

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE UPPER DECK COMPANY,

*Plaintiff,*

-against-

JOSEPH PIROZZI, JACK PIROZZI,  
JONATHAN PIROZZI, and THERESA  
DEPIETRO,

*Defendants.*

**Case No.: 1:17-cv-06685**

**COMPLAINT**

The Upper Deck Company (“**Plaintiff**” or “**Upper Deck**”) by its counsel, Cervini Swanson LLP, as and for its complaint against defendants Joseph Pirozzi (“**Judgment Debtor**”), Jack Pirozzi (“**Defendant Father**”), Jonathan Pirozzi (“**Defendant Son**”) and Theresa DePietro (“**Defendant Girlfriend**”) (collectively, Defendant Father, Defendant Son and Defendant Girlfriend are referred to as “**Defendant Family**”) (collectively, Judgment Debtor and Defendant Family are referred to as “**Defendants**”), alleges as follows:

**I. NATURE OF CLAIMS**

1. This action responds to newly-discovered information obtained by Upper Deck evidencing a systematic (and systematically-concealed) scheme enacted by Judgment Debtor, in concert with his family members (including Defendant Family) to hinder, delay and defraud Upper Deck. This ongoing scheme has spanned over nearly a decade, involving, *inter alia*: (i) fraudulent transfers of funds and property by Judgment Debtor to and among family members; (ii) active concealment of these fraudulent transactions by Judgment Debtor with the cooperation of family members; and (iii) extensive misrepresentations by Judgment Debtor and his family

members in connection with related legal proceedings. The coordinated actions of Judgment Debtor and Defendant Family amount to nothing short of a conspiracy to commit fraud.

2. Upper Deck holds a judgment against Judgment Debtor in excess of \$1.8 million (the “**Judgment**”), obtained in 2015 in connection with a business dispute that arose between the parties around 2009. Since the dispute arose in 2009, Judgment Debtor has engaged in a well-documented campaign of concealment and obstruction with the intent and effect of preventing Upper Deck’s discovery of his fraudulent financial dealings. These ongoing concealment activities have included, *inter alia*: (i) Judgment Debtor’s failure to provide requested and required financial disclosures to Upper Deck in violation of his contractual and legal obligations; (ii) movement between states and jurisdictions to avoid service and participation in legal proceedings; (iii) noncompliance with discovery demands; and (iv) extensive misrepresentations made in legal proceedings in coordination with Defendant Family.

3. The object of Defendants’ activities only recently became known to Upper Deck after a post-judgment examination of Judgment Debtor conducted by Upper Deck at the end of July of 2017 (the “**July 2017 Examination**”). Despite years of pursuit by Upper Deck, the July 2017 Examination of Judgment Debtor represented the first (and only) meaningful financial disclosure made by Judgment Debtor to Upper Deck since the dispute arose between the parties. Notwithstanding Judgment Debtor’s best efforts to legitimize his actions, at the July 2017 Examination, Judgment Debtor disclosed ongoing financial transactions with family members which amounted to a scheme to defraud Upper Deck.

4. The scheme uncovered by Upper Deck involves an ongoing system of fraudulent transactions between Judgment Debtor and his family members, replete with the most-classic badges of fraud, including:

- (i) previously-undisclosed transfers, by Judgment Debtor to Defendant Son, of approximately \$400,000 for no consideration, around the time that his dispute with Upper Deck arose, followed by Judgment Debtor's continued use of and retention of control over such funds, as well as ongoing periodic payments of substantial sums by Defendant Son to Judgment Debtor since the transfer;
- (ii) previously-undisclosed transfers, by Judgment Debtor to Defendant Father, of an interest in real property and proceeds from the sale of said real property in excess of \$160,000 in 2013, while litigation was pending between the parties, followed by ongoing periodic payments of substantial sums by Defendant Father to Judgment Debtor since the transfer; and
- (iii) the previously-undisclosed and ongoing transaction of Judgment Debtor's financial life through Defendant Girlfriend, including, *inter alia*, transaction of Judgment Debtor's financial dealings through accounts in the name of Defendant Girlfriend, and Defendant Girlfriend's acceptance of payments from family members of Judgment Debtor on his behalf (including the aforementioned ongoing payments from Defendant Son and Defendant Father), in concerted efforts to evade payment to Upper Deck.

5. The disclosures made by Judgment Debtor at the July 2017 Examination not only revealed an ongoing fraud by Judgment Debtor in cooperation with his family, but also extensive misrepresentations made by him and Defendant Family in connection with the ongoing enforcement proceedings being conducted in New York at the time (and which currently remain pending in New York). In connection with the enforcement proceedings, each member of

Defendant Family has not only refused to comply with Upper Deck's demands for financial disclosures regarding Judgment Debtor, but also unequivocally represented to Upper Deck (and the state court) that they had no involvement in or knowledge of the financial dealings of Judgment Debtor.

6. If there is any truth to the statements made by Judgment Debtor at the July 2017 Examination, the representations made by Defendant Family in the enforcement proceedings appear intentional misrepresentations made to Upper Deck (and the state court) with the intent of concealing the fraudulent activities of Defendants from Upper Deck. Taken together, the facts of this case indicate a conspiracy by Defendants to commit fraud, to conceal fraud, and to commit perjury in furtherance thereof. This action is commenced in the Eastern District of New York where the fraudulent scheme was initiated and where Defendants continue to perpetrate this fraud against Upper Deck.

## **II. JURISDICTION AND VENUE**

7. This action asserts claims arising under New York common law and the New York Debtor and Creditor Law ("**DCL**").<sup>1</sup>

8. This Court has jurisdiction over Upper Deck's claims pursuant to 28 U.S.C. § 1332. Upon information and belief, this Court has personal jurisdiction over Defendants because they reside in the Eastern District and/or regularly transact business in the District and have committed tortious acts within this District.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

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<sup>1</sup> The causes of action asserted in this action are pleaded under the laws of the State of New York. However, every jurisdiction with any conceivable connection to this action provides for substantially similar laws with respect to the claims asserted in this action.

### **III. THE PARTIES**

10. Upper Deck is a Nevada corporation with a principal place of business located at 5830 El Camino Real, Carlsbad, California 92008.

11. Upon information and belief, Judgment Debtor is an individual residing at 910 Augusta Point Drive, Palm Beach Gardens, Florida 33418.

12. Upon information and belief, Defendant Girlfriend is an individual residing at 910 Augusta Point Drive, Palm Beach Gardens, Florida 33418.

13. Upon information and belief, Defendant Father is an individual residing at 45 Drake Lane, Manhasset, New York 11030.

14. Upon information and belief, Defendant Son is an individual residing in Queens, New York, with a place of business located at 2200 Northern Boulevard, East Hills, New York 11548.

### **IV. FACTUAL BACKGROUND**

#### **A. The Original Business Transactions Underlying the Claims of Upper Deck**

15. Upper Deck is an international business that produces, *inter alia*, sports-trading cards and memorabilia products.

16. Judgment Debtor was a part-owner and operator of company engaged in the wholesale distribution of sports memorabilia, known as J&T Hobby (collectively, the business and its operating entities are referred to as “**Debtor Business**”), which operated from Long Island, New York prior to the closure of Debtor Business in 2010.

17. Prior to closure of Debtor Business in 2010, Upper Deck had supplied Judgment Debtor and Debtor Business with products for more than a decade. For many years, Judgment

Debtor represented one of Upper Deck's largest distributors, enjoying a special relationship of trust and confidence with Upper Deck, and supplied with millions of dollars of products annually by Upper Deck on account.

18. The dispute between the parties initially arose in and around 2009 in connection with Judgment Debtor's failure to pay for products supplied to Judgment Debtor and Debtor Business. These products were supplied pursuant to a written distribution agreement entered into by the parties in 2007 (the "**Agreement**"), executed together with a written personal guaranty of all obligations under the Agreement by Judgment Debtor (the "**Guaranty**") (together, the Agreement and the Guaranty are referred to as the "**2007 Agreements**").

19. After entering into the 2007 Agreements and obtaining a credit increase from Upper Deck to the sum of \$6,000,000 (the "**Credit Increase**"), in short order, Judgment Debtor and Debtor Business proceeded to exhaust the increased credit limit and default upon their payment obligations under the 2007 Agreements.

20. Upon information and belief, during this period, Judgment Debtor and Debtor Business ordered and accepted large shipments of products from Upper Deck on account without any intention or ability to repay the resulting obligations to Upper Deck.

21. By 2009, Upper Deck had terminated its relationship with Judgment Debtor and Debtor Business and initiated collection activities against them.

**B. Judgment Debtor's Disclosure Duties and Other Obligations to Upper Deck**

22. During all relevant periods, Judgment Debtor had ongoing obligations to fully and faithfully disclose information regarding his finances and those of his company to Upper Deck, by virtue of not only the express terms of the Agreement and Guaranty, but also the special

relationship of trust and confidence between the parties (and, later, by law in connection with the litigation between the parties).

**i. The Ongoing Disclosure Obligations of Judgment Debtor under the Guaranty**

23. The Guaranty expressly imposed ongoing obligations upon Judgment Debtor to disclose personal financial information, which continued while any amounts remained outstanding under the Agreement, and which required Judgment Debtor to promptly provide “complete and current” financial information to Upper Deck as requested. *See* Guaranty, ¶ 5.

24. The express disclosure obligations contained in the Guaranty were accompanied by other ongoing financial restrictions imposed upon Judgment Debtor, including, *inter alia*: (i) restrictions on Judgment Debtor’s use of funds from Debtor Business while any obligations remained outstanding under the Agreement [*id.*];<sup>2</sup> and (ii) a trust provision establishing that Judgment Debtor held “in trust for the benefit of [Upper Deck]” funds withdrawn from Debtor Business while amounts remained outstanding under the Agreement. *Id.*<sup>3</sup>

25. By the terms of the Guaranty, these ongoing obligations of Judgment Debtor (and Upper Deck’s right to enforce them) continued as long as any obligations remained outstanding under the Agreement. Pursuant to the Guaranty, Judgment Debtor expressly waived any right to assert any statute of limitations defense in connection with the enforcement of the Guaranty. *See* Guaranty, ¶ 5 (providing that Judgment Debtor “irrevocably and unconditionally

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<sup>2</sup> These financial restrictions placed on Judgment Debtor included, *inter alia*: (i) his subordination of “[a]ny present or future [o]bligations of [Debtor Business] to [Judgment Debtor] to the full payment and performance of the [o]bligations” owed by Debtor Business to Upper Deck [*id.*]; and (ii) his waiver of any rights to payment by Debtor Business “until payment in full of all Obligations” to Upper Deck under the Agreement. *See* Guaranty, ¶ 5 (“Until the payment in full of all Obligations [under the Agreement]... [Judgment Debtor] waives any... rights... against Debtor... that arise from the existence ... of... any Obligation [under the Agreement between Debtor Business and Upper Deck].”).

<sup>3</sup> With respect to these trust obligations, the Guaranty established Judgment Debtor as trustee of Upper Deck with respect to funds transferred to Judgment Debtor by Debtor Business while obligations remained outstanding under the Agreement, providing that any such funds were held “in trust for the benefit of [Upper Deck]... to be held as collateral for any Obligations or other amounts payable under this Guaranty thereafter arising.” *Id.*

waives... the right to plead any and all statutes of limitations as a defense to [Judgment Debtor’s] liability or [to] the enforcement of this Guaranty”).

**ii. The Ongoing Disclosure Obligations of Debtor Business Under the Agreement**

26. Like the Guaranty, the Agreement imposed several ongoing financial disclosure obligations and related duties upon Debtor Business (and Judgment Debtor as the owner-operator of Debtor Business), requiring not only ongoing maintenance of accurate financial records by Debtor Business, but also ongoing disclosure of updated financial information to Upper Deck, at all times, with “the highest standards of honesty, integrity and fair dealings.” Agreement, ¶ 4.3.

27. In this regard, the Agreement imposed upon Debtor Business (and Judgment Debtor as the owner-operator of Debtor Business) ongoing accounting obligations which included, *inter alia*, requirements to “maintain and preserve... complete and accurate books... and records,” during the term of the Agreement and for not less than “three years after [its] expiration,” and to provide Upper Deck with “free and full access” to all such books and records. Agreement, ¶ 10.

28. In addition, the Agreement imposed upon Debtor Business (and Judgment Debtor as the owner-operator of Debtor Business) an affirmative and ongoing obligation to provide updated financial information to Upper Deck, requiring Debtor Business to provide financial reports to Upper Deck on a *monthly* basis.

29. Finally, the Agreement imposed specific disclosure obligations upon Debtor Business (and Judgment Debtor as owner/operator of Debtor Business) upon termination of the Agreement, requiring Debtor Business to promptly disclose and “deliver to [Upper Deck]” all

documents and information in its possession “in connection with [Debtor Business's] activities pursuant to this Agreement” upon termination of the Agreement. Agreement, ¶ 4.5.<sup>4</sup>

**B. Judgment Debtor’s Concealment of Financial Information Prior to Commencement of the California Action in 2011**

30. Before and after defaulting upon their payment obligations under the 2007 Agreements in and around 2009, Judgment Debtor and Debtor Business (under the control of Judgment Debtor) failed to comply with their disclosure obligations to Upper Deck.

31. Upon information and belief, the financial disclosures made by Judgment Debtor and Debtor Business to Upper Deck in 2007 (relied upon by Upper Deck in entering into the Agreement and Guaranty and in approving the Credit Increase for Debtor Business) contained material misstatements and/or omissions with respect to the assets, income and creditworthiness of Judgment Debtor and Debtor Business including, *inter alia*, nondisclosure of large transfers of funds from Judgment Debtor and/or Debtor Business to other parties.

32. After serious payment defaults by Judgment Debtor and Debtor Business in and around 2009 (and after subsequent termination of the Agreement by Upper Deck), Judgment Debtor and Debtor Business failed to comply with their disclosure obligations to Upper Deck: failing to provide updated financial information to Upper Deck as required under the 2007 Agreements, failing to provide updated financial information as requested by Upper Deck pursuant to the 2007 Agreements, and ultimately failing to respond to Upper Deck’s inquiries around the time that Judgment Debtor purportedly ceased operation of Debtor Business in 2010.

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<sup>4</sup> In relevant part, paragraph 4.5 of the Agreement provides as follows: “Upon the termination of this Agreement or sooner if required by [Upper Deck], [Debtor Business] will promptly deliver to [Upper Deck] any and all... documents, data, information... correspondence... records... or other electronically stored materials... in connection with Distributor's activities pursuant to this Agreement ... whether before or after execution of this Agreement.”

**C. Continued Concealment and Delay by Judgment Debtor in Connection with the California Actions**

33. In 2011, Upper Deck commenced an action in California against Judgment Debtor and Debtor Business (the “**California Action**”), seeking to recover the outstanding balance of \$1,503,493.19 (the “**Unpaid Balance**”) due for products delivered to Debtor Business under the Agreement (the “**Products**”).<sup>5</sup>

34. In response to the California Action, Judgment Debtor (individually and on behalf of Debtor Business) filed a countersuit against Upper Deck, asserting unfounded claims of wrongdoing that were subsequently dismissed in their entirety (the “**California Countersuit**”) (together, the California Action and the California Countersuit are referred to as the “**California Actions**”).<sup>6</sup>

35. Throughout the California Actions, Judgment Debtor pursued a dedicated campaign of obstruction and concealment, delaying the California Action for nearly four (4) years through a litany of unsuccessful (and meritless) motions and appeals, while failing to make basic financial disclosures requested by Upper Deck during the litigations or in connection with post-judgment proceedings initiated by Upper Deck following entry of the Judgment against Judgment Debtor in the California Action on April 1, 2015.

**i. Judgment Debtor’s Concealment of Financial Information in the California Actions After 2011**

36. In the California Actions, Judgment Debtor and Debtor Business failed to disclose basic information regarding their financial dealings, assets and income in response to direct

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<sup>5</sup> The California Action was commenced by Upper Deck on November 7, 2011, in the Superior Court of the State of California, County of San Diego, captioned *The Upper Deck Company, Inc. v. J&T Hobby, Joseph Pirozzi and Does I-100*, and filed under case number 37-2011-00100599-CU-BC-CTL.

<sup>6</sup> The California Countersuit was commenced by Judgment Debtor and Debtor Business on August 31, 2012, in the Superior Court of the State of California, County of San Diego, captioned *Joseph Pirozzi and J&T Hobby LLC v. Richard McWilliam, The Upper Deck Company Inc. and Does 1 Through 100, Inclusive*, and filed under case number 37-2012-00056843-CU-BT-NC.

demands for such information by Upper Deck. For example, a document demand served upon Judgment Debtor (individually and as representative of Debtor Business) in the California Countersuit, dated November 5, 2012 (the “**2012 Document Demand**”), included broad requests for financial information that included, *inter alia*: “all documents regarding, related to, or referring to ... [(i)] any debt owed by [Judgment Debtor or Debtor Business] to [Upper Deck]; [(ii)] profits realized by [Judgment Debtor or Debtor Business] under [the Agreement]; [and (iii)] profits realized by [Judgment Debtor or Debtor Business] as a result of [their] business relationship with [Upper Deck].”

37. Despite Judgment Debtor and Debtor Business’s contractual and legal obligations maintain such records, Judgment Debtor and Debtor Business failed to provide any meaningful response to these demands for documents.

**ii. Judgment Debtor’s Concealment of Financial Information  
in the California Post-Judgment Proceedings in 2015**

38. Judgment Debtor similarly failed to disclose his personal financial information to Upper Deck in connection with post-judgment enforcement proceedings initiated in California following entry of the Judgment in the California Action in 2015, failing to respond *entirely* to detailed document demands and interrogatories served upon Judgment Debtor (collectively, the “**2015 Demands**”), seeking information regarding his past and current financial dealings.

**a. Judgment Debtor’s Refusal to Respond  
to Upper Deck’s 2015 Document Demand**

39. For example, Judgment Debtor failed to respond to a document demand served upon him on November 17, 2015 (the “**2015 Document Demand**”), demanding production of documents related to his financial dealings within thirty (30) days of service.

40. Relevant here, the 2015 Document Demand included specific requests for documents related to: (i) Judgment Debtor's interests in real property and the sale or transfer of any interests in real property to other parties; (ii) transfers of property to family members or third parties; and (iii) property held in trust in which Judgment Debtor had served as trustor or trustee.

41. Upper Deck received no response to the 2015 Document Demand from Judgment Debtor.

**b. Judgment Debtor's Refusal to Respond to Upper Deck's 2015 Interrogatories**

42. For example, Judgment Debtor failed to respond to interrogatories served upon him on November 17, 2015 (the "**2015 Interrogatories**"), demanding production of information related to his financial dealings to Upper Deck within thirty (30) days of service.

43. Relevant here, the 2015 Interrogatories included specific requests for information from Judgment Debtor regarding: (i) the sources of income and other money used by Judgment Debtor to pay living expenses; (ii) the bank accounts utilized by Judgment Debtor; (iii) the interests in real property held by Judgment Debtor and any transfers thereof; (iv) transfers of property to third parties including family members; (v) any trust property held by Judgment Debtor on behalf of others.

44. Upper Deck received no response to the 2015 Interrogatories from Judgment Debtor.

**D. Concealment and Misrepresentations by Judgment Debtor and Defendant Family in the Enforcement Proceedings in New York State**

45. After Judgment Debtor's failure to respond to the 2015 Demands in the California Action, Upper Deck sought to enforce the Judgment in New York State where Judgment Debtor resided and had operated Debtor Business until its closure in 2010.

46. On August 12, 2015, Upper Deck domesticated the Judgment in New York State and initiated enforcement proceeds in state court (the “**New York Proceedings**”), immediately moving in 2015 to obtain documents and testimony from Judgment Debtor regarding his financial affairs by subpoena *duces tecum* and *ad testificandum* (the “**Debtor Subpoena**”); then, in 2016, seeking the same information from Defendant Girlfriend by a similar subpoena (the “**Girlfriend Subpoena**”); and, ultimately, seeking similar information from other members of Defendant Family by similar subpoenas (collectively, together with the Girlfriend Subpoena, referred to as the “**Family Subpoenas**”) (collectively, the Debtor Subpoena and the Family Subpoena are referred to as the “**Subpoenas**”).

47. Despite active and ongoing pursuit from Upper Deck, to date, Judgment Debtor and Defendant Family have refused to comply with the Subpoenas, engaging in concerted and ongoing actions to avoid and delay disclosures to Upper Deck in the New York Proceedings that have included, *inter alia*: (i) movement between states and jurisdictions to evade service and participation in the proceedings; (ii) making false statements to the state court with respect to their involvement in and knowledge of Judgment Debtor’s finances; and (iii) even providing false testimony under oath in connection with the New York Proceedings.<sup>7</sup>

48. The purpose of these activities by Defendants (and the depth of their wrongdoing) was only recently revealed to Upper Deck when Judgment Debtor, under threat of contempt, finally submitted to an examination by Upper Deck in connection with the New York Proceedings at the end of July of 2017 (i.e. the July 2017 Examination), disclosing a long history of previously-undisclosed transfers and ongoing transactions between Judgment Debtor and his

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<sup>7</sup> Motions are currently pending against each of Defendants in the New York Proceedings to compel their compliance with their disclosure obligations under the Subpoenas.

family members, engaged in by Defendants with the apparent intent of hindering, delaying and/or defrauding Upper Deck.

49. The disclosures made by Judgment Debtor at the July 2017 Examination, detailed below, indicated not only that Defendants had been engaged in an ongoing scheme to defraud Upper Deck, but also that Defendants had made extensive misrepresentations in the New York Proceedings in order to conceal their fraudulent activities.

**i. Defendants' Concealment of Financial Information and Misrepresentations Prior to the July 2017 Examination**

50. Up until July of 2017, the only substantive disclosure that Upper Deck had obtained from any of Defendants in connection with the New York Proceedings was an examination of Defendant Girlfriend conducted by Upper Deck in September of 2016 (the "**2016 Examination**"), at which Defendant Girlfriend denied any involvement in or knowledge of the financial dealings of Judgment Debtor, and after which Defendant Girlfriend refused to provide additional information or documents requested by Upper Deck. Despite her long-term relationship with Judgment Debtor of more than twenty (20) years, Defendant Girlfriend represented that she did not possess any additional information and/or documentation responsive to Upper Deck's requests other than a single set of financial statements.

51. The other members of Defendant Family have completely refused (and continue to completely refuse) to comply with Upper Deck's demands for information in the New York Proceedings, opposing the demands in concert, disputing service *en masse*, and objecting to the demands based upon unequivocal statements (repeatedly made to Upper Deck and the state court) that each of them have no involvement in or knowledge of the financial dealings of Judgment Debtor.

52. Prior to July of 2017, Judgment Debtor had himself avoided any meaningful disclosure to Upper Deck in the New York Proceedings (or otherwise) through a well-documented pattern of deceptive and dilatory activities that included evasion of service, noncompliance with discovery demands, active concealment of information, and movement between jurisdictions to avoid participation in the ongoing proceedings.<sup>8</sup>

**ii. Judgment Debtor’s Revelation of Previously-Undisclosed Transactions with Family Members in the July 2017 Examination**

53. The July 2017 Examination of Judgment Debtor represented the first and only meaningful financial disclosures received by Upper Deck from Judgment Debtor since the dispute arose between the parties around 2009.

54. At the July 2017 Examination, Judgment Debtor revealed extensive and ongoing financial transactions with family members, conducted (and concealed) with the apparent purposed of hindering, delaying and defrauding Upper Deck.

55. As set forth below, the activities disclosed by Judgment Debtor including ongoing and fraudulent transactions between Judgment Debtor and each member of Defendant Family.

**a. Previously-Undisclosed Fraudulent Transactions with Defendant Son**

56. With respect to the Defendant Son, at the July 2017 Examination, Judgment Debtor indicated that he had transferred approximately \$400,000 to Defendant Son for no consideration around the time that the dispute had arisen between the parties (respectively, the “**Fraudulent Trust Transfer**” and the “**Fraudulent Trust Funds**”).

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<sup>8</sup> Following commencement of the New York Proceedings, Judgment Debtor refused to comply with the disclosure demands of Plaintiff, initially contesting service with the Debtor Subpoena, subsequently evading service by moving between states, and then refusing to comply with the Debtor Subpoena after it was undisputedly served upon him within New York State in September of 2016.

57. Although Judgment Debtor alleged that these funds were transferred in trust, Judgment Debtor's subsequent statements indicated that, *inter alia*: (i) no documentation of the alleged trust relationship was available to Judgment Debtor (or ever existed) in connection with the Fraudulent Trust Transfer; (ii) after the Fraudulent Trust Transfer, Judgment Debtor continued to retain control over and beneficial use of the funds; and (iii) since the Fraudulent Trust Transfer, Defendant Son had made ongoing periodic payments to Judgment Debtor of approximately \$20,000 per year.

**b. Previously-Undisclosed Fraudulent Transactions with Defendant Father**

58. With respect to Defendant Father, at the July 2017 Examination, Judgment Debtor indicated that he had transferred his interest in a real property located in Florida (the "**Florida Property**") to Defendant Father in 2011 and thereafter transferred proceeds from the sale of the Florida Property, in an amount of approximately \$160,000, to Defendant Father in or around 2013 (respectively, the "**Fraudulent Property Transfers**", the "**Fraudulent Property Interest**" and the "**Fraudulent Property Proceeds**").

59. Although Judgment Debtor indicated that the transfer was made to repay an antecedent debt owed to his father, the Fraudulent Property Transfer occurred while the California Action was pending and Judgment Debtor failed to produce any documentation evidencing an obligation of Judgment Debtor to Defendant Father (or transfer of property).

60. Moreover, in the period following the Fraudulent Property Transfer, Judgment Debtor indicated that Defendant Father had made ongoing payments of tens of thousands of dollars to Judgment Debtor each year and continued to make such payments as of the date of the July 2017 Examination.

**c. Previously-Undisclosed Fraudulent Transactions with Defendant Girlfriend**

61. With respect to Defendant Girlfriend, at the July 2017 Examination, Judgment Debtor disclosed extensive participation of Defendant Girlfriend in the ongoing financial dealings of Judgment Debtor.

62. Judgment Debtor indicated that he operated virtually his entire financial existence through Defendant Girlfriend, stating, *inter alia*, that: (i) Judgment Debtor transacted his financial affairs almost entirely through accounts in the name of Defendant Girlfriend; (ii) Judgment Debtor received transfers from family members through Defendant Girlfriend on his behalf (including the aforementioned transfers from Defendant Son and Defendant Father); and (iii) Judgment Debtor, Defendant Girlfriend and other family members made such transfers through Defendant Girlfriend with intent and effect of avoiding payment to Upper Deck.

63. Further, Judgment Debtor acknowledged that Defendant Girlfriend received a direct benefit from these activities, among other things, utilizing funds transferred to her on behalf of Judgment Debtor to pay her own living expenses.

**d. Judgment Debtor's Subsequent Refusal to Provide Documents Following the July 2017 Examination**

64. The true extent of Judgment Debtor's wrongful activities remain unknown due, in large part, to the failure of Judgment Debtor to provide any meaningful document production to Upper Deck prior to the July 2017 Examination (as agreed), and his refusal to provide requested documentation to Upper Deck after the July 2017 Examination (as agreed).

65. Prior to the July 2017 Examination, Judgment Debtor entered into a written stipulation with Upper Deck, filed with the state court in the New York Proceeding, under which he agreed to produce to Upper Deck a complete response to the extensive document requests of

Upper Deck in advance of the July 2017 Examination. Judgment Debtor failed to comply with his obligations under the stipulation and failed to produce any documents in advance of the July 2017 Examination.

66. Although Judgment Debtor failed to produce the requested documentation prior to the July 2017 Examination as agreed, at the examination, Judgment Debtor acknowledged that he possessed many categories of documents responsive to Upper Deck's requests, indicating that they were stored at his home in Florida and, on the record, promising to produce all such documents to Upper Deck upon his return to Florida in September of 2017.

67. Not surprisingly, Judgment Debtor failed to produce the requested documents to Upper Deck in September of 2017 as he had promised on the record at the July 2017 Examination. In response to Upper Deck's demands for turnover of said documents in October of 2017, Judgment Debtor indicated that the documents were either no longer in his possession or otherwise subject to an unidentified attorney-client privilege.

**iii. Documented Instances of Misrepresentations by Defendants in the New York Proceedings**

68. Without knowing the true extent of the undisclosed financial dealings of Judgment Debtor, the statements of Judgment Debtor at the July 2017 Examination (statements made against his own interest) plainly indicate that Judgment Debtor and Debtor Family had previously made extensive misrepresentations to Upper Deck and the state court in connection with the New York Proceedings.

**a. False Representations by Defendant Girlfriend**

69. The statements made by Judgment Debtor at the July 2017 Examination directly conflict with numerous aspects of the testimony given by Defendant Girlfriend *under oath* at the

2016 Examination as well as other subsequent representations made in the New York Proceedings.

70. At the 2016 Examination, in response to direct questioning, Defendant Girlfriend repeatedly denied any knowledge of the financial dealings of Judgment Debtor, explicitly denying: (i) any knowledge of financial accounts utilized by Judgment Debtor (unequivocally denying any “knowledge of his accounts”); (ii) any knowledge of the sources of Judgment Debtor’s income (when asked about the Judgment Debtor’s current “sources of income”, Defendant Girlfriend stated unequivocally “I don’t [know]”); and (iii) any knowledge of the Judgment Debtor’s monthly expenses or how they are paid.

71. Similarly, after the 2016 Examination, Defendant failed to produce any meaningful documents in response to the broad demands for documents by Upper Deck, asserting that she had no additional financial records related to the financial affairs of Judgment Debtor other than a single set of credit-card statements and a few other *de minimis* items.<sup>9</sup>

72. Very recently, Defendant Girlfriend repeated these representations in an affidavit sworn to on July 13, 2017, and submitted to the state court in the New York Proceedings. In opposition to a motion by Upper Deck to compel her compliance with the Family Subpoena, Defendant Girlfriend represented in the affidavit *under penalty of perjury* that: (i) she “is not involved with... [Judgment Debtor’s] finances”; (ii) she “has no further information” regarding Judgment Debtor’s finances other than the single-set of credit card statements provided; and (iii) she “has fully complied with both the original subpoena and the requests made [by Upper Deck] at the [2016 Examination].”

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<sup>9</sup> Notably, this representation was made (and continues to be made) to Upper Deck by Defendant Girlfriend after an exhaustive explanation of the broad categories of documents sought from Defendant Girlfriend at the 2016 Examination which included an explicit request for any financial records related to “shared” accounts through which financial dealings of Judgment Debtor are operated.

73. If the disclosures made by Judgment Debtor at the July 2017 Examination are true, Defendant Girlfriend's representations regarding her knowledge of and/or involvement in the finances of Judgment Debtor are unquestionably false. Moreover, under the circumstances, these misleading statements appear to have been made in a deliberate attempt by Defendant Girlfriend to conceal her own fraudulent transactions with Judgment Debtor and those of the other Defendant Family.

**b. False Representations by Defendant Son**

74. The statements made by Judgment Debtor at the July 2017 Examination similarly conflict with representations made by Defendant Son in the New York Proceedings.

75. In the New York Proceedings, Defendant Son has emphatically opposed Upper Deck's requests for disclosures from him based, in part, upon his unequivocal and repeated representations, made by through counsel and in written statements submitted to the state court, that he possesses no knowledge whatsoever of the financial dealings of Judgment Debtor.

76. Most recently, Defendant Son repeated this representation in an affidavit, sworn to on July 13, 2017, and submitted to the state court in the New York Proceedings in opposition to a motion by Upper Deck to compel his compliance with the Family Subpoena. Under penalty of perjury, Defendant Son represented in the affidavit that he had no knowledge of the financial dealings of Judgment Debtor, stating unequivocally that he had "no information... concerning [Judgment Debtor's] assets," explaining that he does "not share financial information" with Judgment Debtor.

77. In light of the disclosures made by Judgment Debtor at the July 2017 Examination with respect to the Fraudulent Trust Transfer (and the continuing payments made by Defendant Son to Judgment Debtor ever since), this sworn statement of Defendant Son appears to amount to

a wilful misrepresentation - made to Upper Deck and the state court to conceal the fraudulent activities of Judgment Debtor and Defendants.<sup>10</sup>

**E. The Extensive and Ongoing Fraud Perpetrated by Defendants Has Caused Extensive Damage to Upper Deck**

78. As a direct and proximate result of the fraudulent conduct of Defendants, Upper Deck has suffered damages to its business and property, in an amount to be determined at trial, but in no event less than \$800,000, including, *inter alia*: (i) damages caused to Upper Deck by the fraudulent transfer of property away from Judgment Debtor to family members; (ii) damages caused by the concealment of the fraudulent activities of Defendants from Upper Deck; (iii) extensive legal expenses incurred opposing and otherwise responding to the fraudulent claims of Defendants; and (iv) other damages incurred as a result of the wrongdoing of Defendants.

**COUNT I**  
**Fraud**  
**(Against Judgment Debtor, Defendant Girlfriend and Defendant Son)**

79. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

80. As detailed above, numerous false representations of material fact were made to Upper Deck by Judgment Debtor, Defendant Girlfriend, and Defendant Son, in connection with the New York Proceedings (and otherwise), including, *inter alia*, misrepresentations regarding (i) their respective knowledge of and involvement in the financial transactions with Judgment Debtor; (ii) their lack of access to related information and documents (or alleged lack thereof); and/or (iii) their production of all available documents and information to Upper Deck.

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<sup>10</sup> This is especially true in light of the circumstances of this statement. It should not be forgotten that this statement was made by Defendant Son with knowledge of the details requests for information set forth in the Family Subpoena, as well as extensive explanation of the categories of information requested by Upper Deck, stated over months of litigation with Defendant Son and his counsel (who represented and currently represents) all Defendants in the New York Proceedings).

81. Defendants knew these representations to be false and made them with the intention to deceive Upper Deck.

82. Upper Deck justifiably relied upon these representations to its severe detriment.

83. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

84. By reason of the forgoing, Judgment Debtor, Defendant Girlfriend and Defendant Son are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

**COUNT II**  
**Aiding and Abetting Fraud**  
**(Against All Defendants)**

85. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

86. Defendants knew of the fraudulent activities set forth above and knowingly rendered substantial assistance to advance the fraud.

87. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

88. By reason of the forgoing, Defendants are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

**COUNT III**  
**Fraudulent Concealment**  
**(Against Judgment Debtor, Defendant Girlfriend and Defendant Son)**

89. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

90. As detailed above, Judgment Debtor, Defendant Girlfriend, and Defendant Son omitted material facts in their statements to Upper Deck and to the state court, made in connection with the New York Proceeding.

91. Each of these Defendants had a duty to fully and faithfully disclose all material facts in connection with these statements by virtue of, *inter alia*, the contractual disclosure obligations between the parties, and/or the disclosure obligations imposed by law.

92. Each of these Defendants concealed such facts with intent to defraud Upper Deck.

93. Each of these Defendants intended Upper Deck to rely upon these representations when made.

94. Upper Deck justifiably relied upon these representations to its severe detriment.

95. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

96. By reason of the foregoing, Judgment Debtor, Defendant Girlfriend and Defendant Son are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

**COUNT IV**  
**Aiding and Abetting Fraudulent Concealment**  
**(Against All Defendants)**

97. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

98. As detailed above, Defendants were engaged in ongoing fraudulent transfers and transactions aimed to hinder, delay and defraud Upper Deck.

99. As detailed above, each of Defendants knew of the fraudulent activities set forth above and knowingly rendered substantial assistance to advance the fraud, affirmatively assisting with these activities, helping to conceal them, and/or enabling them to proceed by failing to act.

100. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

101. By reason of the forgoing, Defendants are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

**COUNT V**  
**Negligent Misrepresentation**  
**(Against Judgment Debtor, Defendant Girlfriend and Defendant Son)**

102. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

103. As detailed above, Judgment Debtor, Defendant Girlfriend, and Defendant Son made false representations to Upper Deck that they should have known were incorrect.

104. Each of these parties had a duty to give correct information to Upper Deck by virtue of, *inter alia*, the contractual disclosure obligations between the parties, and/or the disclosure obligations imposed by law.

105. The information supplied to Upper Deck by these parties was known by them to be desired by Upper Deck for a serious purpose.

106. Upper Deck intended to rely and act upon this information.

107. Upper Deck justifiably relied upon these representations to its severe detriment.

108. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

109. By reason of the forgoing, Judgment Debtor, Defendant Girlfriend and Defendant Son are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

#### **COUNT VI**

#### **Intentional Fraudulent Conveyance Pursuant to DCL §§ 276, 276-a, and 278 (Against Judgment Debtor and Defendant Son)**

110. Upper Deck repeats and realleges the allegations of the forgoing paragraphs of the Complaint as if fully set forth herein.

111. Judgment Debtor transferred the Fraudulent Trust Funds to Defendant Son without fair consideration.

112. The transfer of the Fraudulent Trust Funds from Judgment Debtor to Defendant Son was made with an actual intent to hinder, delay, and/or defraud present or future creditors of Judgment Debtor including Upper Deck.

113. The transfer of the Fraudulent Trust Funds therefore constitutes a fraudulent conveyance in violation of DCL § 276.

114. By reason of the foregoing, Upper Deck is entitled to recover attorneys' fees from Judgment Debtor and Defendant Son pursuant to DCL § 276-a.

115. By reason of the foregoing, Upper Deck is entitled to set aside the Fraudulent Trust Transfer or disregard the Fraudulent Trust Transfer and attach or levy execution upon the property conveyed to Defendant Son.

116. By reason of the foregoing, Judgment Debtor and Defendant Son are liable to Upper Deck in an amount to be proven at trial including reasonable attorney's fees associated with the action as permitted under DCL § 276.

**COUNT VII**  
**Constructive Fraudulent Conveyance Pursuant to DCL §§ 274 and 278**  
**(Against Judgment Debtor and Defendant Son)**

117. Upper Deck repeats and realleges the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

118. Judgment Debtor transferred the Fraudulent Trust Funds to Defendant Son without fair consideration.

119. Upon information and belief, at the time of the Fraudulent Trust Transfer, Judgment Debtor was engaged or was about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital.

120. Upper Deck became a creditor of Judgment Debtor during Judgment Debtor's continuance of such business.

121. The transfer of the Fraudulent Trust Funds therefore constitutes fraudulent conveyances in violation of DCL § 273.

122. By reason of the foregoing, Upper Deck is entitled to set aside the Fraudulent Trust Transfers or disregard the Fraudulent Trust Transfers and attach or levy execution upon the property conveyed.

123. By reason of the foregoing, Judgment Debtor and Defendant Son are liable to Upper Deck in an amount to be proven at trial.

**COUNT VIII**

**Constructive Fraudulent Conveyance Pursuant to DCL §§ 275 and 278**  
**(Against Judgment Debtor and Defendant Son)**

124. Upper Deck repeats and realleges the allegations of the forgoing paragraphs of the Complaint as if fully set forth herein.

125. Judgment Debtor transferred the Fraudulent Trust Funds to Defendant Son without fair consideration.

126. Upon information and belief, at the time of the Fraudulent Trust Transfer, Judgment Debtor intended and/or believed that he would incur debts beyond his ability to pay as they mature.

127. The transfer of the Fraudulent Trust Funds therefore constitutes fraudulent conveyances in violation of DCL § 275.

128. By reason of the foregoing, Upper Deck is entitled to set aside the Fraudulent Trust Transfers or disregard the Fraudulent Trust Transfers and attach or levy execution upon the property conveyed.

129. By reason of the foregoing, Judgment Debtor and Defendant Son are liable to Upper Deck in an amount to be proven at trial.

**COUNT IX**

**Constructive Fraudulent Conveyance Pursuant to DCL §§ 273 and 278**  
**(Against Judgment Debtor and Defendant Son)**

130. Upper Deck repeats and realleges the allegations of the forgoing paragraphs of the Complaint as if fully set forth herein.

131. Judgment Debtor transferred the Fraudulent Trust Funds to Defendant Son without fair consideration.

132. Upon information and belief, Judgment Debtor was rendered insolvent by the Fraudulent Trust Transfer.

133. The transfers of the Fraudulent Trust Funds therefore constitute fraudulent conveyances in violation of DCL § 273.

134. By reason of the foregoing, Upper Deck is entitled to set aside the Fraudulent Trust Transfers or disregard the Fraudulent Trust Transfers and attach or levy execution upon the property conveyed.

135. By reason of the foregoing, Judgment Debtor and Defendant Son are liable to Upper Deck in an amount to be proven at trial.

#### COUNT X

#### **Intentional Fraudulent Conveyance Pursuant to DCL §§ 276, 276-a, and 278** **(Against Judgment Debtor and Defendant Father)**

136. Upper Deck repeats and realleges the allegations of the forgoing paragraphs of the Complaint as if fully set forth herein.

137. Judgment Debtor transferred the Fraudulent Property Interest and/or the Fraudulent Property Proceeds to Defendant Father without fair consideration.

138. The transfer of the Fraudulent Property Interest and Fraudulent Property Proceeds from Judgment Debtor to Defendant Father was made with an actual intent to hinder, delay, and/or defraud present or future creditors of Judgment Debtor including Upper Deck.

139. The transfer of the Fraudulent Property Interest and Fraudulent Property Proceeds therefore constitutes a fraudulent conveyance in violation of DCL § 276.

140. By reason of the foregoing, Upper Deck is entitled to recover attorneys' fees from Judgment Debtor and Defendant Father pursuant to DCL § 276-a.

141. By reason of the foregoing, Upper Deck is entitled to set aside the transfer of the Fraudulent Property Interest and Fraudulent Property Proceeds or disregard the transfers and attach or levy execution upon the property conveyed to Defendant Father.

142. By reason of the foregoing, Judgment Debtor and Defendant Father are liable to Upper Deck in an amount to be proven at trial including reasonable attorney's fees associated with the action as permitted under DCL § 276.

**COUNT XI**  
**Constructive Fraudulent Conveyance Pursuant to DCL §§ 273-a and 278**  
**(Against Judgment Debtor and Defendant Father)**

143. Upper Deck repeats and realleges the allegations of the foregoing paragraphs of the Complaint as if fully set forth herein.

144. Judgment Debtor transferred the Fraudulent Property Interest and Fraudulent Property Proceeds to Defendant Father without fair consideration.

145. At the time of the transfer, Judgment Debtor was a defendant in the California Action for money damages.

146. After the Judgment was entered in the California Action, Judgment Debtor failed to satisfy the Judgment.

147. The transfers of the Fraudulent Property Interest and the Fraudulent Property Proceeds therefore constitute fraudulent conveyances in violation of DCL § 273-a.

148. By reason of the foregoing, Upper Deck is entitled to set aside the Fraudulent Trust Transfers or disregard the Fraudulent Trust Transfers and attach or levy execution upon the property conveyed.

149. By reason of the foregoing, Judgment Debtor and Defendant Son are liable to Upper Deck in an amount to be proven at trial.

**COUNT XII**  
**Unjust Enrichment**  
**(Against All Defendants)**

150. Upper Deck repeats and realleges the allegations of the forgoing paragraphs of the Complaint as if fully set forth herein.

151. Defendants were unjustly enriched as a result of their fraudulent transactions, receipt and wrongful retention of the fraudulently-transferred property of Judgment Debtor.

152. The enrichment of Defendants was at Upper Deck's expense.

153. The circumstances of Defendant's enrichment are such that equity and good conscience require Defendants to make restitution.

154. By reason of the foregoing, Defendants are liable to Upper Deck in an amount to be proven at trial.

**COUNT XIII**  
**Civil Conspiracy to Commit Fraud**  
**(All Defendants)**

155. Upper Deck repeats and realleges each of the foregoing paragraphs of the Complaint as if fully set forth herein.

156. As set forth above, Defendants have engaged in fraudulent activities against Upper Deck.

157. As set forth above, Defendants have engaged in these actions under an agreement together, in order to hinder, delay and defraud Upper Deck.

158. As set forth above, Defendants have taken overt acts in furtherance of their agreement to hinder delay and defraud Upper Deck.

159. As set forth above, Defendants have intentionally participated in furtherance of plan to hinder, delay and defraud Upper Deck.

160. As a direct and proximate result of the unlawful conduct of Defendants, Upper Deck has been damaged and continues to be damaged in an amount not presently ascertainable.

161. By reason of the forgoing, Defendants are jointly and severally liable to Upper Deck in an amount to be determined at trial, plus interest as well as the costs and fees associated with the Action, including reasonable attorneys' fees and applicable punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, Upper Deck respectfully requests that the Court enter judgment in its favor and against Defendants: (i) in an amount to be determined at trial; (ii) awarding to Upper Deck its costs and attorneys' fees associated with the action; and (iii) granting such other and further relief in favor of Upper Deck as this Court deems just and proper.

Dated: New York, New York  
November 15, 2017

**CERVINI SWANSON LLP**

/s/ Joseph Cervini

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*Counsel for The Upper Deck Company*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, \_\_\_\_\_, counsel for \_\_\_\_\_, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: \_\_\_\_\_
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? \_\_\_\_\_
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? \_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: