# ADMINISTRATIVE DIRECTIVE OF THE CHIEF JUDGE OF THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE NO. 2012-2

This 22<sup>nd</sup> day of August 2012,

**WHEREAS,** pursuant to 10 *Del. C.* § 1302(d), the authority being vested in the Chief Judge as the administrative head of the Court during the term of his appointment; and

WHEREAS, Court of Common Pleas Civil Rule 8, "General Rules of Pleading," sets forth the basic requirements of pleading required by Delaware law; and

WHEREAS, consumer debt collection actions filed with the Court continue to grow at an exponential rate, straining the court system and imposing an increased burden upon judicial resources; and

WHEREAS, the Court seeks to better manage consumer debt collection litigation to improve efficiency and fairness to litigants; and

WHEREAS, the Court finds it prudent and consistent with sound public policy and due process to adopt and implement standardized procedural guidelines in consumer debt collection actions to ensure fairness to all litigants and improve efficiency in the administration of justice; and

**WHEREAS**, the term "Principal Amount Due," when used herein, shall be defined in accordance with the substantive law applicable to the type of legal obligation upon which the action is based; and **WHEREAS**, the term "Consumer Debt Collection Actions," when used herein, shall mean suits to recover the balance due on credit extended for personal, family or household purposes.

**NOW, THEREFORE, IT IS DIRECTED** that Administrative Directive 2011-1 is hereby rescinded and replaced in its entirety, as follows:

#### 1. Pleading Requirements for Complaints in Consumer Debt Collection

**Actions**: Any Consumer Debt Collection Complaint must include an Affidavit of Ownership and Amount Due which shall substantially conform to Form 1 appended hereto. Additionally, the following information shall be set forth in the Complaint:

- a. the caption shall include a sufficient description of the original creditor to reasonably enable the defendant to identify the account, along with the name of the plaintiff;
- b. the last four digits of the original account number or the account number that existed at the time of default; and
- c. a breakdown of the Principal Amount Due and interest, fees and other charges.

2. **Non-Compliance.** Allegations of non-compliance with this Administrative Directive shall be heard by the Court upon motion, or *sua sponte* until judgment is entered. All parties are expected to consult with one another in good faith in an attempt to resolve any disputes prior to filing such a motion.

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#### 3. Judgment.

a. Default Judgment. If the Plaintiff directs or requests the entry of default judgment due to a Defendant's failure to appear or respond to the Complaint, Plaintiff shall comply with Rule 55. The Affidavits submitted by Plaintiff shall substantially conform to Forms 2A and 2B appended hereto. If default judgment is sought pursuant to Rule 55(b)(1), the Direction and Affidavits may be submitted without notice. If default judgment is sought pursuant to Rule 55(b)(2), then submission shall conform to that subsection.

b. If it appears that the Plaintiff has failed to comply with this Administrative Directive, the Court may *sua sponte* deny the entry of judgment.

c. A judgment entered pursuant to this Administrative Directive may be set aside only upon Motion. In considering such Motion, the procedures and standards shall be governed by Rules 55(c) and 60.

d. A request for attorney's fees shall substantially conform to Form 2B and provide sufficient explanation of the basis for recovery of fees and the amount sought to enable the Court to make a determination of appropriateness and reasonableness as contemplated by Delaware law.

4. This Administrative Directive shall apply to all Consumer Debt Collection Actions within its scope filed on or after September 2, 2012.

### BY THE CHIEF JUDGE

/s/ Alex J. Smalls

Judge John K. Welch cc: Judge Rosemary Betts Beauregard Judge Kenneth S. Clark, Jr. Judge Charles W. Welch, III Judge Joseph F. Flickinger, III Judge Andrea L. Rocanelli Judge Anne Hartnett Reigle Judge Eric M. Davis Commissioner Joseph Whitmore Maybee Commissioner Mary M. McDonough Stephanie Fitzgerald, Acting Court Administrator Elizabeth Jonkiert, Clerk of the Court Deborah Mowbray, Judicial Case Manager Administrator Teresa Lindale, Kent County Judicial Operations Manager Wanda Smith, Sussex County Judicial Operations Manager Tamu White, Judicial Case Manager Supervisor File

# AFFIDAVIT OF OWNERSHIP AND AMOUNT DUE FORM 1

STATE OF

## COUNTY OF

: : SS. :

\_\_\_\_\_, authorized representative of \_\_\_\_\_, the plaintiff in the above-captioned action, hereby swears and affirms:

- 1. I am employed as a \_\_\_\_\_\_ of \_\_\_\_\_, the plaintiff in the above-captioned action. I am competent person over 18 years of age and authorized to make this Affidavit.
- 2. The information contained in this Affidavit is based on my personal review of plaintiff's records. I am familiar with the manner and method by which plaintiff maintains its business records. Those records are kept in the regular course of business. Entries therein are made contemporaneous to the time of the act or occurrence recorded by a person with knowledge or at the direction of a person with actual knowledge of the event or transaction recorded.
- 3. Plaintiff is the current owner, by assignment, of the defendant's, (DEFENDANT'S NAME,) (ORIGINAL CREDITOR'S NAME) account number xxxxxxxxxx\_ \_ \_ \_ \_ that is the subject of the above action. Plaintiff acquired that account from (SELLER'S NAME) on or about (DATE) and has neither re-assigned, extinguished nor released the debt. [If applicable: The account was assigned by the original creditor to (NAME) on or about (DATE) and then to (NAME) on or about (DATE).
- The following is a breakdown of the balance currently due and owing. Principal Amount Due<sup>1</sup>:

Interest (from \_\_\_\_\_ to \_\_\_\_ at the rate of \_\_\_\_% per annum):

<sup>&</sup>lt;sup>1</sup> As that term is referenced in the "Whereas" Clause of Administrative Directive No. 2012-2.

Attorney's Fees:

Total:

I solemnly affirm, under penalty of perjury, that the foregoing statements made by me are true and correct.

SIGNATURE

PRINTED NAME

Signed and sworn to before me, the undersigned Authority, on the \_\_\_\_\_day of \_\_\_\_\_, 201\_\_\_\_,

(SEAL)

Notary Public

My commission expires: \_\_\_\_\_

## PLAINTIFF'S AFFIDAVIT IN SUPPORT OF DEFAULT JUDGMENT FORM 2A

STATE OF	

COUNTY OF

: : SS.

\_\_\_\_\_, authorized representative of \_\_\_\_\_, the plaintiff in the above-captioned action, hereby swears and affirms:

- 1. I am employed as a \_\_\_\_\_\_ of \_\_\_\_\_, the plaintiff in the above-captioned action. I am a competent person over 18 years of age and authorized to make this Affidavit.
- 2. The information contained in this Affidavit is based on my personal review of plaintiff's records. I am familiar with the manner and method by which plaintiff maintains its business records. Those records are kept in the regular course of business. Entries therein are made contemporaneous to the time of the act or occurrence recorded by a person with knowledge or at the direction of a person with actual knowledge of the event or transaction recorded.
- 3. This action is based on (description of the type of obligation such as, for example, a credit card agreement, a retail installment sales agreement, a personal loan, a personal guaranty to a consumer debt.) Attached hereto is/are copies of the documents evidencing the legal obligation. That obligation was given the account number xxxxxxxxxx \_ \_ \_ by the original creditor (NAME).
- 4. The original creditor subsequently assigned the obligation to (SECOND CREDITOR'S NAME) on or about (DATE). Attached hereto is a copy of the (ASSIGNMENT, BILL OF SALE, ASSIGNOR'S AFFIDAVIT) or other proof establishing plaintiff's ownership of the account.
- 5. [repeat #4 for each assignment]
- 6. Plaintiff is the current owner, by assignment, of the account. It has neither re-assigned, extinguished nor released the debt.
- The defendant is not on active duty in the military service. (May be contained in either Form 2A or Form 2B)
- The defendant is not an infant and is not incompetent. (May be contained in either Form 2A or Form 2B)

- 9. The last payment on the account was (DATE).
- 10. The Principal Amount Due<sup>1</sup> is \$\_\_\_\_\_. This gives credit for all payments received, which were on the following dates and amounts:
- 11. Plaintiff also seeks interest at the annual rate of \_\_\_\_\_% from \_\_\_\_\_ to \_\_\_\_\_in the amount of \$\_\_\_\_; the applicable rate is shown on the attached (NAME OF DOCUMENT).

I solemnly affirm, under penalty of perjury, that the foregoing statements made by me are true and correct.

SIGNATURE

# PRINTED NAME

Signed and sworn to before me, the undersigned Authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

(SEAL)

Notary Public

My commission expires: \_\_\_\_\_

<sup>&</sup>lt;sup>1</sup> As that term is referenced in the "Whereas" Clause of Administrative Directive No. 2012-2.

## ATTORNEY'S AFFIDAVIT IN SUPPORT OF DEFAULT JUDGMENT FORM 2B

STATE OF

COUNTY OF

: : SS.

\_\_\_\_\_, authorized representative of \_\_\_\_\_, the plaintiff in the above-captioned action, hereby swears and affirms:

- I am employed as a \_\_\_\_\_\_ of \_\_\_\_\_, the law firm representing the plaintiff in the above-captioned action. I am a competent person over 18 years of age and authorized to make this Affidavit.
- 2. The defendant (identification by name only if there is more than one defendant and judgment is not being requested as to all defendants) has been served with the Complaint and Summons more than 20 days before the date of this Affidavit, and he/she has not served or filed an answer or other responsive pleading or entered an appearance.
- 3. The defendant is not an infant and is not incompetent based on information provided to my office by plaintiff and any information obtained by my office during the course of our representation of plaintiff in connection with the subject account. [May be contained in either Form A or Form B]
- 4. The defendant is not on active duty in the military service. [May be contained in either Form A or Form B]
- 5. Plaintiff's claim against defendant is for a sum certain or a sum which can by computation be made certain.
- 6. The Principal Amount Due<sup>1</sup> does not exceed the amount demanded in the complaint.
- 7. The calculation of attorney's fees and the legal basis for awarding attorney's fees, if any, are as follows:

<sup>&</sup>lt;sup>1</sup> As that term is referenced in the "Whereas" Clause of Administrative Directive No. 2012-2.

8. The total requested amount is no more than 15% of the total principal and interest.

I solemnly affirm, under penalty of perjury, that the foregoing statements made by me are true and correct.

SIGNATURE

PRINTED NAME

Signed and sworn to before me, the undersigned Authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

(SEAL)

Notary Public

My commission expires: \_\_\_\_\_