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STATE OF NEW YORK
SUPREME COURT

21 OCT 25 AM 9:21 COUNTY OF MONTGOMERY

FOR NEW YORK

JP MORGAN CHASE BANK, N.A.

Plaintiff

-against-

OPPOSING AFFIRMATION TO
MOTION FOR SUMMARY JUDGMENT

INDEX NUMBER EF2021-3

MS DIANE L. COMPANI

Defendant

STEVEN X. KOURAY ESQ., an attorney duly admitted to practice law in the State of New York, affirms pursuant to CPLR 2106 that the following statements are true:

1. That I am a partner in the firm of Kouray and Kouray, attorneys for the defendant above named, and as such I am thoroughly familiar with the facts and circumstances of this action.

2. That I make this affirmation in opposition to the motion of the plaintiff seeking summary judgment in accordance with Rule 3212 of the new York Civil practice Law and Rules.

3, That the motion brought before the Court should be dismissed as a matter of law as the movant has failed to satisfy the mandatory requirements of the statute governing summary judgments motions in two respects.

4, In the first instance the plaintiff has neglected to annex to its motion the pleadings in this matter. Case law is clear that the failure to include the pleadings in a motion for summary judgment

as required by CPLR 3212 (b) requires that the movant's motion for summary judgment must be denied, McMahon v. Wolverine Worldwide Insurance, 233 AD2d 587 (Third Dept.). The requirement by statute that a motion for summary judgment be supplied with the pleadings is mandatory and the failure to include the same renders the motion procedurally defective. Lake v. Hertz Corp. 28 Misc. 3d 947.

5. Secondly the motion is further deficient in that the affidavit of Amy Wingo of Bexar County Texas, an employee of the plaintiff, states in conclusory terms that she "reviews the electronic, paper, and other books and records of Plaintiff's credit card accounts that are in default and are the subject of consumer credit litigation."

6. However, Wingo does not specifically does not identify the actual electronic, paper and "otherbooks and records of Plaintiff's credit card accounts that are in default and does not clearly set forth and identify those specific records relied on.

7. As Wingo's purported knowledge of the specifics of this particular account is not adequately set forth in evidentiary form her affidavit constitutes inadmissible hearsay and lacks probative value.

8. As the affidavit of Wingo is insufficient to demonstrate proof of the facts constituting the claim it is respectfully submitted that the motion be denied. Wells Fargo Bank v. Oziel 196 AD3d 618, Deutsche Bank National Trust Co. v. Hossain 196 AD3d. 631.

WHEREFORE, it is respectfully requested that the prayed for relief be in all respects denied.

Dated: October 18, 2021



STEVEN X. KOURAY ESQ.

being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

That on the _____ day of _____ at No. _____
deponent served the within

upon _____
the _____ herein, by delivering a true copy thereof to _____ personally. Deponent knew the
person so served to be the person mentioned and described as follows:

- Male White Skin Black Hair 14-20 Yrs. Under 5' Under 100 Lbs.
- Female Black Skin Brown Hair White Hair 21-35 Yrs. 5'0"-5'3"
- Yellow Skin Blond Hair Balding 36-50 Yrs. 5'4"-5'8"
- Brown Skin Gray Hair 51-65 Yrs. 5'9"-6'0"
- Red Skin Red Hair Over 65 Yrs. Over 6' Over 200 Lbs.

Other identifying features _____

Sworn to before me, this _____ day of _____

Signature of Server

| | | |
|---|----------|---|
| R.J.I. No. _____ Judge _____ INDEX NO. _____ STATE OF NEW YORK County of _____ COURT | Original | <p style="text-align: center;">KOURAY AND KOURAY Attorneys for</p> <p style="text-align: center;">Office and Post Office Address 525 State Street SCHENECTADY, NEW YORK 12305 AREA CODE 518 TELEPHONE 374-1200 374-7400</p> <p>Due and personal service of the within _____ is admitted this _____ day of _____ Attorney for _____</p> |
|---|----------|---|

Take notice of an _____
 which the within is a copy, duly granted
 the within entitled action, on the _____ day of _____
 _____, and duly entered
 the office of the Clerk of the County
 _____ on the _____
 _____ day of _____
 _____ N.Y.,

KOURAY AND KOURAY

Attorneys for _____

Office and Post Office Address
525 State Street
SCHENECTADY, NEW YORK 12305
AREA CODE 518
TELEPHONE 374-1200
374-7400

Attorney for _____

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows; that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____

STATE OF NEW YORK, COUNTY OF

SS.: INDIVIDUAL VERIFICATION

deponent is _____ the _____, being duly sworn, deposes and says that _____ read the foregoing in the within action; that deponent has _____ and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this _____ day of _____

STATE OF NEW YORK, COUNTY OF

SS.: CORPORATE VERIFICATION

_____ of _____, being duly sworn, deposes and says that deponent is the _____ named in the within action; that deponent has _____ read the foregoing _____ and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because _____ the corporation. Deponent is an officer thereof, to-wit, its _____ The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this _____ day of _____

STATE OF NEW YORK, COUNTY OF

SS.: AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the _____ day of _____ deponent served the within _____ attorney(s) for upon _____ in this action, at _____

_____ the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in - a post office - official depository under the