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2 *You will need to change the wording of this form a LOT to suit your case. Despite that, this is a*
3 *fantastic document, with all the common law and constitutional rights asserted. Double-click on*
4 *the footer (scroll down after double-clicking if needed) to change the information in it.]*

5 IN THE CIRCUIT COURT OF THE STATE OF CALIFORNIA
6 FOR THE COUNTY OF ORANGE

7
8 RECEIVABLES CORP.,

9 Plaintiff,

10 v.

11 JOHN H. DOE,

12 Defendant.

Case No. XXXXXX

**OBJECTION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT;**

DECLARATION OF JOHN H. DOE;

MOTION TO DISMISS

ORAL ARGUMENT
REQUESTED: 15 MINUTES

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17 Defendant JOHN H. DOE objects to Plaintiff's Motion for Summary Judgment, which
18 Defendant received by mail on August 19, 2007. Defendant requests the Court deny Plaintiff's
19 motion based upon the following:

20 1. On July 19, 2007, Defendant filed Defendant's Answer with the clerk of the
21 Orange County Court and mailed a certified true copy of Defendant's Answer to Plaintiff's
22 attorney Dick Smith complete with Certificate of Service via certified mail. Defendant is in
23 receipt of United States Postal Service Return Receipt dated July 21, 2007, signed by Laura
24 Jones of Plaintiff's attorney's office.

25 2. Defendant has real and genuine points at issue as to material facts, as is evidenced
26 by Defendant's Answer to Complaint with accompanying Exhibits A and B which are

1 incorporated by reference herein. Defendant’s Answer to Complaint includes affirmative
2 defenses under [RCP Rule 19 \(B\)](#). These affirmative defenses include:

- 3 a. Assumption of risk;
- 4 b. Failure of consideration;
- 5 c. Fraud;
- 6 d. Statute of Frauds

7 3. Plaintiff failed to respond to Defendant’s affirmative defenses as required by [RCP](#)
8 [13 \(B\)](#), which states, “[There shall be a reply to a counterclaim denominated as such and a reply](#)
9 [to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There](#)
10 [shall be no other pleading unless the court orders otherwise.](#)”

11 4. [RCP Rule 19 \(C\)](#) states, “[Allegations in a pleading to which a responsive pleading](#)
12 [is required, other than those as to the amount of damages, are admitted when not denied in the](#)
13 [responsive pleading. Allegations in a pleading to which no responsive pleading is required or](#)
14 [permitted shall be taken as denied or avoided. \[CCP 12/2/78\]](#)” Therefore, Defendant asserts that
15 Plaintiff’s failure to respond to Defendant’s affirmative defenses are a tacit admission that
16 Defendant’s affirmative defenses are true and correct, as specified in [RCP Rule 19 \(B\) and \(C\)](#).

17 5. Defendant also objects to Plaintiff’s Motion for Summary Judgment on the
18 grounds that [RCP Rule 21 \(G\)\(3\)](#) states, “[A defense of . . . insufficiency of new matter in a reply](#)
19 [to avoid a defense may be made in any pleading permitted or ordered under Rule 13 B.](#)”

20 6. Defendant also objects to Plaintiff’s Affidavit in Support of Summary Judgment,
21 as it contains statements which can be shown to be false, and inadmissible by virtue of being
22 based on hearsay. Defendant’s Exhibits A and B of Answer to Plaintiff’s Summons and
23 Complaint clearly show that Plaintiff and Plaintiff’s attorney were in receipt of Defendant’s
24 Notices of Dispute, Requests for Validation, and Requests for Creditor Disclosure Statement,
25 received by same on [January 11, 2007](#) (notwithstanding Plaintiff’s original receipt of same on
26 [March 21, 2006](#)). Nonetheless, Plaintiff and Plaintiff’s attorney failed to respond to Defendant’s

1 multiple requests for validation of debt, and subsequently failed to produce any proof of
2 Plaintiff's allegations whatsoever. Bringing a civil action against Defendant therefore is in
3 violation of the Federal Fair Debt Collection Practices Act, [15 USC 1692g] § 809, Validation of
4 Debts.

5 7. Defendant denies statements 1 through 9 of Plaintiff's Affidavit in Support of
6 Judgment. Defendant also asserts that Plaintiff is also in violation of RCP Rule 17 (C),
7 Certifications to Court, as Plaintiff's statements in Affidavit in Support of Judgment as part of
8 Plaintiff's Motion for Summary Judgment are factually, and as Defendant believes, deliberately
9 incorrect, as is proven by the incontrovertible evidence of Defendant's Exhibits A and B of
10 Answer, and also based upon the following:

11 A. Plaintiff's Affidavit in Support of Judgment states that Credit
12 Management, Inc. "maintains the original creditor's records without alteration." (Please
13 see Item 5 of Plaintiff's Affidavit in Support of Judgment.) If such is the case, per
14 Plaintiff's assertion, why have these records not been produced per Defendant's multiple
15 good faith efforts, requests, and demands to have Plaintiff produce strict proof of
16 Defendant's alleged debt and Plaintiff's right to collect? Plaintiff has had approximately
17 one-and-a-half years to respond to these demands, yet has failed to do so. Defendant is
18 not in receipt of any information to prove that these records exist.

19 B. Plaintiff states, "There is no record of any legitimate dispute by the
20 accountholder." (Please see Item 7 of Plaintiff's Affidavit in Support of Judgment.)
21 Defendant denies this statement and asserts that Plaintiff was in receipt of Defendant's
22 Notices of Dispute, Requests for Validation, and requests for Creditor Disclosure
23 Statement, based on Defendant's Exhibits A and B of Answer to Complaint, and also
24 based on Exhibit C (attached to Declaration of John H. Doe) which show Plaintiff's entry
25 on Defendant's Equifax Credit File for the month of December 2006 and also for the
26 months of January 2007 and February 2007, which state, "CONSUMER DISPUTES

1 THIS ACCOUNT INFORMATION.”

2 C. Plaintiff’s Affidavit in Support of Judgment signed by Jane Smith of
3 Receivables Corp. also states that she has had business dealings with the Defendant DOE,
4 JOHN H.. (Please see Item 9 of Plaintiff’s Affidavit in Support of Judgment.) Defendant
5 disputes and denies same, as Defendant has never heard of Plaintiff Receivables Corp.,
6 nor of Credit Management, Inc., nor it’s employee Jane Smith. Defendant is not in
7 receipt of any information which would show that Jane Smith is the actual person in
8 charge of the alleged account and was the party with first-hand, direct, and personal
9 knowledge of the alleged debt, its origination, and/or any entries in the account ledger, or
10 of any legitimate claim against Defendant.

11 D. Defendant asserts that Plaintiff’s witness Jane Smith cannot qualify as
12 Plaintiff’s competent fact witness, as this person must be the person with direct, first hand
13 knowledge of the alleged debt. The competent fact witness would therefore need to be an
14 employee of the original alleged creditor, Bank of XX, were such an agreement to exist,
15 not an employee of a tertiary entity with no contractual agreement with Defendant, and
16 no nexus to original alleged creditor.

17 8. Defendant believes the above violations by Plaintiff and Plaintiff’s attorney of the
18 provisions of RCP Rule 17 (C), Certifications to Court, as well as RCP Rule 47 (G), Affidavits
19 or Declarations Made in Bad Faith, make Plaintiff, as well as Plaintiff’s attorney, subject to the
20 possibility of Court sanctions, as provided by RCP Rule 17 (D), as well as RCP Rule 47 (G),
21 should the Court choose to pursue this matter.

22 9. If Credit Management, Inc.’s employee Jane Smith claims to be Plaintiff’s
23 competent fact witness, Defendant hereby demands the right to face Defendant’s accuser in
24 person in order to investigate the nature and cause of the complaint against Defendant, by cross
25 examination during any and all court hearings, including any hearings before the Court-
26 appointed Arbitrator. Defendant maintains this is Defendant’s right under the provisions of the

1 Constitution of the United States of America, Amendment VI, and also the Constitution of the
2 State of [California, Section 11](#). Further, if Plaintiff fails to produce in person a competent fact
3 witness, Defendant asserts Plaintiff has no case, based on:

4 A. Assertions by Plaintiff’s attorney alone do not fulfill the requirements of a
5 competent fact witness, as statements of counsel in brief or in argument are based on
6 hearsay and are not facts before the Court and therefore are not admissible in any court.

7 B. Plaintiff’s Affidavit in Support of Judgment alone cannot support a Court
8 Ruling (i.e., no summary jurisdiction), as Defendant has no ability to cross-examine nor
9 ask questions relating to the disputed statements of witness, nor ask other pertinent
10 questions relating to additional facts in dispute.

11 C. Defendant maintains that if jurisdiction is not complete by virtue of the
12 appearance and testimony of a competent fact witness, the matter is void.

13 D. Defendant relies on [RCP 55](#) and the cases decided thereunder relating to
14 subpoena duces tecum of witnesses and records. Defendant does intend to subpoena the
15 witness and original and/or certified copies of all records, including any alleged signed
16 contract, if and when this case moves to trial, in addition to obtaining any records,
17 affidavits, and etc. through discovery.

18 10. Defendant also asserts that Plaintiff’s Motion for Summary Judgment is
19 premature and unfairly prejudices Defendant’s right to a fair trial due to:

20 A. Defendant has not been granted time sufficient to conduct discovery in
21 order to develop evidence with which to oppose the motion. Plaintiff filed the Motion for
22 Summary Judgment before Defendant had a chance to send out written Interrogatories,
23 Requests for Admissions and Requests for Production of Documents, or conduct any
24 other investigation pertaining to this matter.

25 B. Defendant asserts Defendant’s right to know and understand the nature
26 and cause of the claim being brought against Defendant, as well as to examine Plaintiff’s

1 witness face to face. These rights are granted Defendant by Amendment VI, Constitution
2 of the United States of America, and by [Section 11 of the Constitution of the State of](#)
3 [California](#), as well as by [RCP Rule 55 \(H\)\(4\)](#).

4 C. Were the Court to grant Plaintiff's Motion for Summary Judgment,
5 Defendant would be forced to appeal based on Defendant's right to due process being
6 violated. Defendant believes this would cause unnecessary expenditure of Court
7 resources, not only for the Court, but also for all parties involved.

8 11. Defendant is not in receipt of any information or records which would show that
9 Plaintiff [Receivables Corp.](#) is licensed in the State of [California](#) as a collection agency, or that
10 they are the holder in due course, or that they have the proper delegation of authority as an
11 assignee from the original alleged creditor.

12 12. Defendant is not in receipt of any information or records which would show that
13 [Receivables Corp.](#) is the actual secured party in this matter, and to assume so constitutes an
14 unfair prejudice against Defendant.

15 13. Defendant is not in receipt of any information or records which would show that
16 Plaintiff [Receivables Corp.](#) has the proper standing in order to pursue a collection action against
17 Defendant. Defendant demands strict proof of proper standing. Likewise, if Plaintiff cannot
18 establish strict proof of proper standing to sue, the Court will be deprived of subject matter
19 jurisdiction, based on [RCP Rule 4](#), which states, "[A court of this state, having jurisdiction of the](#)
20 [subject matter, has jurisdiction over a party served in an action pursuant to Rule 7.](#)"

21 14. Defendant asserts that even if an alleged contract were to exist with original
22 alleged creditor [Bank of XX](#), Plaintiff would still not have the proper standing in order to pursue
23 a collection action against Defendant, as Plaintiff has not established that it is in privity of
24 alleged contract, nor that it has any interest in the subject matter of the alleged contract.

25 15. Defendant is not in receipt of any information or records that would show proof of
26 the alleged contract, or that there is any nexus, or that Plaintiff has the proper standing in order to

1 sue Defendant.

2 16. Based on the above, Defendant asserts that Plaintiff as well as Plaintiff's attorney
3 are additionally in violation of the Federal Debt Collection Practices Act, [15 USC 1692f] §808
4 (1), which states, "A debt collector may not use unfair or unconscionable means to collect or
5 attempt to collect any debt. Without limiting the general application of the foregoing, the
6 following conduct is a violation of this section:

7 (1) The collection of any amount (including any interest, fee, charge, or expense
8 incidental to the principal obligation) unless such amount is expressly authorized by the
9 agreement creating the debt or permitted by law." Defendant asserts there was no express
10 authorization in the alleged agreement which granted novation to Plaintiff. Defendant rejects,
11 rescinds, and revokes any and all offers of novation (substituted agreement) as fraudulent and
12 demands that Plaintiff stay out of Defendant's commercial affairs.

13 17. Defendant is not in receipt of any information that would show that original
14 alleged creditor [Bank of XX](#), were a contract to exist, provided full disclosure or fully complied
15 with the requirements of Regulation Z of the federal Truth in Lending Act.

16 18. Plaintiff's filing of Summons and Complaint without providing evidence, strict
17 proof, or validation of debt per Defendant's multiple requests constitutes a prima facie tort,
18 whereby Defendant reserves the right to file a counterclaim or separate claim for relief and
19 damages should Defendant choose to pursue this matter at law.

20 19. Defendant admits as additional evidence the attached DECLARATION OF [JOHN](#)
21 [H. DOE](#), which is incorporated by reference herein.

22

23 WHEREFORE, Defendant [JOHN H. DOE](#) prays the Court will review the at issue facts
24 of this case, as well as Plaintiff's failure to reply to Defendant's affirmative defenses in
25 Defendant's Answer to Complaint. Defendant further requests the Court deny the admission of
26 Plaintiff's Affidavit in Support of Summary Judgment based on the above defenses, and

1 accordingly deny Plaintiff's Motion for Summary Judgment.

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3 Dated this 1st day of September, 2007.

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By: _____

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John H. Doe, Defendant in Pro Per

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111 N. Seaside Avenue

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San Jose, CA 95101

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10 *[NOTE per Siren: You would attach your Declaration and your Motion, along with your*
11 *Certificate of Mailing/Service, all together before filing this Objection. Don't forget to make*
12 *two copies of all your originals and have the court date-stamp the first copy. The 2nd copy gets*
13 *mailed certified with return receipt requested to the opposing council. Also be sure to ask the*
14 *clerk of the court for the hearing appointment, and call back every few days to find out when the*
15 *date has been set to.]*

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