

’,
vs. Plaintiff, **ATTORNEY’S AFFIRMATION**
(ATTORNEY’S FEES)
Index No.
’,
Defendant(s). ASSIGNED JUDGE:
Hon.

, an attorney admitted to practice in the Courts of the State of New York, and not a party to this action, subscribes and affirms the following to be true under the penalties of perjury:

1. I am the attorney for the Plaintiff, and as such I make this Affirmation as a supplement to my Affirmation submitted in support of Plaintiff’s Motion for Attorney Fees.
2. My fee agreement with provides that shall be entitled to a contingency fee on all net (after disbursements) proceeds recovered from the debtor(s). We do not charge this client pursuant to an hourly rate; however, our average rate in debtor-creditor matters is \$225.00 per hour, with non-attorney billing at \$75.00 per hour.
3. The Defendant(s) contract with the Plaintiff obligates the Defendant(s) to pay attorney fees as noted in the contract. “A contract provision that in the event of default in paying the obligation the debtor will pay to the creditor the reasonable expenses of collecting the debt has long been recognized as lawful and proper... This is so even where the parties agree that a specific percentage of the unpaid debt may be computed as the amount of the attorneys’ fees and be included as part of the collection expenses to be incorporated in the judgment.” *Mead v. First Trust & Deposit Co.*, 60 A.D.2d 71, p. 76 (4th Dep’t 1977)

4. While a hearing relative to the attorney fee award is not usually necessary, the Court “must possess sufficient information upon which to make an informed assessment of the reasonable value of the legal services rendered.” *Bankers Fed. Sav. Bank FSB v. Off W. Broadway Developers*, 224 A.D.2d 376 (1st Dep't 1996).

5. In determining the reasonableness of an application for attorneys' fees, the court should consider the following factors: “time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved”, (see *Matter of Freeman*, 34 N.Y.2d 1, 9, (1974); *Hayes v. Ontario Plastics, Inc.*, 6 A.D.3d 1122 (4th Dep't 2004).

6. The following is submitted relative to the request for an award of attorney fees:

a. Time spent.

This category generally includes the additional factors of difficulties involved in the case, the default, and the nature of the services rendered.

I have annexed an itemized list of work performed and hours expended by my firm to date. As for post-judgment proceedings, I ask the Court to take notice as to the impossibility of predicting the extent of such effort and time. However, from my experience, the vast majority of time and effort is spent in post-Judgment enforcement proceedings, including skip-tracing, asset location, Executions, Restraints, Subpoenas, and proceedings to obtain compliance with Subpoenas. The difficulty in most collection matters is not in taking the

Judgment, but in enforcing the Judgment. In setting an attorney fee award to be incorporated into a Judgment, the Court is permitted to consider anticipated post-Judgment work, *Wasserbauer v. Marine Midland Bank*, 92 Misc. 2d 388 (N.Y. Sup. Ct. Monroe, 1977).

- b. The amount in controversy, including the fee customarily charged by other similarly situated attorneys for similar services.

Plaintiff's Complaint seeks to collect the sum of , plus interest, owing from the Defendant(s) based on a written agreement. The Complaint further seeks judgment for attorneys' fees in the amount of , of the aforementioned sum due, in accordance with the agreement of the Defendant(s) to be responsible therefor. The contingency fee percentage requested for attorneys' fees is a fair and reasonable sum, and is commonly accepted in the collection practice in the State of New York.

- c. The professional standing of counsel.

Attached is an individual biography. The law firm of has a primary focus in creditor's rights' litigation and enforcement of Judgments. My personal practice is almost entirely concentrated in collections and enforcing creditor's rights.

- d. The contingency or certainty of compensation, including the results obtained.

My firm's contingency fee is completely dependent upon our ability to successfully collect the money due to our client. This is not a case where our fee is hourly or fixed, and the award equal to a fixed percentage would result in a windfall to the Plaintiff (or possible fee splitting). There is no certainty of

collection, as enforcement of Judgments is a difficult and time-consuming process. The ability to collect Judgments has been further complicated by the 2008 amendments that will effectively exempt most bank accounts, and 2011 amendments increasing the majority of exemptions (e.g., real estate to \$75,000 each Judgment-Debtor), and adding new exemptions (including motor vehicles).

In this case, if we do not collect, we do not receive any fee. The Defendant(s) are being asked to pay the attorney fee percentage that the Plaintiff has become obligated to pay as a result of the Defendant(s)' default; the Defendant(s) have agreed to reimburse the Plaintiff for attorney fees in the event of such default.

DATED:

, New York

Our file number-©

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