affidavit of sale of the debt by the debt seller, completed by
44 the seller or assignor; and (3) an affidavit of a witness of the plain-
45 tiff, which includes a chain of title of the debt, completed by the
46 plaintiff or plaintiff's witness. The chief administrative judge shall
47 issue form affidavits to satisfy the requirements of this subdivision
48 for consumer credit transactions. When jurisdiction is based on an
49 attachment of property, the affidavit must state that an order of
50 attachment granted in the action has been levied on the property of the
51 defendant, describe the property and state its value. Proof of mailing
52 the notice required by subdivision (g) of this section, where applica-
53 ble, shall also be filed.

54 (j) Affidavit. A request for a default judgment entered by the clerk,
55 must be accompanied by an affidavit by the plaintiff or plaintiff's
56 attorney stating that after reasonable inquiry, he or she has reason to

1 believe that the statute of limitations has not expired. The chief
2 administrative judge shall issue form affidavits to satisfy the require-
3 ments of this subdivision for consumer credit transactions.

4 § 12. The civil practice law and rules is amended by adding a new
5 section 7516 to read as follows:

6 § 7516. Confirmation of an award based on a consumer credit trans-
7 action. In any proceeding under section 7510 of this article to confirm
8 an award based on a consumer credit transaction, the party seeking to
9 confirm the award shall plead the actual terms and conditions of the
10 agreement to arbitrate. The party shall attach to its petition (a) the
11 agreement to arbitrate; (b) the demand for arbitration or notice of
12 intention to arbitrate, with proof of service; and (c) the arbitration
13 award, with proof of service. If the award does not contain a statement
14 of the claims submitted for arbitration, of the claims ruled upon by the
15 arbitrator, and of the calculation of figures used by the arbitrator in
16 arriving at the award, then the petition shall contain such a statement.
17 The court shall not grant confirmation of an award based on a consumer
18 credit transaction unless the party seeking to confirm the award has
19 complied with this section.

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

22 (aa) Not later than January first, two thousand twenty-two, make
23 available Spanish translations of the additional notices in consumer
24 credit transaction actions and proceedings required by section 306-d and
25 subdivision (j) of rule 3212 of the civil practice law and rules, and
26 make available form affidavits required for a motion for default judg-
27 ment in a consumer credit transaction action or proceeding required by
28 subdivision (f) of section 3215 of the civil practice law and rules.

29 § 14. Subdivision (c) of section 5019 of the civil practice law and
30 rules is amended to read as follows:

31 (c) Change in judgment creditor. A person other than the party recov-
32 ering a judgment who becomes entitled to enforce it, shall file in the
33 office of the clerk of the court in which the judgment was entered or,
34 in the case of a judgment of a court other than the supreme, county or a
35 family court which has been docketed by the clerk of the county in which
36 it was entered, in the office of such county clerk, a copy of the
37 instrument on which his authority is based, acknowledged in the form
38 required to entitle a deed to be recorded, or, if his authority is based
39 on a court order, a certified copy of the order. Upon such filing the
40 clerk shall make an appropriate entry on his docket of the judgment.
41 This subdivision shall not apply when there is a change to the owner of
42 a debt through a sale, assignment, or other transfer where no judgment
43 exists.

44 § 15. This act shall take effect immediately; provided, however, that
45 sections two, three, five, six, seven, eight, nine, ten, eleven and
46 twelve shall take effect on the one hundred eightieth day after it shall
47 have become a law and shall apply to actions and proceedings commenced
48 on or after such date; and provided, further, that section four of this
49 act shall take effect on the one hundred fiftieth day after this act
50 shall have become a law.

STATE OF NEW YORK

5724--A

Cal. No. 1003

2021-2022 Regular Sessions

IN SENATE

March 17, 2021

Introduced by Sens. THOMAS, BIAGGI, BROOKS, KRUEGER, MYRIE, RAMOS, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to the rate of interest applicable to money judgments arising out of consumer debt

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

1 Section 1. Section 5004 of the civil practice law and rules, as
2 amended by chapter 258 of the laws of 1981, is amended to read as
3 follows:

4 § 5004. Rate of interest. (a) Interest shall be at the rate of nine
5 per centum per annum, except where otherwise provided by statute;
6 provided the annual rate of interest to be paid in an action arising out
7 of a consumer debt where a natural person is a defendant shall be two
8 per centum per annum (i) on a judgment or accrued claim for judgments
9 entered on or after the effective date of the chapter of the laws of two
10 thousand twenty-one which amended this section, and (ii) for interest
11 upon a judgment pursuant to section five thousand three of this article
12 from the date of the entry of judgment on any part of a judgment entered
13 before the effective date of the chapter of the laws of two thousand
14 twenty-one which amended this section that is unpaid as of such effec-
15 tive date.

16 (b) For the purpose of this section "consumer debt" means any obli-
17 gation or alleged obligation of any natural person to pay money
18 arising out of a transaction in which the money, property, insurance or
19 services which are the subject of the transaction are primarily for
20 personal, family or household purposes, whether or not such obligation

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

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1 has been reduced to judgment, including, but not limited to, a consumer
2 credit transaction, as defined in subdivision (f) of section one hundred
3 five of this chapter.

4 (c) This section does not affect or create any rights or remedies
5 related to any amounts paid prior to the effective date of this subdivi-
6 sion, including amounts paid to satisfy judgments or to accrued interest
7 or fees paid, or with respect to judgments satisfied prior to the effec-
8 tive date of this subdivision. For amounts paid prior to the effective
9 date of this subdivision and lawfully applied in satisfaction or partial
10 satisfaction of interest or fees accrued prior to the effective date of
11 this subdivision, this section shall not be construed to require a judg-
12 ment creditor or sheriff to (i) return or refund such amounts to judg-
13 ment debtors; or (ii) apply such payments to satisfy any part of a money
14 judgment other than fees or interest upon judgment pursuant to section
15 five thousand three of this article.

16 (d) If any word, phrase, clause, sentence, paragraph, subdivision, or
17 part of this section or its application to any person or circumstance is
18 held invalid by any court of competent jurisdiction after exhaustion of
19 all further judicial review, the invalidity shall not affect, impair, or
20 invalidate the remainder of this section or applications of this article
21 which can be given effect without the invalid provision or application,
22 and to this end the provisions of this section are severable.

23 § 2. Subdivisions (f) and (i) of section 3215 of the civil practice
24 law and rules, subdivision (f) as amended by chapter 453 of the laws of
25 2006, and subdivision (i) as amended by chapter 31 of the laws of 1967
26 and relettered by chapter 255 of the laws of 1992, are amended to read
27 as follows:

28 (f) Proof. On any application for judgment by default, the applicant
29 shall file proof of service of the summons and the complaint, or a
30 summons and notice served pursuant to subdivision (b) of rule 305 or
31 subdivision (a) of rule 316 of this chapter, and proof of the facts
32 constituting the claim, the default and the amount due, including, if
33 applicable, a statement that the interest rate for consumer debt pursu-
34 ant to section five thousand four of this chapter applies, by affidavit
35 made by the party, or where the state of New York is the plaintiff, by
36 affidavit made by an attorney from the office of the attorney general
37 who has or obtains knowledge of such facts through review of state
38 records or otherwise. Where a verified complaint has been served, it may
39 be used as the affidavit of the facts constituting the claim and the
40 amount due; in such case, an affidavit as to the default shall be made
41 by the party or the party's attorney. When jurisdiction is based on an
42 attachment of property, the affidavit must state that an order of
43 attachment granted in the action has been levied on the property of the
44 defendant, describe the property and state its value. Proof of mailing
45 the notice required by subdivision (g) of this section, where applica-
46 ble, shall also be filed.

47 (i) Default judgment for failure to comply with stipulation of settle-
48 ment. 1. Where, after commencement of an action, a stipulation of
49 settlement is made, providing, in the event of failure to comply with
50 the stipulation, for entry without further notice of a judgment in a
51 specified amount with interest, if any, from a date certain, the clerk
52 shall enter judgment on the stipulation and an affidavit as to the fail-
53 ure to comply with the terms thereof, together with a complaint or a
54 concise statement of the facts on which the claim was based, and, if
55 applicable, a statement that the interest rate for consumer debt pursu-
56 ant to section five thousand four of this chapter applies.

1 2. Where, after commencement of an action, a stipulation of settlement
2 is made, providing, in the event of failure to comply with the stipu-
3 lation, for entry without further notice of a judgment dismissing the
4 action, the clerk shall enter judgment on the stipulation and an affida-
5 vit as to the failure to comply with the terms thereof, together with
6 the pleadings or a concise statement of the facts on which the claim and
7 the defense were based.

8 § 3. Paragraph 1 of subdivision (a) of section 3218 of the civil prac-
9 tice law and rules, as amended by chapter 214 of the laws of 2019, is
10 amended to read as follows:

11 1. stating the sum for which judgment may be entered, authorizing the
12 entry of judgment, [~~and~~] stating the county where the defendant resides
13 and, if applicable, stating that the interest rate for consumer debt
14 pursuant to section five thousand four of this chapter applies;

15 § 4. Subdivisions (a) and (b) of section 5230 of the civil practice
16 law and rules, subdivision (a) as amended by chapter 24 of the laws of
17 2009 and subdivision (b) as amended by chapter 59 of the laws of 1993,
18 are amended to read as follows:

19 (a) Form. An execution shall specify the date that the judgment or
20 order was entered, the court in which it was entered, the amount of the
21 judgment or order, the applicable interest rate and the date as of which
22 the new interest rate applies if the interest rate for consumer debt
23 pursuant to section five thousand four of this chapter applies and the
24 amount due thereon and it shall specify the names of the parties in
25 whose favor and against whom the judgment or order was entered. If the
26 applicable interest rate changes pursuant to section five thousand four
27 of this chapter while an execution is ongoing, the judgment creditor
28 shall issue an amended execution within sixty days of the effective date
29 of the chapter of the laws of two thousand twenty-one which amended this
30 subdivision, effective as of the date of the rate change. An execution
31 shall direct that only the property in which a named judgment debtor or
32 obligor who is not deceased has an interest, or the debts owed to the
33 named judgment debtor or obligor, be levied upon or sold thereunder and
34 shall specify the last known address of that judgment debtor or obligor.
35 Except in cases when the state of New York, or any of its agencies or
36 municipal corporations is the judgment creditor, or if the debt enforced
37 is for child support, spousal support, maintenance or alimony, provided
38 that in those instances the execution contains a legend at the top ther-
39 eof, above the caption, in sixteen point bold type with the following
40 language: "The judgment creditor is the state of New York, or any of its
41 agencies or municipal corporations, AND/OR the debt enforced is for
42 child support, spousal support, maintenance or alimony.", an execution
43 notice shall state that, pursuant to subdivision (1) of section fifty-
44 two hundred five of this article, two thousand five hundred dollars of
45 an account containing direct deposit or electronic payments reasonably
46 identifiable as statutorily exempt payments, as defined in paragraph two
47 of subdivision (1) of section fifty-two hundred five of this article, is
48 exempt from execution and that the garnishee cannot levy upon or
49 restrain two thousand five hundred dollars in such an account. Except in
50 cases when the state of New York, or any of its agencies or municipal
51 corporations is the judgment creditor, or if the debt enforced is for
52 child support, spousal support, maintenance or alimony, provided that in
53 those instances the execution contains a legend at the top thereof,
54 above the caption, in sixteen point bold type with the following
55 language: "The judgment creditor is the state of New York, or any of its
56 agencies or municipal corporations, AND/OR the debt enforced is for

1 child support, spousal support, maintenance or alimony.", an execution
2 notice shall likewise state that pursuant to subdivision (i) of section
3 fifty-two hundred twenty-two of this article, an execution shall not
4 apply to an amount equal to or less than ninety percent of the greater
5 of two hundred forty times the federal minimum hourly wage prescribed in
6 the Fair Labor Standards Act of 1938 or two hundred forty times the
7 state minimum hourly wage prescribed in section six hundred fifty-two of
8 the labor law as in effect at the time the earnings are payable, except
9 such part as a court determines to be unnecessary for the reasonable
10 requirements of the judgment debtor and his or her dependents. Where the
11 judgment or order was entered in a court other than the supreme, county
12 or a family court, the execution shall also specify the date on which a
13 transcript of the judgment or order was filed with the clerk of the
14 county in which the judgment was entered. Where jurisdiction in the
15 action was based upon a levy upon property or debt pursuant to an order
16 of attachment, the execution shall also state that fact, describe all
17 property and debts levied upon, and direct that only such property and
18 debts be sold thereunder. Where the judgment or order was recovered for
19 all or part of a mortgage debt, the execution shall also describe the
20 mortgaged property, specify the book and page where the mortgage is
21 recorded, and direct that no part of the mortgaged property be levied
22 upon or sold thereunder.

23 (b) Issuance. At any time before a judgment or order is satisfied or
24 vacated, an execution may be issued from the supreme court, county court
25 or a family court, in the county in which the judgment was first docket-
26 ed, by the clerk of the court or the attorney for the judgment creditor
27 as officer of the court, to the sheriffs of one or more counties of the
28 state, directing each of them to satisfy the judgment or order out of
29 the real and personal property of the judgment debtor or obligor and the
30 debts due to him or her. Provided, however, if the applicable interest
31 rate changes pursuant to section five thousand four of this chapter
32 while an execution is ongoing, the clerk of the court of the supreme
33 court, county court or a family court, in the county in which the judg-
34 ment was first docketed, or the attorney for the judgment creditor as
35 officer of the court, shall be authorized to issue an amended execution
36 to the sheriffs of one or more counties of the state and shall issue an
37 amended execution within sixty days of the effective date of the chapter
38 of the laws of two thousand twenty-one which amended this subdivision,
39 effective as of the date of the rate change. Where the judgment or order
40 is for support and is payable to the support collection unit designated
41 by the appropriate social services district, such unit shall be author-
42 ized to issue the execution and to satisfy the judgment or order out of
43 the real and personal property of the judgment debtor or obligor and the
44 debts due to him or her.

45 § 5. Subdivisions (a), (d), (j) and (k) of section 5231 of the civil
46 practice law and rules, subdivisions (a), (d) and (j) as amended by
47 chapter 550 of the laws of 2015, subdivision (k) as amended by chapter
48 241 of the laws of 1986 and as relettered by chapter 829 of the laws of
49 1987, are amended to read as follows:

50 (a) Form. An income execution shall specify, in addition to the
51 requirements of subdivision (a) of section 5230[7]: (i) the name and
52 address of the person or entity from whom the judgment debtor is receiv-
53 ing or will receive money; (ii) the amount of money, the frequency of
54 its payment and the amount of the installments to be collected there-
55 from; and (iii) shall contain a notice to the judgment debtor that he or
56 she shall commence payment of the installments specified to the sheriff

1 forthwith and that, upon his or her default, the execution will be
2 served upon the person or entity from whom he or she is receiving or
3 will receive money. Provided, however, that if a judgment creditor
4 issues an amended execution pursuant to section five thousand two
5 hundred thirty of this article because the applicable interest rate
6 changes pursuant to section five thousand four of this chapter, the
7 income execution need only specify paragraphs (i) and (ii) of this
8 subdivision.

9 (d) Service upon debtor; first service by sheriff. Within twenty days
10 after an income execution is delivered to the sheriff, the sheriff shall
11 serve a copy of it upon the judgment debtor, in the same manner as a
12 summons or, in lieu thereof, by certified mail return receipt requested
13 provided an additional copy is sent by regular mail to the debtor. If
14 service is by mail as herein provided, the person effecting service
15 shall retain the receipt together with a post office certificate of
16 mailing as proof of such service. Provided, however, that if a judgment
17 creditor issues an amended execution pursuant to section five thousand
18 two hundred thirty of this article because the applicable interest rate
19 changes pursuant to section five thousand four of this chapter, the
20 sheriff shall serve a copy of the income execution within forty-five
21 days after an income execution is delivered to the sheriff.

22 (j) Priority; delivery to another sheriff. Two or more income
23 executions issued against the same judgment debtor, specifying the same
24 person or entity from whom the money is received and delivered to the
25 same or different enforcement officers shall be satisfied out of that
26 money in the order in which the executions are delivered to an officer
27 authorized to levy in the county, town or city in which the debtor
28 resides or, in any county in which the person or entity from whom the
29 judgment debtor is receiving or will receive money has an office or
30 place of business, or where the judgment debtor is a non-resident, the
31 county, town or city in which he or she is employed. If the applicable
32 interest rate changes pursuant to section five thousand four of this
33 chapter while an execution is ongoing, the issuance of the amended
34 execution pursuant to section five thousand two hundred thirty of this
35 article shall retain the priority of the ongoing execution. If an income
36 execution delivered to a sheriff is returned unsatisfied in whole or in
37 part because the sheriff to whom it was delivered is unable to find
38 within the county the person or entity from whom the judgment debtor is
39 receiving or will receive money, the execution may be delivered to the
40 sheriff of any county in which such person or entity has an office or
41 place of business. The priority of an income execution delivered to a
42 sheriff within twenty days after its return by each previous sheriff
43 shall be determined by the time of delivery to the first sheriff.

44 (k) Accounting by sheriff. It shall be the duty of the sheriff to whom
45 such income execution shall be delivered, from time to time and at least
46 once every ninety days from the time a levy shall be made thereunder, to
47 account for and pay over to the person entitled thereto all monies
48 collected thereon, less his lawful fees and expenses for collecting the
49 same. Provided, however, that if a judgment creditor issues an amended
50 execution pursuant to section five thousand two hundred thirty of this
51 article because the applicable interest rate changes pursuant to section
52 five thousand four of this chapter, any money collected in excess of the
53 judgment amount shall be promptly returned to the debtor.

54 § 6. Subdivisions (a) and (c) of section 5222 of the civil practice
55 law and rules, subdivision (a) as amended by chapter 409 of the laws of

1 2000 and subdivision (c) as amended by chapter 575 of the laws of 2008,
2 are amended to read as follows:

3 (a) Issuance; on whom served; form; service. A restraining notice may
4 be issued by the clerk of the court or the attorney for the judgment
5 creditor as officer of the court, or by the support collection unit
6 designated by the appropriate social services district. It may be served
7 upon any person, except the employer of a judgment debtor or obligor
8 where the property sought to be restrained consists of wages or salary
9 due or to become due to the judgment debtor or obligor. It shall be
10 served personally in the same manner as a summons or by registered or
11 certified mail, return receipt requested or if issued by the support
12 collection unit, by regular mail, or by electronic means as set forth in
13 subdivision (g) of this section. It shall specify all of the parties to
14 the action, the date that the judgment or order was entered, the court
15 in which it was entered, the amount of the judgment or order and the
16 amount then due thereon, the names of all parties in whose favor and
17 against whom the judgment or order was entered, it shall set forth
18 subdivision (b) and shall state that disobedience is punishable as a
19 contempt of court, and it shall contain an original signature or copy of
20 the original signature of the clerk of the court or attorney or the name
21 of the support collection unit which issued it. If the applicable inter-
22 est rate changes pursuant to section five thousand four of this chapter
23 while a restraint is in effect, the judgment creditor shall issue an
24 amended restraining notice, and include the date as of which the new
25 interest rate applies, without leave of court as required under subdivi-
26 sion (c) of this section. Service of a restraining notice upon a depart-
27 ment or agency of the state or upon an institution under its direction
28 shall be made by serving a copy upon the head of the department, or the
29 person designated by him or her and upon the state department of audit
30 and control at its office in Albany; a restraining notice served upon a
31 state board, commission, body or agency which is not within any depart-
32 ment of the state shall be made by serving the restraining notice upon
33 the state department of audit and control at its office in Albany.
34 Service at the office of a department of the state in Albany may be made
35 by the sheriff of any county by registered or certified mail, return
36 receipt requested, or if issued by the support collection unit, by regu-
37 lar mail.

38 (c) Subsequent notice. Leave of court is required to serve more than
39 one restraining notice upon the same person with respect to the same
40 judgment or order. A judgment creditor shall not serve more than two
41 restraining notices per year upon a natural person's banking institution
42 account. If the applicable interest rate changes pursuant to section
43 five thousand four of this chapter while a restraint is in effect, the
44 judgment creditor shall issue an amended restraining notice without
45 leave of court.

46 § 7. This act shall take effect on the one hundred twentieth day after
47 it shall have become a law.

https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220407_23nyerrpt1_and_ccfa

April 7, 2022

To: Debt collectors governed by 23 N.Y.C.R.R. Part 1

Subject: Compliance with 23 N.Y.C.R.R. § 1.3(b) and the new Consumer Credit Fairness Act

The Department is issuing this guidance to address potential confusion about how to comply with notice requirements of 23 N.Y.C.R.R. § 1.3(b) in light of a recent amendment to the New York Civil Practice Law and Rules (“CPLR”) taking effect April 7, 2022. That amendment, set forth in § 4 of the Consumer Credit Fairness Act (“CCFA”) (L.2021, c. 593), adds a new section 214-i to the CPLR that provides, in relevant part, as to the statute of limitations applicable to actions arising out of consumer credit transactions, “Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitation period.” 23 N.Y.C.R.R. § 1.3(b) of the Department’s regulation governing debt collectors requires that, “[i]f a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt, the debt collector must provide the consumer with clear and conspicuous notice, in the same medium (such as via telephone or electronic communication) by which the debt collector will accept payment, that,” among other things, “if the consumer makes any payment on a debt for which the statute of limitations has expired or admits, affirms, acknowledges, or promises to pay such debt, the statute of limitations may restart.” Debts addressed by the new CPLR 214-i are collected by debt collectors subject to the Department’s regulation, and as to those debts, under the new law, it is no longer true that a consumer’s making or promising to make a payment on, or admitting, affirming, or acknowledging such time-barred debt can restart the statute of limitations period. In November of 2021, the Department proposed amendments to the regulation that, among other things, would address this issue and is now reviewing public comment on the proposal, but because the amendments are not yet final, the Department is advising entities subject to 23 N.Y.C.R.R. Part 1 that it does not expect such entities to advise consumers incorrectly as to those debts whose statute of limitations periods can no longer be restarted as provided by CPLR 214-i. The Department advises that debt collectors provide accurate information to consumers, consistent with all applicable laws and regulations, and notes that 23 N.Y.C.R.R. § 1.3 does not prohibit debt collectors from adding explanatory language to the model disclosure language set forth in § 1.3(c) or using their own language to comply with § 1.3(b). Exclusively for the purposes of the Department’s enforcement of its own regulation, an example of a statement that addresses each of the requirements of § 1.3(b) is:

“We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice: Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. If a creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining

a judgment against you. To do so, you must tell the court that the statute of limitations has expired.

Even if the statute of limitations has expired, you may choose to make payments on the debt. We are also required to tell you that, for certain kinds of debts, if you make a payment on a debt, admit to owing a debt, or promise to pay a debt, the time period in which the debt is enforceable in court may start again. **However**, your creditor or debt collector believes that restarting the time period on this debt is prohibited by law, and whether or not you acknowledge, promise to pay, or make a payment on this debt, **your creditor or debt collector will NOT sue you to collect this debt.**

If you waive the statute of limitations on a debt, the time period in which the debt is enforceable in court may start again.

If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.”

Additionally, as to debts covered by CPLR 214-i about which debt collectors have initiated communication with a consumer prior to the effective date of CPLR 214-i and have already notified consumers as required by 23 N.Y.C.R.R. § 1.3(b)(5), for debts not yet paid, the debt collector should notify such consumers that because of a change in the law, the consumer’s acknowledgement of, making any payment on, or taking other action on the debt will not revive the statute of limitations period. For clarity, the debt collector should also remind recipients that it is a violation of the Fair Debt Collection Practices Act to sue to collect a debt for which the statute of limitations has expired. An example of a statement to this effect is as follows:

“We are notifying you of a change in the law that affects your debt. This information is NOT legal advice: A new law affects this debt because your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt has expired. Previously, we informed you that if you make a payment on the debt, admit to owing the debt, or promise to pay the debt, the time to sue could start again. This is no longer the case. Under the new law, if the time to sue has expired, admitting to owing the debt, promising to pay the debt, or making a payment on the debt will not restart the time period during which you can be sued for the debt. **Your creditor or debt collector will NOT sue you to collect this debt.**

It is also a violation of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 *et seq.*, to sue to collect on a debt for which the statute of limitations has expired. If a creditor sues you to collect on a debt for which the time to sue has expired, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired.

If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.”

Any questions about this guidance may be sent to counsel@dfs.ny.gov.