

# **Case: Upsolve & Rev. John Udo-Okon v. New York (Filed Jan 25, 2022)**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC. and REV. JOHN UDO-  
OKON,

Plaintiffs,

-v-

LETITIA JAMES, in her official capacity as  
Attorney General of the State of New York,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

**NATURE OF THE ACTION**

1. Plaintiffs bring this action to vindicate their First Amendment rights to close a well-documented gap in access to justice for low-income New Yorkers who are faced with debt collection actions.

2. Debt collection actions are one of the most common kinds of lawsuits in New York, and responding to such suits is straightforward: New York State itself provides a standard fill-in-the-blank form for responding to such lawsuits. But the vast majority of defendants are low-income individuals who cannot afford a lawyer, cannot find pro bono counsel, and face additional barriers that make it difficult to prepare and file an answer themselves. The result is that the large majority of low-income New Yorkers in such actions default. They never have a day in court and lose their lawsuits and their property—even where the cases against them lack merit. The result is often wage garnishment, damage to credit, and a cascading cycle of harm to people who are already vulnerable, which also comes at a cost to the public.

3. Plaintiffs stand ready to respond to this access to justice crisis. Plaintiff Upsolve is a nonprofit organization with a mission and a track record of fighting to ensure that all Americans can access their legal rights. Upsolve has carefully designed, crafted, and obtained funding to implement a program—the American Justice Movement (“AJM”)—to train professionals who are not lawyers to provide free legal advice on whether and how to respond to a debt collection lawsuit. All advice under the program would be reliable, free, straightforward, and narrowly circumscribed, provided on a strictly non-commercial basis to ensure that defendants can understand their rights and respond to the debt collection lawsuits against them. Plaintiff Rev. John Udo-Okon is a pastor in the South Bronx whose community is desperately in need of such free advice. Rev. Udo-Okon stands ready to associate with Upsolve to advocate for and provide free, narrowly circumscribed legal advice for the purpose of increasing access to the courts and thereby protecting the property and liberty of low-income New Yorkers who are currently unable to understand or access their legal rights when faced with a debt collection action.

4. The only thing stopping Plaintiffs is the threat of prosecution under New York’s rules governing the unauthorized practice of law (“UPL”). New York law is clear that individuals who are not lawyers may not provide legal advice, and that advising a person on how to respond to a lawsuit qualifies as legal advice even when the advice is free, straightforward, and simple. The UPL rules threaten anybody who does so—or anybody who solicits or aids in providing such advice—with criminal misdemeanor prosecution and civil penalties. Because AJM staff and Rev. Udo-Okon are not lawyers, they cannot provide truthful and non-misleading advice about how to answer a debt collection lawsuit without facing the risk of such punishment.

5. The UPL rules put the many low-income New Yorkers who would receive AJM’s advice in a devastating bind. If they solicit legal advice from qualified and trusted advisors who

are not lawyers, they face a risk of criminal or civil prosecution themselves and also expose their advisors to that same risk. But if they do not receive such advice, they will likely receive no advice at all, default in their debt collection lawsuits, and face the risk of being wrongfully deprived of their property and the risk of harmful and long-lasting follow-on consequences.

6. Plaintiffs bring this action to vindicate their First Amendment rights to close this gap in the access to justice, and to declare that New York's UPL rules cannot be validly applied to prohibit the truthful and non-misleading advice they would provide.

7. At the outset, application of the UPL rules here triggers First Amendment scrutiny. The UPL rules are content-based because their application depends on the content of a person's speech, and in particular whether one individual's speech to another includes advice about how to respond to a lawsuit. They also impede on the Plaintiffs' associational rights, as "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment" to the United States Constitution. *In re Primus*, 436 U.S. 412, 426 (1978) (quoting *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971)).

8. New York's UPL rules are well intentioned and effective at combatting the risk of unreliable advice in many applications, so would ordinarily withstand First Amendment scrutiny. But they cannot withstand First Amendment scrutiny as applied under the narrow circumstances of this case. As applied to Plaintiffs, those rules would be affirmatively counterproductive and impede the very interests the UPL rules were adopted to protect. In particular, UPL rules are designed to protect consumers from unreliable or fraudulent advice and to protect the integrity of the courts and the public perception of the justice system. But Plaintiffs would be providing advice for free, without any financial motivation. They would be advising individuals in an area where New York has itself recognized an access to justice gap and that straightforward advice can be



reliably provided, as New York promulgates a standard form for filing such a response. And Plaintiffs have carefully crafted their program to ensure reliability—with third-party experts attesting that the program would help many New Yorkers. Conversely, without the free advice provided under Plaintiffs’ program, many low-income New Yorkers would be left to fend for themselves without any advice at all about how to respond to a debt collection action: Low-income New Yorkers typically cannot afford a lawyer, especially to respond to relatively low-dollar demands, and pro bono counsel are in too short supply to fill the gap. Experience shows that many individuals will simply fail to respond, leading to default judgments entered without any adversarial testing, notwithstanding evidence that debt collection suits often lack merit or demand inflated payments. New York does not have a legitimate interest in increasing the number of default judgments and preventing people from obtaining help to respond to lawsuits using a form that New York has itself provided, particularly when Plaintiffs have carefully crafted a program to provide the requisite protections against uninformed, bad-faith, or false advice.

9. This Court accordingly should enter a declaration that the UPL rules are unconstitutional as applied to Plaintiffs’ participation in the American Justice Movement, and an injunction preventing the enforcement of the UPL rules against Plaintiffs’ conduct, along with other relief necessary for Plaintiffs to vindicate their constitutional rights.

### **THE PARTIES**

10. Plaintiff Upsolve, Inc., is a 501(c)(3) nonprofit, tax-exempt organization chartered in New York with the mission of helping Americans access their civil legal rights for free and engaging in widespread education and advocacy to that end. Upsolve is currently the largest nonprofit organization providing free bankruptcy-related resources in the United States and has confirmed relieving more than \$400 million in debt for low-income self-represented debtors filing for simple, no-asset Chapter 7 bankruptcy. Upsolve also provides free online education on a

number of topics, including debt collection defense, student loans, wage garnishment, repossession, foreclosures, evictions, among others, and serves over 150,000 individuals per month. Coupled with its free online resources, Upsolve invests heavily in public advocacy to raise awareness around civil rights injustices, and the corresponding inability of millions of low-income families to access their legal rights.

11. Upsolve's success has been widely recognized in the media. Upsolve has received funding support from major public-interest and philanthropic organizations, such as the Robin Hood Foundation and the Hewlett Foundation.

12. The American Justice Movement is an Upsolve project.

13. Plaintiff Reverend John Udo-Okon is a reverend at Word of Life Christian Fellowship International in the South Bronx. Rev. Udo-Okon and his congregation provide services to people in need. Many members of his community are facing credit issues and debt collection lawsuits and lack access to free counsel or legal advice they can afford.

14. Defendant Letitia James is the Attorney General of the State of New York. Defendant James' official duties include the administration and enforcement of regulations governing the unauthorized practice of law. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 because this suit arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim have occurred or will occur in this judicial district.

## **FACTS**

### **I. Many New Yorkers lack the basic legal assistance they need to respond to debt collection lawsuits, which can result in severe long-term consequences.**

17. The problem Plaintiffs seek to solve is widespread and severe: A restricted supply of free or low-cost civil legal assistance prevents low-income New Yorkers from understanding and accessing their legal rights when they are faced with debt collection actions, leading to wrongful deprivations of property and a cascade of other life-altering consequences.

18. Debt collection actions are one of the most common kinds of lawsuit in New York State courts. Debt collection actions have been estimated to comprise approximately one quarter of all lawsuits in New York's courts.

19. In the vast majority of debt collection lawsuits in New York State, the defendant fails to appear and thus faces a default judgment. Some estimates put this rate of default as high as 85-90%. A lower range of estimates puts it closer to 70%. Either way, the large majority of debt collection lawsuits end with a default judgment.

20. Defendants can avoid a default judgment, and the adverse consequences flowing from such a judgment, only if they file a timely response to the debt collection action.

21. Defendants who respond to debt collection lawsuits often obtain better outcomes, because many debt collection lawsuits lack merit or demand an amount that is too large. For example, one study by the Legal Aid Society of New York reviewed a sample of debt collection cases and estimated that more than a third were “clearly meritless.”<sup>1</sup>

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<sup>1</sup> The Legal Aid Society et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers*, at 8–10 & 26 n.91 (May 2010), [https://www.neweconomy.nyc.org/wp-content/uploads/2014/08/DEBT\\_DECEPTION\\_FINAL\\_WEB-new-logo.pdf](https://www.neweconomy.nyc.org/wp-content/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf).

22. By failing to answer and to assert available affirmative defenses, many defendants are deprived of their property without ever having their day in court. When defendants default, plaintiffs never have any need to prove their cases, and courts have no opportunity to assess the merits of their claims, even when a claim would fail were it subjected to adversarial testing.

23. Adverse judgements in debt collection actions can have devastating effect on the lives of low-income New Yorkers.

24. Defaulting in a debt collection lawsuit can lead to wage garnishment, eviction, repossession of an automobile, bank seizures, and lasting damage to a consumer's credit. This damage to credit can make it difficult for low-income New Yorkers to secure future financing—such as on a car they need to access employment opportunities—and can make it more difficult for them to rebuild their credit. For somebody living in precarious financial circumstances, even small-dollar lawsuits can snowball to have devastating consequences.

25. The stories of New Yorkers William Evertsen, Liz Jurado, and Christopher Lepre—all of whom defaulted in debt collection actions in which they received no legal advice—demonstrate the need for such advice and the serious long-term consequences New Yorkers can experience without it<sup>2</sup>:

- *William Evertsen*: William (“Tyler”) Evertsen is a 60-year-old HIV-positive gay man living in Brooklyn. In 2017, Evertsen received harassing phone calls from a third-party debt buyer regarding a debt he did not owe. The third-party debt buyer sued him and got a default judgment against him for this debt he did not owe, which has contributed to his financial distress. Evertsen explained that “[t]he judgment made me feel like I was defrauded, because they never proved that I actually owed the debt [and] I was also powerless to do anything about it.”
- *Liz Jurado*: In 2019, after her husband lost his job, Liz Jurado got a full-time job that would allow her to “provide for my kids and take care of my husband.” But shortly

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<sup>2</sup> Declarations from these three individuals describing their experiences are attached to the Silbert Declaration in Support of the Motion for a Preliminary Injunction. *See* Silbert Decl. Ex. 5 (Evertsen); Ex. 6 (Jurado); Ex. 7 (Lepre).

thereafter Jurado received a letter from the sheriff that they were going to garnish her wages because she had defaulted in a lawsuit to collect a surprise medical debt incurred in connection with the birth of one of her children. Jurado “knew that having my wages garnished would have severe effects for myself and my family” since they “were living paycheck-to-paycheck.” Jurado received no legal advice because she “could not afford a lawyer” and “did not know of any resources that would provide me with legal assistance for free.” As Jurado describes her experience, “I was facing permanent, life-altering consequences for something that I didn’t even know how to do anything about.”

- *Christopher Lepre*: In 2015, Christopher Lepre’s car flipped over. Lepre, a U.S. Navy veteran, had “no choice but to take on a high interest loan” to purchase a new car. Lepre’s car quickly stopped working. Lepre’s auto lender demanded repayment, sued him on his debt, and he defaulted because he “didn’t know what I needed to do in order to defend myself” and was unable to find a lawyer to help him. As Lepre explains, “I wish I had gotten my day in court . . . [but] the judge decided the case without hearing my side and without the [other side] ever having to prove their case.” Lepre continues to suffer the “negative consequences of the lawsuit”: his wages are being garnished at the rate of over \$1000 per month; there were times he “could not afford to pay [his] rent”; he “cannot afford a car”; and his credit score is “further damaged.”

26. Access to basic free legal advice could make a big difference for many other debt collection defendants. Individual defendants who have legal assistance not only have their day in court, but also tend to secure more favorable outcomes. As a report from the National Center for State Courts explains: “Although plaintiffs are generally represented by attorneys, defendants in [lower-value] cases are overwhelmingly self-represented, creating an asymmetry in legal expertise that, without effective court oversight, can easily result in unjust case outcomes.”<sup>3</sup>

27. There is accordingly a pressing need among many low-income New Yorkers for legal advice about how to respond to a debt collection action to avoid a default judgment, obtain access to justice, and potentially obtain a better outcome by prevailing on the merits.

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<sup>3</sup> National Center for State Courts, *Call to Action: Achieving Civil Justice for All*, at 34 (2016), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0029/19289/call-to-action\\_-achieving-civil-justice-for-all.pdf](https://www.ncsc.org/__data/assets/pdf_file/0029/19289/call-to-action_-achieving-civil-justice-for-all.pdf); see also The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*, at 14–15 (May 2020), <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf> (collecting “analyses from jurisdictions across the country indicat[ing] that when consumers are represented by attorneys, they are more likely to secure a settlement or win the case outright”).

28. Despite this need for legal assistance, the vast majority of debt collection defendants in New York lack legal representation and many face default judgments as a result. Many low-income debt collection defendants cannot afford to pay for a lawyer to represent them in their case. And free lawyers are in too short supply to meet the immediate needs of many individuals in low-income communities.

29. As a 2010 report by the Federal Trade Commission (“FTC”) explained: Although “[f]undamental fairness dictates that the legal process afford consumers a reasonable opportunity to defend themselves[,]” “[m]ost alleged debtors fail to answer complaints or otherwise defend themselves in debt collection actions.”<sup>4</sup> The FTC Report went on to note that “[t]here [is] broad consensus . . . that relatively few consumers who are sued for alleged unpaid debts actually participate in the lawsuits,” and cited estimates that “sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults.”<sup>5</sup>

30. The rate of default is particularly high among communities of color. A study of judgments over a five-year period in St. Louis, Chicago, and Newark, New Jersey, found that, even

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<sup>4</sup> Federal Trade Comm’n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, at 6–7 (July 2010), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>.

<sup>5</sup> *Id.* at 7; *see also*, The Aspen Institute Financial Security Program, Aspen Inst., *A Financial Security Threat in the Courtroom: How Federal and State Policymakers Can Make Debt Collection Litigation Safer and Fairer for Everyone*, at 8 (Sept. 2021) (“Multiple studies have shown that more than 70 percent of debt collection lawsuits end in default judgments in the studies jurisdictions. This is despite the fact that the individuals being sued may have legitimate defenses.”) [https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP\\_Debt\\_CollectionsPaper\\_092221.pdf](https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_Debt_CollectionsPaper_092221.pdf).

after accounting for income, the rate of default judgments in mostly black neighborhoods was nearly double that of mostly white ones.<sup>6</sup>

31. This high rate of default—which means that plaintiffs never have to prove their cases—is particularly problematic because many debt collection suits lack merit.

32. A study by the Legal Aid Society of New York found that, in more than a third of a sample of debt collection cases reviewed, “the debt was the result of mistaken identity or identity theft, the debt had been previously paid, the debt had been discharged in bankruptcy, or the statute of limitations on the debt had expired.”<sup>7</sup>

## **II. New York provides a form for responding to a debt collection action, but many low-income New Yorkers are unable to use it.**

33. Responding to a debt collection lawsuit in New York is typically straightforward and does not require significant specialized legal training. Law school, however, takes three years and often comes at a significant cost.

34. Indeed, New York State has provided a fill-in-the-blank answer form for debt collection defendants that allows them to respond to lawsuits and raise common defenses, asserting, for example, that they do not owe the debt, the amount is inaccurate, or the lawsuit is outside the statute of limitations.<sup>8</sup> A copy of the form is attached as Exhibit A to this complaint.

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<sup>6</sup> Paul Kiel and Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, ProPublica (Oct. 8, 2015), <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>.

<sup>7</sup> Legal Aid Society et al., *supra* note 1, at 10, 26 n.91.

<sup>8</sup> See New York State Unified Court System, *Answer Form*, <https://nycourts.gov/LegacyPDFS/rules/CCR/forms/Consumer-Credit-Answer.pdf>; see also New York State Unified Court System, *Common Defenses in a Debt Collection Case* (describing common affirmative defenses that can be raised on the Answer Form), <https://www.nycourts.gov/courthelp/moneyproblems/defenses.shtml> (last updated March 14, 2018).

35. The one-page form is simple. Its heading provides labeled blank spaces in which to write the caption of the action. After that, the form offers a series of 24 labeled checkboxes that can be checked to raise particular defenses, for example, “I have paid all or part of the alleged debt” or “I had no business dealings with Plaintiff (Plaintiff lacks standing).” One of the checkboxes is labeled “Other Reasons” and provides a blank space in which additional answers can be written. The bottom of the form allows for verification and notarization.

36. In providing this form, New York itself thus recognizes that the practical importance of responding to a debt collection action and that doing so is typically straightforward and simple.

37. New York’s form is inadequate, however, to close the gap in the access to justice.

38. Even with this form, the large majority of low-income New Yorkers fail to respond to debt collection actions, or fail to do so accurately, and accordingly face default judgments.

39. The high default rate despite the availability of New York’s answer form confirms that barriers of legal complexity and fear (among others) prevent low-income New Yorkers from vindicating their rights on their own.

40. For example, New York’s form includes language that requires some measure of familiarity with the legal system and specialized terminology, which many low-income defendants lack. Among the checkboxes that the answer form offers are: “General Denial: I deny the allegations in the Complaint”; “I received the Summons and Complaint, but service was not correct as required by law”; “Unconscionability (the contract is unfair)”; “Statute of limitations (the time has passed to sue on this debt)”; “Unjust enrichment (the amount demanded is excessive compared with the original debt)”; and “Laches (plaintiff has excessively delayed in bringing this lawsuit to



my disadvantage).”<sup>9</sup> Many low-income New Yorkers are unfamiliar, however, with concepts of a general denial, the requirements of service of process under law, the meaning of unconscionability, the applicable statute of limitations to a debt collection action, or the application of laches in a debt collection suit.

41. Low-income defendants often face language barriers and literacy and educational gaps. They also typically lack familiarity with the civil justice system and are often intimidated by, or anxious and uncertain about how to respond, when served with a debt collection lawsuit. Many people thus do not understand how the civil legal system works, much less how to respond to a lawsuit to defend their own rights, or are apprehensive to do so.

42. What scholars have called the “costs of financial misery”—which cause people to “work overtime, forego basic necessities, face serious health consequences, deal with persistent debt collection calls, end up in court, lose homes, and sell what little they own”—further increase the barriers low-income New Yorkers face in vindicating their legal rights.<sup>10</sup> As the high rate of default indicates, especially when coupled with the high number of meritless collection actions, more assistance is needed to ensure that all New Yorkers are able to participate in the legal system and vindicate their rights in court.

43. Low-income New Yorkers faced with debt collection lawsuits often cannot afford to hire paid counsel to represent them.

44. Some attorneys provide free legal counsel, including for responding to debt collection actions. But the availability of free assistance from barred lawyers is in too short supply

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<sup>9</sup> New York State Unified Court System, *Answer Form*.

<sup>10</sup> Pamela Foohey, Robert M. Lawless, Katherine M. Porter & Deborah Thorne, *Life in the Sweatbox*, 94 Notre Dame L. Rev. 219, 255 (2018).

to satisfy the demand. One study estimated that the leading nonprofit program in New York City for debt collection defense had the resources to assist fewer than 2% of all individuals sued on a debt in New York City Civil Court.<sup>11</sup>

45. There is a constitutional right to free counsel in criminal cases, but no such right attaches in civil debt collection actions.

46. Attorneys who provide free or low-cost services to debt collection defendants are frequently overloaded and often cannot provide enough assistance on the quick timeline on which such suits proceed.

47. The result is that most low-income New Yorkers facing debt collection lawsuits are left without any representation at all, and instead must fend for themselves. By many estimates, over 90% of defendants in debt collection lawsuits—and by some estimates up to 99%—are left without any representation and must fend for themselves.<sup>12</sup>

48. This problem has been exacerbated by the pressures of COVID-19, as a number of free legal aid programs have been curtailed due to the constraints of the pandemic. For example, New York’s Civil Legal Advice and Resource Office (“CLARO”) cancelled all in-person programming until further notice, due to the COVID-19 pandemic.<sup>13</sup> Additionally, the New York State Courts’ Volunteer Lawyer for a Day Program—a program where which volunteer attorneys

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<sup>11</sup> Legal Aid Society et al., *supra* note 1, at 17.

<sup>12</sup> The Pew Charitable Trusts, *supra* note 3, at 13–14.

<sup>13</sup> CLARO, *COVID-19 Notice*, <http://www.claronyc.org/claronyc/default.html> (last visited Jan. 20, 2022).

provide limited representation for unrepresented consumer debtors in state court in New York City—is now operating virtually and on a limited basis in some counties.<sup>14</sup>

49. The lack of representation for debt collection defendants is often contrasted with sophisticated representation on the plaintiff side.

50. In its November 2020 annual report, the State of New York’s Permanent Commission on Access to Justice stated that “high-volume debt collection cases with frequent defaults” are “notorious for having over-zealous plaintiff attorneys and largely unrepresented defendants.”<sup>15</sup>

51. Because creditors often have (and debt buyers can purchase) large books of similar debts, they can take advantage of economies of scale to bring many lawsuits at a lower cost and pursue actions even for small-dollar debts. The high rate of defendant default means that creditor-plaintiffs will rarely have to prove their cases in court, creating a disincentive to invest the resources to investigate potential actions thoroughly before filing lawsuits. Individual defendants, by contrast, are faced only with a single suit—sometimes demanding less money than it would cost to hire a lawyer to defend the suit—and cannot take advantage of economies of scale. They instead face transaction costs that are effectively insurmountable for many low-income individuals, contributing to the high rate of default judgments. Absent free or low-cost legal advice, this asymmetry can have the effect of preventing low-income New Yorkers from defending their property against wrongful deprivation in a manner that is economically rational.

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<sup>14</sup> New York State Unified Court System, *Access to Justice Volunteer Attorney Programs*, [http://ww2.nycourts.gov/attorneys/volunteer/VAP/program\\_descriptions.shtml](http://ww2.nycourts.gov/attorneys/volunteer/VAP/program_descriptions.shtml) (last visited Jan. 20, 2022).

<sup>15</sup> Permanent Comm’n on Access to Justice, *Report to the Chief Judge of the State of New York*, at 10 (Nov. 2020), [https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/20\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/20_ATJ-Comission_Report.pdf).

52. The ability to bring a high number of cases with confidence that many defendants will default and the merits of the cases will never be examined also creates a risk of fraud and abuse of the legal process and in the origination of the loans whose collection ultimately results in such default judgments. For example, one process server in New York State pleaded guilty to fraud in connection with a failure to properly notify debt collection defendants that led to approximately 100,000 improper default judgments.<sup>16</sup> And the New York Attorney General and other state Attorneys General have investigated the origination and collection practices of lenders in connection with potential violations of federal and state consumer protection laws.<sup>17</sup>

53. Debt collection lawsuits are emblematic of a broader access to justice gap that prevents low-income New Yorkers from understanding and accessing their civil legal rights.

54. As the American Bar Association has concluded, “[d]espite sustained efforts to expand the public’s access to legal services, significant unmet needs persist.”<sup>18</sup> In a single year in

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<sup>16</sup> N.Y. State Off. of the Att’y Gen., *The New York State Attorney General Andrew M. Cuomo Announces Guilty Plea Of Process Server Company Owner Who Denied Thousands Of New Yorkers Their Day In Court* (Jan. 15, 2010), <https://ag.ny.gov/press-release/2010/new-york-state-attorney-general-andrew-m-cuomo-announces-guilty-plea-process>.

<sup>17</sup> *See, e.g.*, Credit Acceptance Corporation, Quarterly Report (Form 10-Q), at 42 (Sept. 30, 2021) (describing a notification that the New York State Attorney General was considering bringing claims against the company under the Dodd-Frank Wall Street Reform and Consumer Protection Act, New York Executive Law § 63(12), the New York Martin Act and New York General Business Law § 349 in connection with the Company’s origination and securitization practices); *see also, e.g., id.* at 43 (describing a settlement of \$27.2 million in connection with a lawsuit by the Massachusetts Attorney General for unfair and deceptive trade practices).

<sup>18</sup> Am. Bar Ass’n Comm’n on the Future of Legal Services, *Report on the Future of Legal Services in the United States*, at 11 (2016) (“ABA Report”), [https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf).

New York, “1.8 million litigants in civil matters did not have representation for matters involving housing, family, access to health care and education, and subsistence income.”<sup>19</sup>

**III. Plaintiffs seek to provide free, narrowly circumscribed legal advice on how to respond to a debt collection lawsuit with the goal of helping low-income New Yorkers understand and access their legal rights.**

55. The Plaintiffs seek to help close this access to justice gap.

56. Specifically, Plaintiffs seek to associate to provide free, narrowly circumscribed legal advice to low-income New Yorkers to ensure that they can understand how to respond to the debt collection lawsuits against them and help reduce wrongful deprivation of property and the lasting harm it can cause. Plaintiffs also hope to improve public faith in the court system by ensuring that all defendants rich and poor can have their day in court, courts can decide more cases on their merits, and plaintiffs cannot secure default judgments on meritless claims simply due to defendants’ inability to vindicate their rights. Plaintiffs’ intervention is carefully designed—and reviewed and approved by experts on debt collection defense—to help individuals respond to debt collection actions consistent with New York’s form response, to ensure robust protections for the communities Plaintiffs hope to serve, and to serve the public interest.

57. Plaintiffs have developed and are prepared to implement the American Justice Movement (“AJM”). AJM is a program to train and supervise “Justice Advocates,” public-interest professionals who are not lawyers, to provide free legal advice on responding to a debt collection lawsuit. By training, empowering, and overseeing Justice Advocates to provide free, narrow, and reliable legal advice, Plaintiffs hope to help overcome the educational, financial, structural, and cultural barriers that low-income New Yorkers face in trying to access their legal rights when they

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<sup>19</sup> *Id.* at 12 (citing Task Force to Expand Access to Just. to Civ. Legal Servs. in N.Y., *Report to the Chief Judge of the State of New York*, at 2 (Nov. 2014), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/CLS%20TaskForce%20Report%202014.pdf>).

are faced with a debt collection lawsuit. Justice Advocates would be individuals who are already working in the public interest, are already embedded in low-income communities, and reflect the diversity of their communities.

58. AJM has started to recruit, will continue to recruit, and is prepared to support and oversee the work of Justice Advocates.

59. Because New York State already streamlines the process of responding to a debt collection lawsuit, the advice needed to help a defendant to do so can be reliably and consistently provided without the need for significant specialized legal training. For example, three years of law school often involves significant cost and creates a substantial barrier to entry.

60. Justice Advocates will only provide advice for free. AJM will require that the Justice Advocate cannot receive and the client cannot provide any form of compensation in connection with the advice they give.

61. By empowering Justice Advocates to provide straightforward advice that is in the served community's best interest, Plaintiffs hope to help support low-income New Yorkers facing debt collection actions who currently risk being wrongfully deprived of their property because they lack the knowledge or support to respond.

62. Specifically, the Justice Advocates will: (1) determine whether the client could benefit from their advice; (2) confirm the limited scope of representation with the client; (3) advise the client whether it is in their best interest to answer the lawsuit against them; (4) advise the client on how to fill out the answer based on the client's answers to a series of straightforward questions; and (5) advise the client on how and where to file and serve the answer.

63. AJM has prepared a robust step-by-step Training Guide to ensure that all of the advice that Justice Advocates are being directed to provide is in the clients' best interest. A copy of the AJM Training Guide is attached to this complaint as Exhibit B ("Training Guide").

64. The Training Guide has been independently reviewed by third-party experts in consumer law and debt collection defense. Those experts have confirmed that advice provided according to the terms of the Training Guide will provide clients with substantial benefits at no cost and that the program minimizes the risk of unreliable or harmful advice. Declarations from Mr. Tashi Lhewa and Professor Pamela Foohey describing their credentials and their review and endorsement of the Training Guide are attached to the Silbert Declaration in Support of the Motion for a Preliminary Injunction.

65. AJM will train all Justice Advocates to ensure that they understand the Training Guide and are willing to comply with its restrictions. Additionally, AJM will regularly review and, if necessary, update the Training Guide to ensure it is consistent with applicable law, ethical requirements, and the best interests of its advisees.

66. The Training Guide describes a step-by-step process the Justice Advocate should follow and provides them with advice to give clients about whether and how to fill out their answer forms based on the client's answers to a series of questions with explanatory guidance the Justice Advocate can provide to advise the client about whether it is in the client's best interest to raise particular affirmative defenses.

67. The Training Guide also includes an affidavit that Justice Advocates must sign and adhere to describing the limited scope of their responsibilities and the safeguards they must implement to provide advice under the auspices of AJM. Moreover, in designing the Training Guide, Plaintiffs carefully limited the issues on which Justice Advocates may advise to ensure that,

where more complex issues arise calling for legal advice that Justice Advocates are not equipped to reliably provide, Justice Advocates are required to refer clients to alternative sources of legal assistance.

68. To participate in the American Justice Movement, clients will be required to sign a User Agreement, also included in the Training Guide, attesting to their understanding and acceptance of this limited arrangement and agreeing that they are joining AJM in its mission of increasing access to justice. The Agreement provides the clients with information about how to proactively contact AJM to report any misconduct or bad advice by a Justice Advocate. *See* Training Guide, Ex. B – User Agreement. AJM will also track all advice-giving encounters and will communicate with clients to confirm that the advice they received was helpful, accurate, and followed the strict requirements AJM imposes on Justice Advocates.

69. Specifically, as the Training Guide describes, Plaintiffs have adopted a series of protections to minimize the risk of unreliable or unethical advice and ensure that all advice being provided is in the best interest of the clients, including but not limited to:

- Justice Advocates must successfully complete a training program provided by AJM explaining the Training Guide in order to be certified by AJM to provide legal advice.
- Justice Advocates must provide all advice for free and for the purpose of increasing access to justice, thereby avoiding the risk of any conflict-of-interest resulting from the possibility of compensation.
- All advice must be truthful, non-misleading, and provided in good faith.
- Justice Advocates must provide all advice only within the scope of the Training Guide that AJM has prepared and has vetted with attorney experts to ensure that all advice is in the client's best interest.
- Justice Advocates must clearly disclose and require clients to acknowledge the limited scope of the legal advice being provided and that Justice Advocates are not attorneys. Where a Justice Advocate is unable to advise a client, they must direct the client to alternative resources.



- Justice Advocates must adhere to the exact same confidentiality and conflict-of-interest restrictions that New York State imposes on lawyers providing pro bono services.
- AJM will closely monitor the conduct and behavior of Justice Advocates, including by tracking each client encounter and contacting clients to confirm that the advice they received was fully consistent with the strict guidance required by AJM's training materials.
- To the extent Justice Advocates are acting outside the scope of AJM's program or not strictly adhering to AJM's guidelines, AJM will sever ties with noncompliant Justice Advocates and, as necessary, refer them to government authorities for further investigation.

70. AJM encourages clients to contact AJM about any misbehavior or deviation from these standards by Justice Advocates. AJM commits to investigating any complaints and, if necessary, removing Justice Advocates from the program. AJM also plans to track every interaction between a Justice Advocate and a client and to follow up with clients to confirm that the service provided was consistent with the terms AJM requires. As part of its preparations to launch AJM, Upsolve has already created web-based forms for both of these purposes.<sup>20</sup>

71. AJM warns Justice Advocates that providing legal advice outside the narrow scope and strict terms of the program may expose them to prosecution for engaging in the unauthorized practice of law or under other fraud or consumer-protection laws, like N.Y. Gen. Bus. Law §§ 349, 350, which impose liability for “[d]eceptive acts or practices in the conduct of any business” and could potentially be used to prosecute false, misleading, or bad faith advice.

72. Multiple third-party experts have reviewed the program and Training Guide and determined that AJM's clients will receive a substantial benefit from free legal advice from a Justice Advocate, and will be better off than they would have been had they received no advice at

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<sup>20</sup> See Tracking Form, <https://www.americanjusticemovement.org/tracking-form> (last visited Jan. 20, 2022); Complaint Form, <https://www.americanjusticemovement.org/complaint-form> (last visited Jan. 20, 2022).

all and been forced to go it alone. As Professor Pamela Foohey explains: “Given the limited resources available to unrepresented individuals in debt collection proceedings, particularly during the continuing COVID-19 pandemic, when debt collection proceedings are predicted to increase, allowing individuals who are not lawyers to provide carefully tailored and circumscribed assistance will significantly enhance low-income New Yorkers’ ability to assert their legal rights in court.”<sup>21</sup>

73. AJM gives life to recent recommendations by the American Academy of Arts & Sciences, the American Bar Association, and other leading groups that have “endorsed the expanded use of trained, supervised individuals,” sometimes called “justice advocates,” who lack full “formal legal education” but are nonetheless trained “to help people who would otherwise receive no legal assistance.”<sup>22</sup>

74. A number of successful programs already exist in a variety of states and in the federal system that allow professionals who are not lawyers to provide meaningful legal assistance within the civil justice system.<sup>23</sup>

75. For example, a number of states, like Arizona and Utah, are developing licensing regimes for legal paraprofessionals.<sup>24</sup> Additionally, advocates who are not lawyers are allowed to

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<sup>21</sup> Professor Foohey’s declaration is attached to the Silbert Declaration in Support of the Motion for a Preliminary Injunction as Exhibit 4 (“Foohey Decl.”). *See* Foohey Decl. ¶ 12.

<sup>22</sup> Am. Acad. of Arts & Scis., *Civil Justice for All*, at 15 (2020), [https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All\\_0.pdf](https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf); *see id.* at 15 & 47 nn. 44–45 (collecting sources); *also* ABA Report at 16, 40–41.

<sup>23</sup> *See id.* at 17 (“Some nonlawyer advocates already perform well-defined roles in civil justice.”).

<sup>24</sup> *See* Ariz. Sup. Ct., *Arizona Supreme Court Makes Generational Advance in Access to Justice* (Aug. 27, 2020), <https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf>; Utah Cts., *Licensed Paralegal Practitioners*, <https://www.utcourts.gov/legal/lpp/index.html> (last modified Feb. 6, 2021).

practice in a limited capacity in various federal forums, like “[A]ccredited [R]epresentatives” who may represent people in federal immigration proceedings, and other professionals who are not lawyers are empowered to represent claimants seeking Social Security disability benefits.<sup>25</sup>

76. New York State itself allows qualified individuals who are not lawyers to practice before the New York State Workers’ Compensation Board, provided they have “competent knowledge of the [relevant] law” and pass a written examination and participate in an orientation program.<sup>26</sup>

77. New York nonetheless continues to prohibit similarly situated professionals with similar training and supervision from providing straightforward legal advice when it comes to advising on how to respond to a debt collection action, including advising people on how to responding using New York’s own form.

#### **IV. Plaintiffs are ready, willing, and able to implement this program.**

78. Plaintiffs Upsolve and Rev. John Udo-Onkon are prepared to launch AJM to help low-income New Yorkers understand and access their legal rights in debt collection proceedings.

79. Upsolve is well situated to create and administer AJM and to recruit, train, and supervise Justice Advocates to provide free, narrow, and reliable legal advice to individuals facing debt collection actions.

80. Upsolve’s mission and activities as an organization are rooted in advocating for systemic change in America’s legal and financial systems. Over the past five years, Upsolve’s political advocacy has materialized in policy proposals, op-eds, speeches, conference and panel

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<sup>25</sup> See 8 C.F.R. § 1292.1; 20 C.F.R. § 404.1705.

<sup>26</sup> See N.Y. Comp. Codes R. & Regs. tit 12, §§ 302-1.1– 302-1.4, 302-1.11.

presentations, media outreach, and conversations with elected officials, Bar Associations, judges, legal scholars, and state agencies.

81. Upsolve and its co-founder and Chief Executive Officer, Rohan Pavuluri, have been widely lauded, including by the *New York Times*, the *Wall Street Journal*, and the *Washington Post*. Mr. Pavuluri's TED Talk discussing the access to justice crisis and Upsolve's work has been viewed more than 1.4 million times.

82. Upsolve has already invested the time and resources to design AJM, prepare the Training Guide, consult with subject-matter experts to ensure that the advice provided is in the public interest, and recruit potential Justice Advocates, including Plaintiff Rev. Udo-Okon. Upsolve has secured funding to finance AJM and stands ready to implement the program immediately.

83. Plaintiff Rev. John Udo-Okon is a pastor in the South Bronx who is ready and willing to serve as an AJM Justice Advocate. He believes that he can preach the gospel by providing various services to community members. Rev. Udo-Okon has witnessed firsthand the need for greater access to legal rights in his community.

84. Members of Rev. Udo-Okon's community face many legal problems, including harassing calls from debt collectors. However, community members typically cannot afford to hire a lawyer to help them respond to debt collection actions, and doing so is too complicated and intimidating for individuals on their own.

85. As a result, many individuals seek out Rev. Udo-Okon for assistance with their legal problems. However, Rev. Udo-Okon is not a lawyer. He knows that New York makes it unlawful for him to provide legal advice, so the only option that remains is to refer these individuals to outside agencies, which are more often than not overwhelmed with requests for free

legal assistance. Members of Rev. Udo-Okon's community are frequently put on long waiting lists before even getting the opportunity to receive legal advice, even though their situations can be quite time sensitive. The wait alone can result in losing the ability to access their rights.

86. Through conversations with members of his community, Rev. Udo-Okon has learned that many of them are being regularly harassed by debt collectors. In some cases, they believe they do not owe the debts that are being demanded. Some people have lost their homes and had their credit scores damaged as a result of their failure to properly respond to these lawsuits, regardless of their merit.

87. Rev. Udo-Okon is acutely aware of the urgency for a project like AJM in his community. Following a recent town hall meeting, more than one hundred community members signed a petition asserting that they want to receive this kind of advice from Rev. Udo-Okon. That response indicates both the size of the demand and that Rev. Udo-Okon could immediately begin helping people access the justice system as a Justice Advocate, if doing so were lawful.

**V. The only barrier to Plaintiffs providing and receiving this critical service is the threat of civil sanction and criminal prosecution under New York's UPL rules.**

88. The only thing preventing Upsolve and Justice Advocates from associating and providing free legal advice under AJM, in furtherance of increasing their clients' access to courts and the justice system, is the threat of prosecution under New York's UPL rules.

89. A number of statutes and rules governing the practice of law make it a crime and civilly sanctionable to engage in, solicit, or aid in the unauthorized practice of law. *See* N.Y. Jud. Law §§ 476-a, 478, 484, 485, 750, 753; *see also* N.Y. Penal Law § 20.00 (imposing criminal liability for "solicit[ing], request[ing] . . . or intentionally aid[ing]" in unlawful conduct).

90. The assistance AJM seeks to provide would violate New York's UPL rules, because it would involve providing individualized legal advice about whether and how to respond to ongoing litigation (and advertising that assistance to potential advisees).

91. The risk of prosecution under these rules is acute because New York's UPL rules are vigorously enforced.

92. As a result, as soon as AJM launches, Upsolve, Rev. Udo-Okon, potential clients, and any other individuals who aid in this project would face the risk of criminal and civil prosecution for engaging in the unauthorized practice of law. This risk is chilling Upsolve from launching the program. Indeed, the only thing stopping Rev. Udo-Okon from associating with Upsolve and providing this legal advice is the threat of being prosecuted for violating New York's UPL rules.

93. The low-income New Yorkers who would receive Rev. Udo-Okon's and other future Justice Advocates' advice are also in a bind. They cannot afford a paid lawyer and cannot find free counsel, but if they solicit this kind of advice from a non-lawyer they face the risk of prosecution, and they do not know how to go it alone. Without legal help, they are likely to default and face the risk of wrongful deprivation of their property and significant follow-on harms.

94. The experts who reviewed and endorsed the Training Guide limited the scope of their review "[i]n part," as Professor Foohey explained, "to avoid any possibility of liability under rules governing the unauthorized practice of law." This illustrates that industry experts likewise fear prosecution under UPL rules. Foohey Decl. ¶ 11.

95. But applying New York's UPL rules to bar Plaintiffs' advocacy and expressive association violates Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution.

96. *First*, application of the UPL rules here would trigger strict scrutiny. The Supreme Court has held that “collective activity undertaken to obtain meaningful access to the courts”—just like the activity Plaintiffs plan to undertake—“is a fundamental right within the protection of the First Amendment[’s]” guarantee of the Freedom of Association. *In re Primus*, 436 U.S. 412, 426 (1978) (quoting *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971)).

97. Furthermore, application of New York’s UPL rules triggers strict scrutiny under the First Amendment’s protection of Free Speech. “Above all else, the First Amendment means that government generally has no power to restrict expression”—or the hearing of that expression—“because of its message, its ideas, its subject matter, or its content.” *Barr v. Am. Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (quoting *Police Dep’t. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)) (internal quotation marks omitted). And application of the UPL rules here is content-based, because it depends on the content of speech and in particular whether it includes individualized advice about whether and how to respond to a debt collection action.

98. *Second*, application of the challenged rules to Plaintiffs cannot survive First Amendment scrutiny.

99. Application of the UPL rules in this context has the effect of preventing many low-income New Yorkers from receiving advice that would help them avoid the risk of wrongfully losing their property (and more), even where, as here, trained professionals who are not lawyers are already embedded in low-income communities and are acting in the public interest to provide truthful, free, and carefully circumscribed legal advice on terms that mirror those on which pro bono lawyers may provide similar advice.

100. The application of the UPL rules to Plaintiffs is particularly unjustified because the American Justice Movement will advance the very interests underlying the rules. New York’s UPL

rules are designed to protect consumers from the risk of unreliable or unscrupulous representation and thereby increase public faith in the justice system. These rules serve these salutary aims in many applications.

101. By providing free, reliable, and helpful information about how low-income New Yorkers can access their legal rights, Plaintiffs seek to protect consumers and help to bolster faith in the justice system and thereby avoid the significant harm that currently results from low-income New Yorkers' inability to understand and access their legal rights. Far from undermining the State's interest, Plaintiffs seek to help New Yorkers fill out a form that the state itself has provided, confirming the state's own recognition of the significance of responding to debt collection actions and the need to support the many defendants who currently are unable to do so. By doing so, Plaintiffs hope to help ensure that every low-income New Yorker is able to access and exercise their legal rights and avoid paying a debt they do not owe or that a plaintiff has no right to collect.

102. Plaintiffs accordingly bring this action to vindicate those rights and ensure that no more Americans will be deprived of their property and their civil rights due to the lack of free assistance to help them access and vindicate those rights.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **42 U.S.C. § 1983: Violation of the Freedom of Speech**

103. Plaintiffs repeat and allege paragraphs 1–102 as if fully set forth herein.

104. The First Amendment's protection of Free Speech protects Plaintiffs' activity against the application of New York's UPL rules because the government "generally has no power to restrict expression"—or the hearing of that expression—"because of its message, its ideas, its subject matter, or its content." *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335,



2346 (2020) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)) (internal quotation marks omitted).

105. New York’s UPL rules, as applied to Plaintiffs, punish Plaintiffs’ truthful, non-commercial, and non-misleading speech on the basis of its content.

106. New York’s UPL rules, as applied to Plaintiffs, cannot satisfy strict scrutiny because they are not narrowly tailored to a compelling government interest. Nor can they satisfy any lesser level of scrutiny that might apply. To the contrary, Plaintiffs’ carefully designed program to provide free, reliable, truthful, and non-misleading legal advice to low-income New Yorkers advances the State’s interests in consumer protection and preserving the integrity of the legal system that underlie the UPL rules.

107. In implementing and enforcing the UPL rules against Plaintiffs, Defendant is, under color of state law, depriving Plaintiffs of their constitutional rights.

## **COUNT TWO**

### **42 U.S.C. § 1983: Violation of the Freedom of Association**

108. Plaintiffs repeat and allege paragraphs 1–107 as if fully set forth herein.

109. The Supreme Court has held that “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment” to the United States Constitution. *In re Primus*, 436 U.S. 412, 426 (1978) (quoting *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971)).

110. New York’s UPL rules, as applied to Plaintiffs, would prevent Plaintiffs from associating to engage in collective activity for the purposes of expressing their personal beliefs in access to justice and ensuring that low-income New Yorkers can access their rights to be heard in court.

111. New York's UPL rules, as applied to Plaintiffs, cannot satisfy strict scrutiny because they are not narrowly tailored to a compelling government interest. To the contrary, Plaintiffs' carefully designed program to provide free, reliable, truthful, and non-misleading legal advice to low-income New Yorkers advances the State's interests in consumer protection and preserves the integrity of the legal system that underlie the UPL rules.

112. In implementing and enforcing the UPL rules against Plaintiffs, Defendant is, under color of state law, depriving Plaintiffs of their constitutional rights.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and grant the following relief:

- A. A declaration that application of New York's UPL rules to Plaintiffs' truthful, non-misleading, and good faith legal advice provided through the American Justice Movement would violate Plaintiffs' protected rights under the First and Fourteenth Amendments of the United States Constitution;
- B. A preliminary and permanent injunction enjoining Defendants and other state agencies—as well as their agents, offices, and employees—from taking any action that would interfere with Plaintiffs' intended activities.
- C. Nominal damages of \$1.00 to remedy the past violation of Plaintiffs' constitutional rights.
- D. An award of Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to 42 U.S.C. § 1988; and
- E. Any other relief the Court deems just and proper.

Dated: New York, New York  
January 25, 2022

WEIL, GOTSHAL & MANGES LLP

/s/ Gregory Silbert  
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*\*Pro hac vice* motion forthcoming

*Counsel for Plaintiffs*

# Exhibit A

\_\_\_\_\_,  
Plaintiff(s)  
-against-  
\_\_\_\_\_,  
Defendant(s)

**WRITTEN ANSWER  
CONSUMER CREDIT TRANSACTION**

Index Number: \_\_\_\_\_

**ANSWER: (Check all that apply)**

1. ☐ General Denial: I deny the allegations in the Complaint.

**SERVICE**

2. ☐ I did not receive a copy of the Summons and Complaint.

3. ☐ I received the Summons and Complaint, but service was not correct as required by law.

**DEFENSES**

4. ☐ It is not my debt. I am a victim of identity theft or mistaken identity.

5. ☐ I have paid all or part of the alleged debt.

6. ☐ I dispute the amount of the debt.

7. ☐ I had no business dealings with Plaintiff (Plaintiff lacks standing).

8. ☐ There is no record of plaintiff having a license to collect debt (only for cases filed in New York City, Buffalo and other municipalities requiring debt collectors to be licensed).

9. ☐ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City, Buffalo and other municipalities requiring debt collectors to be licensed).

10. ☐ Statute of limitations (the time has passed to sue on this debt).

11. ☐ This debt has been discharged in bankruptcy.

12. ☐ The collateral (property) was not sold at a commercially reasonable price.

13. ☐ Failure to provide proper notice before selling collateral (property).

14. ☐ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages).

15. ☐ Unjust enrichment (the amount demanded is excessive compared with the original debt).

16. ☐ Violation of the duty of good faith and fair dealing.

17. ☐ Unconscionability (the contract is unfair).

18. ☐ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).

19-a. ☐ **OUTSIDE OF NEW YORK CITY ONLY:** Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed **and** you are not a resident of that city **or** (for all counties except Westchester and Nassau counties) you are not a resident of a town next to that city within the same county).

19-b. ☐ **SUFFOLK COUNTY:** Lack of personal jurisdiction; the defendant is not a resident and/or was not served in, or there was no transaction of business in, that portion of Suffolk County for which a District Court has been established (Towns of Huntington, Babylon, Islip, Smithtown and Brookhaven).

20. ☐ Defendant is in the military.

**OTHER**

21. ☐ Other Reasons \_\_\_\_\_

22. ☐ Please take notice that my only source of income is \_\_\_\_\_, which is exempt from collection.

**COUNTERCLAIM(S)**

23. ☐ Counterclaim(s): \$ \_\_\_\_\_ Reason: \_\_\_\_\_

**VERIFICATION**

State of New York, County of \_\_\_\_\_ ss:

\_\_\_\_\_, being duly sworn, deposes and says: I have read the Answer in Writing and know the contents to be true from my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Defendant's  
Address:

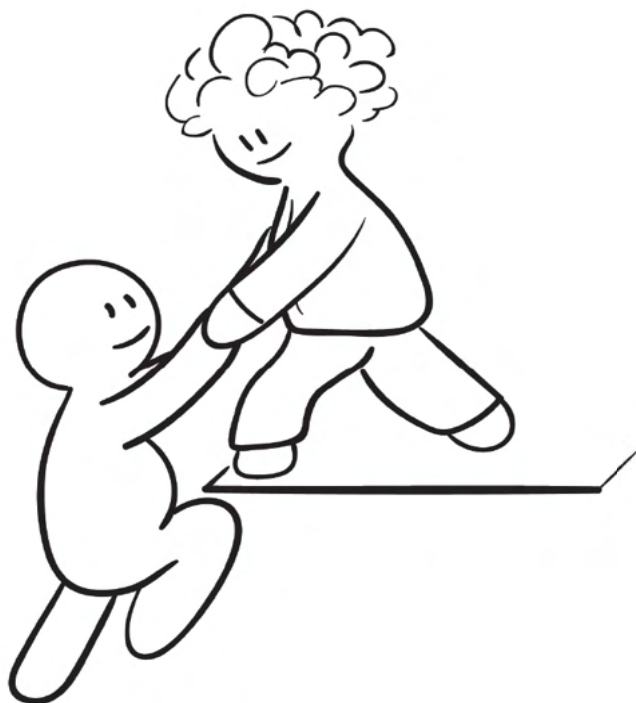
This case is scheduled to appear on the court calendar as follows:

Date: \_\_\_\_\_ Part: \_\_\_\_\_ Room: \_\_\_\_\_ Time: \_\_\_\_\_ Both sides notified: Yes No

# Exhibit B



## **The American Justice Movement Consumer Rights Project**



## **Justice Advocate Training Guide New York City**



## Introduction

Congratulations on joining the American Justice Movement (AJM) as a Justice Advocate!

This guide will introduce you to our mission, code of conduct, disciplinary infrastructure, and values. This guide will also train you on how to provide limited scope, free legal advice in debt collection defense cases in New York, outline your exact responsibilities as a Justice Advocate, and explain the limitations of your role.

## I. Your Obligations as a Justice Advocate

As a member of the American Justice Movement, you will have the ability to help low-income Americans access their civil legal rights by providing free legal advice even if you are not a lawyer.

In order to do so, you must meet the following criteria:

1. You accept the attached "Justice Advocate Affidavit" (Exhibit A) and agree that you are participating in the American Justice Movement for the purpose of helping low-income New Yorkers access their legal rights for free. **You must fill out and return your Justice Advocate Affidavit to the American Justice Movement, attend a virtual training, and be approved by the American Justice Movement before you can provide any advice.**
2. Your assistance is provided free of charge to the person you are helping and you don't request or require any compensation from them, their family, or their friends.
3. Before providing any advice, you must make clear to people receiving your advice that even though you are providing them with free legal advice, not merely clerical assistance, you are not a lawyer and that the advice you can provide is limited in scope.
4. You provide free legal advice only in responding to a debt collection lawsuit in New York, and only in the manner and circumstances described in the Training Guide.

Additionally, you must comply with the following requirements—which are similar to those followed by lawyers providing pro bono advice:

- **Conflicts of Interest:** Justice Advocates must comply with Rules 1.7, 1.8, and 1.9 of the New York State Rules of Professional Conduct as though the Justice Advocate were acting as a lawyer, if the Justice Advocate has knowledge at the time of the representation that the representation involves a conflict of interest.





- *Informed consent:* Justice Advocates must secure the client's informed consent to the limited scope of the representation—all decisions must be made in the client's best interest.
- *Confidentiality:* The representation provided through AJM must comply with the confidentiality requirements set out in Rule 1.6 of the New York State Rules of Professional Conduct.

If you violate any of these rules, your membership in the American Justice Movement will be terminated and you may face the risk of prosecution for the unauthorized practice of law. Additionally, if you provide unlawful or fraudulent advice, you may also face liability under various other consumer-protection laws governing, for example, fraud or false advertising.

## **II. Introduction to Debt Collection Defense**

Nearly 4 million individuals every year are sued for their debt, mostly by businesses, including third-party debt buyers, payday lenders, subprime auto-lenders, hospitals for medical debt, for-profit colleges, etc.

The vast majority of these lawsuits are for amounts that are less than \$10,000 and the vast majority of defendants – over 90% by many estimates – receive no legal advice in their cases. As a result, most people who face debt collection actions receive default judgments – they lose their lawsuits without courts considering any facts at all. And when people have counsel, they often prevail or reduce the amount owed. Together, this means that the lack of access to counsel forces many defendants to pay debts they do not owe, or to pay more than they owe. Debt collection judgments can cause adverse consequences, like wage garnishment, levied bank accounts, liens on their homes, automobile repossession, and damage to credit. This gap in access to justice is particularly problematic in New York where, by some estimates, 97% of consumer debt litigants are unrepresented. Moreover, money judgments in New York accrue interest at 9 percent per year and are enforceable for 20 years.

As a Justice Advocate of the American Justice Movement, you will be responsible for helping address this civil rights crisis.

### **Steps in a Debt Collection Lawsuit**

1. Before a debt collection lawsuit is filed, a consumer must default on a debt, *i.e.* miss one or more payments to their original creditor. The creditor themselves, or a debt buyer, may then engage in communication in an attempt to collect the debt or may file a lawsuit.
2. The plaintiff files a complaint and serves the defendant.



3. The defendant is required to respond to the complaint, such as by filing an answer, for which New York State provides a standard, fill-in-the-black form. **(This is where you will be providing free legal advice.)**
4. If the defendant fails to respond, the plaintiff can obtain a default judgment and seek to collect on the debt. If, however, the defendant answers the complaint, the plaintiff is required to prove their case. (While this Training Guide does not allow you to provide advice beyond advising the client how to answer, there are additional resources, including those attached as Exhibit E, to help the client represent themselves for issues outside the scope of your assistance.)

### **III. Your Role: Providing Advice on Answering the Complaint**

#### **Step 1: Determine whether the client could benefit from your advice**

- This Training Guide is designed to empower you to assist only clients who are defendants in a debt collection lawsuit in New York Civil Court.
- New York offers a simple check-box form to assist people in filing an answer, but many people do not know it exists, do not know how to fill it in, and fail to submit it. You can help people protect their rights using this simple form.
- Before you can help a client, you will first need to determine whether they are within the limited category of people who can benefit from the advice you can provide.
- To confirm that a potential client is eligible for your services, please confirm that they have been served with a Summons and/or Complaint in New York Civil Court and that they have not yet answered their lawsuit or filed an answer on their own but are interested in filing an updated or amended answer with your help.
  - If the client's papers reflect that they have been sued in Supreme Court, please let them know that you are unable to advise them and direct them to the alternative resources in Exhibit D.
  - If the client explains that the lawsuit involves their failure to pay child support, please let them know that you are unable to advise them and direct them to the alternative resources in Exhibit D.
- If the client has already received a default judgment, you should advise them that they may be able to have that judgment vacated but that you cannot advise them how to do so and they should consider contacting other resources for free legal assistance, including those listed in Exhibit D.
- If a client is not sure what stage their case is at, you should advise them to visit the courthouse website or records office to determine the status of their case.



## Step 2: Confirm limited scope of representation with client

- Once you have confirmed that a potential client has a debt collection lawsuit that they have not answered or already answered on their own but want to amend, you should inform them that you can provide them with free legal advice about how to answer their lawsuit.
- You should tell the client that you cannot help them outside of that narrow advice, but that answering their lawsuit can make a big difference in their case, by requiring the creditors to prove their cases using admissible evidence.
- You should tell the client that you will be providing your advice for free and for the purpose of helping them access their legal rights and thereby increasing access to justice.
- Finally, before advising the client, you should have them read and sign the **User Agreement**, which is attached to this Training Guide as Exhibit B.
- You must also input yours and the client's information on the **American Justice Movement Website Web-Form** (accessible at <https://www.americanjusticemovement.org/tracking-form>), which tracks all advice-giving encounters and allows us to follow up with clients to confirm that the advice they received is fully consistent with the terms of this guide.

## Step 3: Advise the client how to answer their lawsuit

- Showing up is often half the battle in debt collection cases. Debtors should therefore answer the complaints filed against them and assert their rights. In cases where the plaintiff is not the original creditor, they may not have the proof to make even a basic case that they have the right to collect the debt they are suing on.
- If the client has not yet filed an answer, you should advise them that it is in their interest to file an answer.
- Ordinarily, a defendant has either 20 or 30 days from when they are served to file an answer, depending on how they were served.<sup>1</sup> But you should advise clients that they should answer their lawsuits even if that deadline has elapsed.
- To file an answer, explain to the client that New York provides a simple form. Provide them a copy of the form (attached as Exhibit C), and tell them you will help them fill out their answer form by asking them a series of questions about their debt.
- Tell them they will need to file their answer in the clerk's office of the appropriate court, which they can find out by checking the court's website.
  - There may be alternative options that allow the client to file the answer by mail, email, or over the phone, but these options are generally temporary (due to

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<sup>1</sup> If the defendant was personally serviced, they have 20 days, and if they were served by mail or service was made on another, they have 30 days.



COVID) and vary from court to court. But you can suggest to the client that they call the court to find out if they have alternative options to going in person.

- Before you ask the questions below and advise the client how to fill out their answer form, be sure to provide the client with a copy of the form attached as Exhibit C.
- Ask the client the following series of questions and follow the guidelines below to direct them how to fill out the answer form. You should let the client know that this may take 15-20 minutes but that they should be patient and that it will be worthwhile for them to answer the complaint.
- Where the guidelines below are unclear, apply your best judgment to the answer the client provides to determine whether you think their description satisfies the requirements for a particular defense. If you are not still sure of whether a specific defense applies to the client's case, you should err on the side of telling the client to check the box to make sure they don't lose the opportunity to raise that defense, but you should advise the client to determine whether they have any documents or other information they can use to back up their claim.
- Note that the client may end up checking more than one box on the form.
- **Questions for advising a client on how to fill out their answer form:**
  - 1. "Do you deny the allegations in the Complaint?"
    - Unless the client tells you that they agree with every statement in the complaint, they should check this box.
    - You should advise the client to check this box in most cases, as there is usually at least one statement in the complaint that they dispute. They may dispute the identity of the debt buyer, creditor, exact dollar amount down to the penny, account number, their stated residence or any other information in the complaint.
  - 2, 3. "Did you or somebody close to you receive a copy of the Summons and Complaint? Was it properly served within 120 days of the complaint being filed? There are only three ways for the complaint to be properly served, either (1) it was delivered personally to you, (2) it was delivered to another person of appropriate age at your home or work who can be trusted to get it to you and mailed to you within 20 days, or (3) it was attached to the front door of your home or work at separate times on three different days and was mailed to you within 20 days. If you were served any other way, even if it was slightly different, you were not properly served."
    - If they did not receive the Summons and Complaint, advise the client to check box 2.
    - If the Summons and Complaint was not properly served, advise the client to check box 3.



- Some additional common examples of improper service include being served on a Sunday or being served by the person suing you. More examples are described at [this link](#).
  - Please advise the client that if they want to challenge service, they will probably want to file a Motion to Dismiss. Tell them this is outside the scope of what you're able to advise them on, but may be a good option IN ADDITION to filing this answer. Whether to file a Motion to Dismiss is something for which you should advise the client to consult the resources listed in Exhibit D.
- 4. "Do you not owe this debt because it is not a debt you owe or you do not recognize the account number?"
    - If yes, advise the client to check box 4.
    - Remind clients that they should not check this box if it is a debt they co-signed on.
  - 5. "Have you already paid this debt or a portion of this debt, even if paid through a debt settlement company?"
    - If yes, advise the client to check box 5.
  - 6. "Do you dispute the amount of the debt alleged in the complaint?"
    - If yes, check box 6.
    - The client should check this box even if they dispute a small amount of the debt.
  - 7. "Is the person or company bringing this lawsuit not a name you recognize?"
    - If they do not recognize the name of the plaintiff, they should most likely check this box, as the plaintiff is most likely a debt buyer. Even if they recognize the original creditor, in most cases the debt buyer-plaintiff does not have proper proof of assignment or failed to serve required notice of assignment. A debt may have been sold several times and each assignee in the chain must provide proper proof and notice of assignment. If they do not recognize the plaintiff, advise the client to check box 7.
    - Unless the client tells you otherwise, you should advise the client to check this box in every case where the plaintiff is a debt buyer.
  - 8, 9. "If the person or company is not the original creditor, when you look online, at <http://www1.nyc.gov/site/dca/consumers/check-license.page>, does the person or company have a debt collector's license and include that license number in the complaint?" (If the plaintiff is the original creditor, you will not be able to use this defense.)



- To the extent possible, please help the client look up the debt collector's information online.
  - If the plaintiff does not have a license, advise the client to check box 8.
  - If the plaintiff does not include the license number in the complaint, advise the client to check box 9.
  - Note that this defense may not apply in every part of New York State, but you should advise the client to check the box if it may apply.
- 10. "How long has it been since you last made a payment on this debt (even a small payment counts)? Or if you have never made a payment, how long has it been since you missed your first payment?"
- Whether or not the client should check box 10 depends on what type of debt it is:
    - If it is a consumer credit claim (like a credit card, private student loan, or personal loan), check box 10 if it has been more than 3 years.
    - If it is an auto loan or store credit card (e.g., Macy's or Sears cards), check box 10 if it has been more than 4 years.
    - If it is a cell phone debt, check box 10 if it has been more than 2 years.
    - And if it is a rent obligation, a medical debt, or tuition, check box 10 if it has been more than 6 years.
  - [After April 1, 2022, the statute on consumer credit claims (e.g., credit card, auto loan, private student loan, personal loans) will become 3 years.]
- 11. "Did you file for bankruptcy and list this debt in your bankruptcy forms and receive a discharge?"
- If yes, advise the client to check box 11.
- 12, 13. "Did your creditor sell whatever the property was that was securing this loan? For example, did your creditor already repossess your car that is the subject of this loan? If they did, did they sell it for a price that is less than you think the property is worth? And did you receive notice of the sale on paper with information of the sale within 10 days of the sale?"
- If the collateral was not sold, go on to 14.
  - If the collateral was sold but not for a fair price, advise the client to check box 12.
    - In most auto loan or lease-to-own cases, the collateral will not be sold at a commercially reasonable price due to the limited effort to publicize the auction. Client can look at <https://www.kbb.com/> to get an estimate of vehicle's value.



- If the collateral was sold and the client did not receive notice, advise the client to check box 13.
- 14. "Are the things the creditor could have done but didn't do that would have helped minimize their loss? One common example is where a tenant leaves a lease early and the landlord delays in seeking an alternative tenant. It is landlord's burden in court to prove that it took reasonable measures to mitigate damages."
  - If the answer is yes, advise the client to check box 14.
- 15. "Is the amount demanded more than the amount you owe? The amount may be higher than the original debt due to interest and other charges, but the plaintiff cannot excessively delay to allow such amounts to unreasonably increase."
  - If the amount demanded seems out of step with the amount owed, advise the client to check box 15.
  - You will likely advise clients to check this box in most cases, especially for clients who already checked box 6.
- 16. "Has the other side not dealt honestly and fairly with you? For example, has your creditor lied to you about your rights or about how to handle your debt?"
  - If yes, advise the client to check box 16.
  - You will likely advise clients to check this box in most cases.
- 17. "Was the agreement you signed very unfair in the first place? For example, was the interest rate your creditor charged much higher than the market rate for similar debts?"
  - If yes, advise the client to check box 17.
  - You will likely advise clients to check this box in most cases.
- 18. "Do you think the plaintiff waited too long to bring this case on purpose and it makes it that much harder for you to defend against it?"
  - If yes, advise the client to check box 18.
- 19. "Were you sued in a county outside of New York City where you do not live or work?"
  - If yes, check box 19-a, but if the suit was filed in Suffolk County, advise the client to check 19-b.
- 20. "Are you in the military?"
  - If yes, advise the client to check box 20.





- Being in the military may mean that the client can delay their case. If the client is in the military, advise the client to seek advice from a lawyer (or other resources described in Exhibit D to this Training Guide).
- 21. "Are there any other reasons you should not be held liable for this debt that you want to communicate to the court?"
  - If yes, check box 21 and advise the client to write the reasons in the blank or additional information they want to share with the judge (but advise the client not to include any information that might contradict any of the prior boxes they checked).
  - Some examples of additional reasons might be that the client did not have the capability to understand the original agreement they signed or if the client was under 18 years old at the time and did not have the consent of their parent or guardian.
- 22. "Is your only source of income one that may not be taken by creditors to satisfy judgments. This includes:"
  - If you make less than \$450 per week after mandatory deductions (taxes, social security, Medicare), or
  - Supplemental Security Income (SSI), Social Security retirement, Social Security Disability, Public assistance (like TANF), Income earned while receiving SSI or public assistance, Disability of Workers' compensation benefits, Veterans benefits, black lung benefits, Spousal or child support, Railroad retirement, Unemployment."
  - If the client answers yes, advise the client to check box 22, and advise the client to write the source of their income in the blank on line 22.
- 23. "Counterclaims are claims that the client might be able to bring against the debt collector if the debt collector did something unlawful in connection with their attempts to collect the debt."
  - If the client believes they may have a counterclaim, you should inform them that they would mostly likely be better off looking for a lawyer, including through some of the institutions in Exhibit D.
  - Some examples of a potential counterclaims include:
    - If the client has received two summonses in different cases for the same debt, or if the other side lied to the client about whether and when they would file a lawsuit, advise the client to check line 23 and write the dollar amount of damages the client suffered (or \$50 if the client has not suffered more than \$50 in harm) and, next to "Reason:" write "Unfair and Deceptive Business Practice under N.Y. General Business Law section 349" and a very brief description of the conduct.





- Additionally, if the client has experienced inappropriate debt collection behaviors that violate the Fair Debt Collection Practices Act (“FDCPA”)<sup>2</sup>, advise the client to check line 23, write \$1000 plus any monetary damages the client suffered, and, next to “Reason:” write “Fair Debt Collection Practices Act, 15 U.S.C. sections 1692a-o” and briefly describe the conduct. Some common examples of conduct by debt collectors that may violate the FDCPA include: contacting unrelated people (e.g., neighbors) about the debt; making harassing phone calls, using obscene language, or threatening violence; and making any false representations about the debt.
- You should warn the client that they may have additional counterclaims that you are not equipped to help them with, but that these are common counterclaims that people in their situation sometimes have.
- Once you’ve directed the client how to fill out the answer form, tell them to (1) take the Answer form to the court clerk; (2) ask the court clerk to notarize the Answer; (3) ask for a copy of the notarized Answer to keep for their records; (4) ask the clerk about when they will be notified about their court appearance. Remind the client that they should do all of this as soon as possible and that they may be required to do so within 20 days of being served with summons, but that they should still answer even if they are late.
  - The location for bringing the answer to the court depends on which county the lawsuit is in:
    - Bronx: 851 Grand Concourse, Basement, Bronx, NY 10451; Go to Window 6 to request your file and then to Window 14 to answer.
    - Kings (Brooklyn): 141 Livingston St., Room 302, Brooklyn, NY 11201.
    - New York (Manhattan): 111 Centre Street, Room 118 Windows 7-10, New York, NY 10013.
    - Queens: 89-17 Sutphin Boulevard, Room 147, Jamaica, NY 11435.
    - Richmond (Staten Island): 927 Castleton Avenue, Basement, Staten Island, NY 10310
  - There may be other temporary options for filing the answer online or by phone, but these vary by court and the client should contact the relevant court to determine if there is an alternative to bringing the answer to the court in person.
- You should advise the client that after they have answered they will be required to show up at the court either in-person or virtually through Microsoft Teams, and that they might receive more information about their court date through a postcard in the mail. Remind

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<sup>2</sup> More details about the FDCPA and other laws that limit what debt collectors can say or do are available from the Consumer Financial Protection Bureau at <https://www.consumerfinance.gov/ask-cfpb/are-there-laws-that-limit-what-debt-collectors-can-say-or-do-en-329/>.



them that if they don't show up they can still lose their case, but encourage them that showing up is half the battle. Please also provide the client with the information in Exhibit E about "What happens next after you answer?"

**If you cannot assist a client—for example, because they have not been served with a debt collection lawsuit or have already filed an answer in such a lawsuit—you should inform them that they require assistance you cannot provide and that they should consider contacting the resources listed in Exhibit D.**



## Ex. A – Justice Advocate’s Affidavit

In order to provide legal advice as part of the American Justice Movement, you must attest to the following:

- I am providing limited legal advice for the purpose of helping all Americans understand and access their legal rights and to increase access to the courts.
- I recognize that I am providing clients with legal advice and am not merely engaging in clerical non-legal assistance.
- I promise not to request or receive any compensation for the services I provide.
- I promise to adhere to the Training Guide provided by the American Justice Movement and to not provide legal advice on any other issue. I understand that if I provide legal advice outside the scope of the Training Guide, I may be engaged in the unauthorized practice of law and I understand the consequences of doing so.
- I promise to clearly and honestly communicate the limited nature of the service I can provide to all of the people who seek my legal advice.
- I promise to adhere to the obligations described below and promise to withdraw from any representation if there is any risk that it will not be in the client’s best interest:
  - *Conflicts of Interest*: Justice Advocates must comply with Rules 1.7, 1.8, and 1.9 of the New York State Rules of Professional Conduct as though the Justice Advocate were acting as a lawyer if the Justice Advocate has knowledge at the time of the representation that the representation involves a conflict of interest.
  - *Informed consent*: Justice Advocates must secure the client’s informed consent to the limited scope of the representation—all decisions must be made in the client’s best interest.
  - *Confidentiality*: The representation provided through AJM must comply with the confidentiality requirements set out in Rule 1.6 of the New York State Rules of Professional Conduct.
- I promise to abide by other consumer-protection laws, including protections against false advertising, fraud, and deceptive practices. See, e.g., New York General Business Law § 349 (“Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”).
- I recognize that if I fail to abide by these guidelines, I can be removed as a Justice Advocate and may face other penalties, including under laws governing the unauthorized practice of law.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone number and/or email address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## Ex. B – User Agreement

Thank you for being a part of the American Justice Movement, an organization committed to ensuring that all Americans can exercise their right to provide and receive free legal advice for the purpose of expanding access to the courts.

This is an agreement between you and the American Justice Movement. It describes the terms of the project to provide you with free, limited legal advice and assistance. By signing this agreement, you acknowledge that you understand the limitations of the advice you are receiving and that you are receiving this advice for the purpose of asserting your own rights and expanding access to the courts.

**Justice Advocates:** The Justice Advocates who are offering you free legal advice are not lawyers and not employees of the court. They are volunteers who believe in the American Justice Movement's mission to increase access to justice and are providing you with free advice to advance that goal.

**Scope of Legal Advice:** Justice Advocates are able to provide limited, free legal advice about whether and how to respond to your debt collection lawsuit based on the information you provide. You will still be required to represent yourself in your case and neither the Justice Advocates nor the American Justice Movement will represent you. Neither the American Justice Movement nor the Justice Advocates assume any liability regarding the outcome of your case.

**Cost:** All of the advice you receive will be provided for free. If the Justice Advocate asks you to pay anything in connection with this service, please notify the American Justice Movement immediately through the form on our website:

<https://www.americanjusticemovement.org/complaint-form>.

**Duration and Follow-up:** The advice the Justice Advisor provides is limited to this meeting. However, you acknowledge that the American Justice Movement may contact you in the future.

**Limitations:** The Justice Advocate may decline to provide you with advice if your legal problems are too complicated or outside the scope of this project or for any other reason.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone number and/or email address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## Ex. C – Answer Form

COURT	COUNTY OF	Part: _____
-against-	Plaintiff(s)	<b>WRITTEN ANSWER</b> <b>CONSUMER CREDIT TRANSACTION</b>  Index Number: _____
	Defendant(s)	

**ANSWER: (Check all that apply)**

1. ☐ General Denial: I deny the allegations in the Complaint.

**SERVICE**

2. ☐ I did not receive a copy of the Summons and Complaint.

3. ☐ I received the Summons and Complaint, but service was not correct as required by law.

**DEFENSES**

4. ☐ It is not my debt. I am a victim of identity theft or mistaken identity.

5. ☐ I have paid all or part of the alleged debt.

6. ☐ I dispute the amount of the debt.

7. ☐ I had no business dealings with Plaintiff (Plaintiff lacks standing).

8. ☐ There is no record of plaintiff having a license to collect debt (only for cases filed in New York City, Buffalo and other municipalities requiring debt collectors to be licensed).

9. ☐ Plaintiff does not allege a debt collector's license number in the Complaint (only for cases filed in New York City, Buffalo and other municipalities requiring debt collectors to be licensed).

10. ☐ Statute of limitations (the time has passed to sue on this debt).

11. ☐ This debt has been discharged in bankruptcy.

12. ☐ The collateral (property) was not sold at a commercially reasonable price.

13. ☐ Failure to provide proper notice before selling collateral (property).

14. ☐ Failure to mitigate damages (Plaintiff did not take reasonable steps to limit damages).

15. ☐ Unjust enrichment (the amount demanded is excessive compared with the original debt).

16. ☐ Violation of the duty of good faith and fair dealing.

17. ☐ Unconscionability (the contract is unfair).

18. ☐ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage).

19-a. ☐ **OUTSIDE OF NEW YORK CITY ONLY:** Lack of personal jurisdiction under Uniform City Court Act § 213 (applies if you do not work in the city where the case was filed and you are not a resident of that city or (for all counties except Westchester and Nassau counties) you are not a resident of a town next to that city within the same county).

19-b. ☐ **SUFFOLK COUNTY:** Lack of personal jurisdiction; the defendant is not a resident and/or was not served in, or there was no transaction of business in, that portion of Suffolk County for which a District Court has been established (Towns of Huntington, Babylon, Islip, Smithtown and Brookhaven).

20. ☐ Defendant is in the military.

**OTHER**

21. ☐ Other Reasons \_\_\_\_\_

22. ☐ Please take notice that my only source of income is \_\_\_\_\_, which is exempt from collection.

**COUNTERCLAIM(S)**

23. ☐ Counterclaim(s): \$ \_\_\_\_\_ Reason: \_\_\_\_\_

**VERIFICATION**

State of New York, County of \_\_\_\_\_ ss:

\_\_\_\_\_, being duly sworn, deposes and says: I have read the Answer in Writing and know the contents to be true from my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public	Defendant's Address:	Signature of Defendant
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This case is scheduled to appear on the court calendar as follows:

Date: \_\_\_\_\_ Part: \_\_\_\_\_ Room: \_\_\_\_\_ Time: \_\_\_\_\_ Both sides notified: Yes No  
 UCS-CC-3 Revised 11/15



## **Ex. D – Alternative Sources of Assistance**

**If you cannot help a client, you should encourage them to contact one of the following resources:**

- **New York City Consumer Help Finder:**  
[https://nycoi.legalserver.org/modules/matter/external\\_intake.php?pid=129&h=daa817](https://nycoi.legalserver.org/modules/matter/external_intake.php?pid=129&h=daa817)
- **New York Legal Assistance Group: (212) 417-3700**
- **City Bar Justice Center: (212) 626-7383**
- **Brooklyn Volunteer Lawyers Project:**  
[https://vlpoi.legalserver.org/modules/matter/external\\_intake.php?pid=129&h=daa817&](https://vlpoi.legalserver.org/modules/matter/external_intake.php?pid=129&h=daa817&)
- **New Economy Project: (212) 925-4929**
- **Legal Aid Society: (888) 663-6880 (Wednesday)**
- **Legal Services NYC: (917) 661-4500**
- **Law Help: <http://www.lawhelp.org/>**
  - **Law Help provides a directory of other legal resources**

**If the client has already had a default judgment entered against them, they may be able to have it vacated if they follow the directions here:**

**[https://nycourts.gov/courts/nyc/civil/int\\_affidavit2vacate.shtml](https://nycourts.gov/courts/nyc/civil/int_affidavit2vacate.shtml)**



## **Ex. E – What happens next after you answer?**

**While you cannot help a client after they have filed an answer, you should let them know that the court will schedule a hearing. Provide them the following information about what will happen next.**

**More information is also available at:**

**<https://nycourts.gov/courts/nyc/civil/tips.shtml>**.

### ***Tips for Your Day in Court***

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#### **Don't Miss Your Court Date**

Court is not an appointment that can be missed or rescheduled. If you miss your court date (including being late) there could be serious consequences – the court could enter a judgment against you. If you have a serious reason why you can't go to court, you must call the court clerk and request an adjournment.

Due to the Covid-19 pandemic, you may be able to appear by phone or remotely with Microsoft Teams. If you are interested in appearing remotely, ask the court clerk how you should proceed. You should only appear remotely, if you have reliable internet and access to a computer, tablet, or smartphone.

#### **Get There Early**

You should allow plenty of time to travel. Consider the traffic, weather, parking, frequency of public transportation, and extra time needed to get through security at the entrance to the courthouse. Being late can make you anxious and unable to do your best. Remember that court may be an all day affair. If you choose to appear remotely, always test the Teams link before your court appearance. Once you log-in, you may be put in a virtual waiting room for some time until the court clerk lets you in.

#### **Be Prepared**

Bring your files. You should have a file with copies of all of your court papers and papers from the other side. Bring a notepad and pens in case you want to take notes. Bring change in case





you need to use the copy machine. Visit the courthouse and courtroom ahead of time, if possible, so you are comfortable with the location and observe how things work. Make notes of the questions you want to ask. Practice your presentation with friends and family.

### **Bring Your Evidence**

If you are supposed to bring [evidence](#) and witnesses to the courtroom, bring everything. If you have documents or pictures, bring the original item and two copies. Ask your witnesses to arrive early and dress nicely. Some documents can't be used as evidence unless the right person is in the courtroom to explain the document and answer questions about it. You can learn more by reading a Civil Court [publication](#) on how to try or prepare for your case.

### **Dress Nicely**

Wear conservative clothing. T-shirts with curses, belly shirts, plunging necklines, sunglasses, and torn clothing are not appropriate. You do not have to buy new clothing for court, but remember it is a formal place and you want to be conservative and respectful.

### **Act Properly in the Courtroom**

Certain behaviors are not allowed because they are noisy, distracting or disrespectful. You should turn off your cell phone or pager when you are in the courtroom. You can't chew gum, eat, sleep, wear a hat, listen to music, talk on a cell phone, take pictures, or carry a weapon in the courtroom. You should enter and leave the courtroom quietly, so you do not disturb others.

The courtroom calendar is usually posted outside the courtroom. Look for your case and write down the calendar number. Tell the clerk or officer that you are there and give them the calendar number. Let them know if you need an interpreter. Listen for your case to be called. You should stand when you speak to the Judge and address the Judge as "Your Honor." You will be expected to treat others in the court respectfully, no yelling or cursing or cutting someone off when they are speaking. You should speak clearly and slowly. Your words are being recorded, either by a machine or a person. If you mumble, speak too quickly, too softly, or answer by shaking or nodding your head, the record will not be accurate.

### **Before You Leave Court Make Sure You Understand What Happens Next**

Ask the Clerk, or Court Attorney if you do not understand something or are confused about what you are required to do. If you are supposed to come back, make sure you know when and where. If you are supposed to submit something to the court, make sure you know what to do. If the Judge made a decision or you settled the case, make sure you have a copy of the [order](#) or [stipulation](#). You can also visit the [Help Center](#) in the courthouse for legal and procedural information.



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC. and REV. JOHN UDO-  
OKON,

Plaintiffs,

-v-

LETITIA JAMES, in her official capacity as  
Attorney General of the State of New York,

Defendant.

Case No. \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY INJUNCTION**

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Tel: (212) 310-8000  
Fax: (212) 310-8007

*Attorneys for Plaintiffs*

January 25, 2022

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## **PRELIMINARY STATEMENT**

Plaintiffs are seeking to fight a serious problem: many low-income New Yorkers are unable to understand and access their civil legal rights when they face a debt collection lawsuit and as a result many suffer wrongful deprivation of property and serious downstream consequences. New York State itself has recognized that responding to such a lawsuit is both straightforward and important, as New York State provides a one-page fill-in-the-blank form for doing so. But many defendants still cannot and do not answer without legal assistance. The vast majority of debt collection defendants are low-income individuals who cannot afford a lawyer, and pro bono advice is in too short supply. As a result, the large majority of debt collection defendants are left to fend for themselves and fail to respond, thus leading to entry of a default judgment, even when they might have asserted an affirmative defense that could have prevented the wrongful deprivation of their property. This access to justice gap is well-documented, disproportionately harms low-income individuals and people of color, and is exacerbated by the COVID-19 pandemic.

Plaintiff Upsolve is a non-profit organization that has designed a program called the American Justice Movement to help close this access to justice gap by associating with individuals who are not lawyers—like Plaintiff Rev. John Udo-Onkon—to provide narrowly-circumscribed and valuable advice about how to respond to a debt collection action. The aim of this expressive association is to fight the cycle of poverty and make the guarantee of equal justice under law a reality for individuals who risk losing their property because they lack the resources to understand and access their legal rights.

Third-party experts on consumer protection and debt collection have reviewed the program and determined that clients will receive substantial benefits at no cost and will benefit from many important protections in the program. Among these protections are that: (1) all advice will be strictly limited to advising low-income New Yorkers on whether and how to fill out and file the

state-provided debt collection lawsuit answer form; (2) all advice will be provided for free with no expectation of private commercial gain; (3) all advice-givers, called “Justice Advocates,” will be carefully vetted, trained, and supervised by Upsolve; (4) Justice Advocates will provide advice only pursuant to the terms of a strict, expert-approved “Training Guide;” (5) Justice Advocates will provide robust disclosures to clients about the nature of their service and will abide by conflict-of-interest and confidentiality restrictions; and (6) Upsolve will monitor the Justice Advocates’ performance and remove Justice Advocates who do not follow the program’s strict rules or live up to its consumer-protective values.

Plaintiffs are chilled from engaging in this important advocacy and association, however, because New York’s rules governing the unauthorized practice of law (“UPL”) prohibit individuals who are not lawyers from providing individualized advice about whether or how to respond to a lawsuit, even when that advice is straightforward and simply involves assisting a person in filling out and filing a state-provided form to answer a complaint. The effect of applying these rules to Plaintiffs is to deny low-income New Yorkers the ability to understand and access their legal rights and deny Plaintiffs their constitutional rights to advocate and associate. Moreover, without such advice, more debt collection defendants will default, depriving courts of the chance to subject such claims to testing and undermining public perception of the justice system.

At bottom, barring Plaintiffs from implementing AJM will frustrate the very interests the UPL rules are meant to advance. Plaintiffs have carefully designed their program to ensure that clients will receive substantial benefits at no cost and will be better off with the benefit of the free, limited assistance that Plaintiffs would provide than they would be were they forced to represent themselves. Allowing Plaintiffs to provide this narrow, non-commercial, non-misleading, and free legal advice would empower low-income New Yorkers to assert their rights and enable courts to



properly exercise their judicial power, thereby advancing consumer protection and strengthening the integrity of New York State's legal system and the public's perception of it. This Court should enter a preliminary injunction to enable Plaintiffs to put this program into operation.

## BACKGROUND

### **I. A LIMITED SUPPLY OF AFFORDABLE LEGAL ASSISTANCE PREVENTS LOW-INCOME NEW YORKERS FROM UNDERSTANDING THEIR LEGAL RIGHTS AND CAUSES WIDESPREAD HARM.**

Debt collection actions are among the most common kinds of lawsuits in New York's courts. When low-income New Yorkers face a debt collection action, however, they often cannot afford to hire a lawyer and free lawyers are often unavailable. *See* Compl. ¶¶ 26, 43–48. As a result, such low-income New Yorkers often have no choice but to go it alone. In practice, without legal advice, ordinary individuals simply fail to respond, even when they have potentially meritorious defenses to liability. *See id.* ¶ 2. Indeed, self-represented debt collection defendants face default judgments at overwhelming rates. *See id.* ¶¶ 2, 19.

Research has shown that many such suits lack merit or seek the wrong amount of money, meaning that many defendants are wrongfully deprived of property without ever having their day in court. *See id.* ¶¶ 21, 32. And the consequences of this wrongful deprivation of property extend further than the initial debt, as a default judgment can cause lasting harm to an individual's credit score and result in bank account seizure, wage garnishment, automobile repossession, or eviction—thereby undermining low-income New Yorkers' ability to participate fully in the state's economy. *See id.* ¶ 24. As declarations from New Yorkers who have suffered default judgments illustrate, the consequences of such a default can be severe and long-lasting. *See* Exs. 5–7 (declarations of William Evertsen, Liz Jurado, and Christopher Lepre)<sup>1</sup>; Compl. ¶ 25.

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<sup>1</sup> Exhibits cited herein are attached to the Silbert Declaration in Support of the Motion for a Preliminary Injunction.

Leading institutions have proposed a variety of solutions to the inadequate supply of individualized legal assistance. Recently, the American Academy of Arts and Sciences released a report advocating for increased opportunities for professionals who are not lawyers—“Justice Advocates”—to provide carefully circumscribed legal assistance. *See* Compl. ¶ 73. In doing so, the Academy recognized that a variety of states and federal agencies had successfully experimented with non-lawyer advocacy. *See id.* ¶¶ 73–74. As Justice Neil Gorsuch put it, “nonlawyers already perform—and have long performed—many kinds of work traditionally and simultaneously performed by lawyers,” making it “entirely unclear why exceptions should exist to help [] niche (and, some might say, financially capable) populations but not be expanded in ways more consciously aimed at serving larger numbers of lower- and middle-class clients.” Neil Gorsuch, *A Republic, If You Can Keep It* 257 (2019); *see id.* (finding it “well past time to reconsider our sweeping unauthorized practice of law prohibitions”).

New York State itself recognizes the problem of default judgments in debt collection actions, as it provides a simple one-page form for responding to such cases. *See* Compl. ¶¶ 2, 34–36. The form includes a number of labeled checkboxes allowing defendants to select affirmative defenses, such as, “I had no business dealings with Plaintiff (Plaintiff lacks standing)” or “Unconscionability (the contract is unfair).” *See* Compl. Ex. A. But the form is insufficient. Even with it, low-income New Yorkers face language and educational barriers and may be unfamiliar with or intimidated by the legal system and the legal concepts mentioned in the form. *See* Compl. ¶¶ 37–42. Without legal assistance, they fail to respond or respond inaccurately. *Id.* ¶ 38. The rate of default remains sky high.

Whereas debt collection defendants are typically unrepresented and fail to appear, debt collection plaintiffs are often repeat players who can benefit from economies of scale to bring

many such suits at low cost, making it economical to pursue even small-dollar claims. *Id.* ¶¶ 49–52. The high rate of default also reduces the incentive for plaintiffs to carefully develop cases, as the large majority of such claims are never subjected to adversarial testing. *See id.* ¶ 51. The access to justice gap is thus severe and pervasive.

## **II. PLAINTIFFS ARE PREPARED TO PROVIDE FREE, NARROWLY CIRCUMSCRIBED LEGAL ADVICE ON WHETHER AND HOW TO RESPOND TO DEBT COLLECTION LAWSUITS.**

Plaintiffs have developed a program to help close this gap by empowering non-profit professionals already embedded in low-income communities to provide free, narrowly circumscribed, and straightforward legal advice about whether and how to respond to a debt collection lawsuit. Plaintiffs have carefully limited the program’s scope and imposed strict requirements to minimize the risk of bad advice. Plaintiffs are associating in this common cause with a common goal: to express their belief in free and fair access to the courts and fight the cycle of poverty by ensuring that all Americans can understand and access their civil legal rights. *Id.* ¶ 3.

Plaintiff Upsolve is a non-profit organization with a mission and successful track record of helping Americans access their legal rights for free and engaging in widespread education and advocacy aimed at expanding access to justice. Upsolve has advocated for systemic changes to the American legal and financial systems that directly improve people’s lives by developing policy proposals; communicating Upsolve’s policy agenda with elected officials, judges, bar associations, and legal scholars; publishing op-eds; giving speeches, panel presentations, and appearing at conferences; developing a robust technology platform for self-represented individuals filing for personal bankruptcy; and expanding public awareness through community education and outreach, social media engagement, and earned media appearances. *See id.* ¶ 80.

Upsolve designed and is prepared to launch the American Justice Movement (“AJM”), a project designed to recruit and train non-profit professionals who are not lawyers—Justice

Advocates—to provide free advice to low-income Americans in their communities facing debt collection lawsuits and in need of assistance. *See id.* ¶¶ 57–58, 78–79. Upsolve has committed its own resources to developing AJM and has secured a financial grant to support the program, which will allow it to fund a staff member to vet, train, and supervise Justice Advocates. *See id.* ¶ 82.

AJM has prepared a detailed Training Guide in consultation with experts in consumer finance and debt collection law to dictate to Justice Advocates how to provide free, narrow, and straightforward legal advice within a framework with robust guardrails to protect clients from risk of harm. *See id.* ¶¶ 63–69. Both Professor Pamela Foohey—an expert in commercial law and consumer law at Benjamin N. Cardozo School of Law—and Mr. Tashi Lhewa—Supervising Attorney of the Legal Aid Society’s Consumer Law Project—reviewed the Training Guide and confirmed that advice provided pursuant to the guide will be in clients’ best interests. *See* Ex. 4 (Foohey Declaration); Ex. 3 (Lhewa Declaration).

AJM’s Training Guide prescribes strict criteria to which Justice Advocates and their clients must adhere. *See* Compl. Ex. B. Justice Advocates may advise only on the narrow question of whether and how to respond to a debt collection action; where a client’s needs exceed this mandate, Justice Advocates must direct them to alternative sources of assistance. AJM requires that all advice be provided for free and in service of the mission to increase access to justice; that all advice remain within the narrow scope of issues described in the Training Guide; that Justice Advocates clearly disclose and secure acknowledgement from their clients of the limited nature of the advice being provided; and that Justice Advocates adhere to the conflicts-of-interest and confidentiality standards that apply to New York lawyers doing pro bono work. *See* Compl. ¶¶ 62, 67–69. AJM will use a web-form to track every advice-giving encounter and routinely follow up with clients to ensure that the advice they received was fully consistent with the program’s strict guidelines and

limited scope. AJM also encourages clients to contact AJM directly about any misbehavior or deviation from these standards by Justice Advocates. AJM commits to investigating these complaints and, if necessary, removing Justice Advocates from the program. *See id.* ¶¶ 68–70.

AJM warns Justice Advocates that providing legal advice outside the narrow scope and strict terms of the program may expose them to prosecution for engaging in the unauthorized practice of law or under other state and federal consumer-protection laws. *See id.* ¶ 71. Justice Advocates providing false, misleading, or bad faith advice will thus not be operating under the auspices of AJM and can be prosecuted for their misconduct.

Plaintiff Rev. John Udo-Okon is committed to serve as a Justice Advocate with AJM. He is a pastor in the South Bronx who believes in preaching the gospel by providing social services to his disproportionately Black and poor community. *See id.* ¶ 83. As described in his declaration, Rev. Udo-Okon attests that he is ready and willing to act as an AJM Justice Advocate and provide free legal advice on responding to debt collection actions to members of his community with the goal of expanding access to the courts and ensuring that all members of his community can access their legal rights. *See Ex. 2* (declaration of Rev. Udo-Okon). Rev. Udo-Okon further asserts that the need for such advice is urgent and exacerbated by the COVID-19 pandemic: after a recent town hall meeting, more than one hundred community members signed a petition asserting that they want to receive this kind of advice from Rev. Udo-Okon. *See id.*; *Ex. 2A* (attaching the petition). He thus could provide valuable, important, and free legal advice to his community under the American Justice Movement starting immediately.

### **III. NEW YORK’S VIGOROUSLY ENFORCED UPL RULES ARE THE ONLY BARRIER TO PLAINTIFFS PROVIDING THIS ADVICE.**

Plaintiffs are chilled from providing advice through AJM, however, because of the threat of prosecution under New York’s UPL rules. *See Ex. 1*, Pavuluri Decl. ¶¶ 32–33; *Ex. 2*, Udo-Okon

Decl. ¶ 21. New York makes it a misdemeanor and civilly sanctionable for an individual not admitted to the bar to engage in the “unlawful practice of law” or to hold herself out as able to do so, and for a person to seek or assist in the providing of such legal advice. *See* N.Y. Jud. Law §§ 476-a, 478, 484, 485, 750, 753 (proscribing the unauthorized practice of law and providing for the enforcement of this prohibition); *see also* N.Y. Penal Law § 20.00 (imposing criminal liability for “solicit[ing], request[ing] . . . or intentionally aid[ing]” in unlawful conduct). “A person is practicing law when the person gives legal advice, drafts legal documents, or otherwise holds himself or herself out as authorized to practice law in New York State.” 6A N.Y. Jur. 2d, Attorneys at Law § 54 (footnotes omitted); *see id.* (collecting cases). In particular, “[t]he practice of law involves the rendering of legal advice and opinions directed to particular clients.” *Matter of Rowe*, 80 N.Y.2d 336, 341–42 (1992); *see generally Matter of N.Y. Cnty. Lawyers Ass’n v. Dacey*, 28 A.D.2d 161, 174–76 (N.Y. App. Div. First Dep’t 1967) (Stevens, J., dissenting opinion, *adopted as the opinion of the New York Court of Appeals*, 21 N.Y.2d 694).

The purposes of New York’s UPL rules are “to protect the public in this State from the dangers of legal representation and advice given by persons not trained, examined and licensed for such work” and thereby protect the integrity and public perception of the judicial system. *El Gemayel v. Seaman*, 72 N.Y.2d 701, 705 (1988) (citation omitted); *see also People v. Alfani*, 227 N.Y. 334, 339 (1919) (UPL rules aim to “protect the public from ignorance, inexperience, and unscrupulousness” in the conduct of legal affairs).

Plaintiffs’ intended conduct—namely, providing free, individualized legal advice on whether and how to respond to a lawsuit—constitutes the practice of law under New York law. Although the advice they would give is straightforward, truthful, and narrow, Plaintiffs seek to render particularized advice to specific clients on whether and how to respond to debt collection

lawsuits. This type of direct and individualized advice about how to respond to a lawsuit constitutes the practice of law under New York law, without regard to how straightforward, truthful, or careful the advice is, or whether it is free. *See, e.g., Matter of Rowe*, 80 N.Y.2d at 341–42. New York’s UPL rules also prevent Plaintiffs from speaking out to advertise the free legal advice they hope to provide or soliciting, aiding, or abetting others who would provide such advice. *See supra* at 7–8.

As the declarations from Rohan Pavuluri, Upsolve’s Co-Founder and Chief Executive Officer, and Rev. Udo-Okon attest, the fear of prosecution under New York’s UPL rules is the only thing stopping Plaintiffs from implementing AJM. *See* Ex. 1, Pavuluri Decl. ¶¶ 32–33; Ex. 2, Udo-Okon Decl. ¶ 21. The UPL rules chill Plaintiffs’ intended communication and association.

### **JURISDICTION**

This Court has jurisdiction because Plaintiffs’ claims raise federal questions under 28 U.S.C. §§ 1331 and 1343. *See also* 28 U.S.C. § 2201(a) (authorizing declaratory relief). Plaintiffs’ claims are ripe for review, as they have “alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution.” *Nat’l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 689 (2d Cir. 2013) (quoting *Vt. Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 382 (2d Cir. 2000)).

### **ARGUMENT**

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). All four factors weigh in favor of an injunction here.

#### **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

“[I]n the First Amendment context[,] the likelihood of success on the merits is the

dominant, if not the dispositive, factor.” *Id.* at 488. Here, Plaintiffs are likely to prevail in proving that their First Amendment speech and association rights bar the application of New York’s UPL rules.

To be clear, Plaintiffs do not seek facial invalidation of New York’s UPL rules, nor do Plaintiffs seek to prevent application of such rules where they serve their intended purposes of helping to protect the public. Rather, Plaintiffs seek only a ruling that New York’s UPL rules violate the Constitution as applied to Plaintiffs’ plan to provide free, truthful, non-misleading, and carefully circumscribed legal advice through AJM for the purpose of resolving an urgent problem the state has recognized using tools the state itself provides. Indeed, application of the UPL rules to Plaintiffs’ planned speech and association would affirmatively impede the interests in consumer protection and integrity of the courts that the UPL rules were adopted to advance.

**A. The First Amendment’s protections of speech and association demand that the UPL rules, as applied to Plaintiffs’ activity, must satisfy strict scrutiny.**

**1. The First Amendment protects Plaintiffs’ truthful and non-misleading speech.**

“Above ‘all else, the First Amendment means that government’ generally ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (quoting *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). To that end, “[c]ontent-based laws are subject to strict scrutiny.” *Id.* (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015)). “[A] law is content-based if ‘a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.’” *Id.* (quoting *Reed*, 576 U.S. at 163).

Under New York’s UPL rules, the legality of Plaintiffs’ speech turns on its content and, in particular, whether it contains legal advice. Plaintiffs seek to provide person-to-person advice—AJM is distributing written materials for Justice Advocates to read and rely on to provide verbal



legal guidance to clients—and what matters is what that advice is about: Because it is advice about whether and how to respond to a lawsuit, it is barred by the UPL rules. *See* Compl. ¶ 90. For example, Rev. Udo-Okon may provide individualized emotional counsel to a member of his church being sued by a debt buyer for a debt she does not owe and may pray with her for relief. But Rev. Udo-Okon would violate the UPL rules if he changed the content of his speech by also giving straightforward advice about how to answer the lawsuit in court. The parishioner could face liability as well if she had solicited such advice. *See id.* ¶¶ 92–93.

The harm to protected First Amendment interests is particularly severe given that Plaintiffs are not pursuing commercial interests. Plaintiffs are engaging in a project of political advocacy—and, in the case of Rev. Udo-Okon, also religious belief and ministry—to ensure that all New Yorkers can access their legal rights with the goal of fighting the cycle of poverty and drawing attention to the shortcomings of the justice system for low-income New Yorkers. *Cf. Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 477 (1989) (describing “‘commercial speech[’s] . . . subordinate position in the scale of First Amendment values’” (quoting *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 456 (1978))).

The harm is more acute because denying Plaintiffs their right to provide legal advice harms the court system’s ability to fairly adjudicate debt collection actions. When debt collection defendants default, courts are left with no opportunity to evaluate the merits of the claims. The result is that applying the UPL rules to Plaintiffs serves only to “prohibit[] speech and expression upon which courts must depend for the proper exercise of judicial power.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). The current state of affairs causes “the courts and the public to question the adequacy and fairness” of the system, and banning Plaintiffs’ political speech only further “threatens [to] impair[] the judicial function.” *Id.* at 546. By contrast, allowing Plaintiffs to

help provide courts with accurate and good-faith answers will allow the courts to better exercise their power and help bolster public faith in the judicial system. *See, e.g.*, Compl. ¶ 101.

Because the UPL rules depend on the content of Plaintiffs’ communications, the application of those rules in this context must withstand strict scrutiny.

2. The First Amendment protects Plaintiffs’ right to associate to provide free, carefully circumscribed legal advice for the purpose of increasing access to the courts.

Strict scrutiny is additionally warranted because the application of the UPL rules abridges Plaintiffs’ protected associational rights. The First Amendment protects the “right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition.” *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). Thus, “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.” *In re Primus*, 436 U.S. 412, 426 (1978) (quoting *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971)).

The Supreme Court and Second Circuit have accordingly recognized that state restrictions on the practice of law trigger strict scrutiny where they prevent non-profit associations from advising the public of their legal rights and how to access those rights. *See Jacoby & Meyers, LLP v. Presiding Justices of First, Second, Third, and Fourth Dep’t, Appellate Div. of Supreme Court of N.Y.*, 852 F.3d 178, 191 (2d Cir. 2017) (explaining that strict scrutiny applies “when a challenged regulation imposes severe burdens on associational rights” (citation omitted)).

In *NAACP v. Button*, 371 U.S. 415 (1963), the Supreme Court held that a Virginia law barring organizations from retaining attorneys to represent third parties infringed on the rights of the NAACP and its members “to associate for the purpose of assisting persons who seek legal redress for infringements of their . . . rights.” 371 U.S. at 428. The Court emphasized that while the state may be interested in “insur[ing] high professional standards,” it “may not, under the guise

of prohibiting professional misconduct, ignore constitutional rights.” *Id.* at 439. Similarly, in *In re Primus*, the Court held that South Carolina could not, under the guise of regulating the practice of law in the state, discipline an ACLU attorney for advising a potential plaintiff of her rights and informing her of the ACLU’s willingness to provide free legal representation. 436 U.S. at 432–39. Although the Court recognized—in a case decided the same day as *Primus*—that “States may vindicate legitimate regulatory interests through proscription” of “in-person solicitation for pecuniary gain,” the Court expressly distinguished “offer[s] of free assistance” that are “undertaken to express personal political beliefs and to advance the civil-liberties objectives of [a non-profit association],” which may not be so restricted. *Id.* at 422 (citing *Ohralik*, 436 U.S. 447).<sup>2</sup>

The Second Circuit recently clarified *Button*’s reach, confirming that the UPL rules must satisfy heightened scrutiny if they are to be applied to Plaintiffs here. Although the Second Circuit rejected a for-profit law firm’s First Amendment challenge to New York’s prohibition on non-attorney investment in law firms, the court recognized that *Button* and its progeny protect associations’ “expressive rights in the causes they pursue—when those causes implicate expressive values,” and that laws restricting such rights must satisfy strict scrutiny. *Jacoby & Meyers*, 852 F.3d at 185–86. The Second Circuit distinguished the for-profit activity at issue in that case from non-for-profit advocacy activity like Plaintiffs’ here: “Neither [of the plaintiffs] is a not-for-profit political advocacy organization engaging in its own expression,” rather, the plaintiffs in that case were “engaged in the practice of law *as a business*” for the purpose of commercial gain, meaning

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<sup>2</sup> The Supreme Court has further interpreted *Button* to protect the rights of unions and their members to associate to ensure “meaningful access to the courts” by “obtain[ing] affordable and effective legal representation.” *United Transp. Union*, 401 U.S. at 585–86. To that end, the Supreme Court has held that states cannot prevent unions from: (1) recommending lawyers to members for workers’ compensation suits, *Brotherhood of R.R. Trainmen v. Virginia, ex rel. Va. State Bar*, 377 U.S. 1, 8 (1964); (2) employing attorneys to represent members, *United Mine Workers, Dist. 12 v. Illinois State Bar Ass’n*, 389 U.S. 217, 221–22 (1967); or (3) recommending attorneys who had agreed to a maximum fee to members, *United Transp. Union*, 407 U.S. at 585–86.

that “[they] can be regulated as businesses” without “automatically trigger[ing] strict scrutiny.” *Id.* at 188 (emphasis added). By contrast, the Attorney General’s brief in that case explained the import of the *Button* line of cases for parties like Plaintiffs here: “[I]n every case the real party in interest was the expressive organization or its members, and the critical part of the Court’s holding was to recognize the rights of these organizations or their members to access the courts, and to strike down measures that effectively impeded that right of access.” Br. for Appellees, *Jacoby & Meyers*, No. 15-2608, 2016 WL 692945, at \*33 (2d Cir. Feb. 18, 2016).

Precedent from both the Fourth Circuit and the New Hampshire Supreme Court is in accord that the UPL rules, as applied to Plaintiffs, must satisfy strict scrutiny. In a recent “admittedly close” case, the Fourth Circuit identified three key considerations in holding that restrictions on the practice of law as applied to a trade association seeking to provide legal services to its members need not satisfy strict scrutiny: “First, what [the trade association] seeks to accomplish would be for commercial ends[,] . . . [s]econd, it would not facilitate access to the courts[,] [a]nd third, it would pose ethical concerns not present in the *Button* cases.” *Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 206 (4th Cir. 2019). By contrast, Plaintiffs here fall on the other side of the Fourth Circuit’s line on each factor: Plaintiffs seek to “associate for political or otherwise public goals” not to “practice law for commercial ends,” Plaintiffs aim to “facilitate access to justice,” and, by providing advice for free, Plaintiffs’ “proposed practice . . . does [not] raise ethical concerns” or risk “compromis[ing] the independence and professional judgment of [those] involved.” *Id.*

The New Hampshire Supreme Court, in an opinion by Justice David Souter, similarly recognized that a nonprofit’s “members and employees have an associational right under the [F]irst [A]mendment to engage in advocacy on behalf of the disabled,” which precluded the application of state statutes barring corporations from providing certain legal services. *In re N.H. Disabilities*

*Rights Ctr., Inc.*, 130 N.H. 328, 339 (1988). “When such advocacy may reasonably include the provision of legal advice,” the court explained, “the organization may itself provide legal representation to its members or beneficiaries despite State regulations restricting legal practice . . . provided that the organization and its lawyers do not engage in the specific evils that the general State regulations are intended to prevent.” *Id.* So too here.

Plaintiffs’ activity thus fits within *Button* as interpreted by the Second Circuit and other courts and is protected by the First Amendment. First, AJM is a “not-for-profit political advocacy organization engaging in its own expression,” *Jacoby & Meyers*, 852 F.3d at 188, to ensure that all low-income New Yorkers can understand and vindicate their rights to have a “meaningful opportunity to be heard,” *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971), and “access [the] courts for redress of wrongs,” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–97 (1984) (citation omitted). *See generally Turner v. Rogers*, 564 U.S. 431, 449 (2011) (finding a violation of due process where a party receives “neither counsel nor the benefit of [adequate] alternative procedures”). Second, Plaintiffs’ activity is not “for commercial ends.” *Stein*, 922 F.3d at 206. Rather, all advice is provided for free and Justice Advocates are prohibited from receiving any compensation. And third, Plaintiffs’ activity does not “raise ethical concerns,” *id.*, or involve “the specific evils that the general State regulations are intended to prevent,” *N.H. Disabilities Rights Ctr.*, 130 N.H. at 339. To the contrary, Plaintiffs designed AJM to avoid the risk of consumer harm and advance the interests underlying New York’s UPL rules—and multiple third-party experts have confirmed that Plaintiffs have done so successfully. *See supra* at 6–7 (describing the numerous consumer-protective safeguards Plaintiffs will implement). Because Plaintiffs are engaging in “collective activity undertaken to obtain meaningful access to the courts,” the UPL rules that would abridge this fundamental right must satisfy strict scrutiny. *Primus*, 436 U.S. at 426.

**B. The application of the UPL rules to Plaintiffs cannot survive heightened scrutiny.**

Because the UPL rules, as applied to Plaintiffs, burden protected First Amendment interests, the regulations may “survive[] only if [they are] narrowly drawn to advance a compelling state interest.” *Jacoby & Meyers*, 852 F.3d at 191 (quoting *Kraham v. Lippman*, 478 F.3d 502, 506 (2d Cir. 2007)). The UPL rules cannot satisfy this high standard of strict scrutiny. Indeed, the UPL rules cannot even satisfy any lesser, intermediate level of scrutiny that may apply, as their application to Plaintiffs fails to directly advance any substantial state interest. *See, e.g., Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2375–76 (2018) (acknowledging the “possibility that some [] reason exists” for applying intermediate scrutiny and alternatively concluding that the challenged law “cannot [] survive intermediate scrutiny”).

The state has no significant interest in banning Plaintiffs’ advocacy and association. Ordinarily, UPL rules serve important interests “in regulating attorney conduct and in maintaining ethical behavior and independence” to ensure consumer protection and preserve the integrity of the legal system. *Jacoby & Meyers*, 852 F.3d at 191; *see supra* at 8 (describing the state’s interests). But those interests cannot justify application of the UPL rules here, because doing so would affirmatively impede those interests.

First, by advising low-income New Yorkers whether and how to fill in a *state-provided* answer form, Plaintiffs would be working to resolve an urgent problem the state itself has recognized by facilitating accurate, timely, and clear responses to debt collection actions and ensuring that New Yorkers exercise their rights rather than being forced to pay debts they may not owe or which a creditor has no right to collect. *See* Letitia James, *Attorney General James Urges Consumers to Be Aware of Rights When Faced with Attempts to Collect on Consumer Debt* (Dec. 1, 2021) (“No consumer should be sued over a debt they do not legally owe or which a creditor has no right to collect, but as we recover financially from COVID-19, we are seeing more and

more debt collectors come out of the woodwork with outrageous claims.”), <https://ag.ny.gov/press-release/2021/consumer-alert-attorney-general-james-urges-consumers-be-aware-rights-when-faced>; *see generally* Lauren Sudeall, *The Overreach of Limits on “Legal Advice”*, 131 Yale L.J. F. 637, 650 (2022) (“[I]t is hard to see what interest the government would have in preventing users of the judicial process from knowing about and potentially exercising the very rights and defenses it has created.”). By helping to provide accurate and good-faith answers and facilitating full and fair adjudication of debt collection actions on the merits, Plaintiffs seek to provide courts with information they need to reach decisions that will increase public faith and trust in the courts.

Second, Plaintiffs have taken substantial precautions to protect the state’s interest in avoiding false, unethical, or inaccurate advice. Plaintiffs’ advice would be provided for free, without commercial motivation. It would be provided only on a narrow, straightforward issue—whether and how to file New York’s own standard answer form for a debt collection lawsuit. *See supra* at 1–2, 5–6. AJM would train Justice Advocates on how to advise people about the use of the form and whether they should respond, thus providing Justice Advocates with the relevant (yet narrow) body of knowledge. AJM would require Justice Advocates to attest that they are providing only truthful and non-misleading advice on the strict terms AJM’s Training Guide requires, which include robust disclosures to the clients and impose confidentiality and conflict-of-interest restrictions. *See* Compl. ¶¶ 62, 66–69. AJM would also monitor Justice Advocates, who could be expelled from the program and face additional consequences if they provide inaccurate or unfounded advice. Third-party experts have reviewed AJM’s Training Guide and determined that it would provide the requisite protections to ensure that individuals will receive substantial benefits from advice under the program. Plaintiffs thus have designed their program to avoid the “dangers of legal representation and advice given by persons not trained, examined and licensed for such

work.” *El Gemayel*, 72 N.Y.2d at 705 (citation omitted). And Plaintiffs seek relief to protect only advice that is truthful, non-misleading, and made in good faith.

Application of the UPL rules here would not be narrowly tailored. The rules are over-inclusive, as other jurisdictions allow trained professionals who are not lawyers to provide limited legal services.<sup>3</sup> That experience confirms that the consumer- and court-protective aims of the UPL rules can be achieved without restricting Plaintiffs rights and restricting the supply of free legal advice-givers to a degree that results in widespread denial of low-income Americans’ days in court and the wrongful deprivation of their property. *See* Compl. ¶¶ 74–77; *cf. Ohio State Bar Ass’n v. Watkins Glob. Network, L.L.C.*, 159 Ohio St. 3d 241, 254 (2020) (DeWine, J., concurring in part and dissenting in part) (“Lawyers don’t have a monopoly on something just because the law touches it.”). The UPL rules are under-inclusive, too, as they allow lawyers without specialized training to advise on any area of the law, meaning that a corporate real estate attorney could advise on how to respond to a debt collection lawsuit even if they have less knowledge or expertise in that area than would AJM’s Justice Advocates. And the state has ample alternative means to adequately protect against the risk of consumer harm. As AJM’s Training Guide makes clear, to the extent Justice Advocates provide fraudulent advice or advice outside the scope of the program, they remain vulnerable to prosecution under the UPL rules and numerous other consumer-protection laws (as well as ordinary civil liability for, *e.g.*, fraud). *See* Compl. ¶ 71.

Far from protecting the public, the application of the UPL rules to Plaintiffs’ truthful and non-misleading advocacy would cause public harm by preventing low-income New Yorkers from

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<sup>3</sup> Plaintiffs’ activity finds support in historical precedent, too, as legal assistance provided by individuals who are neither trained nor barred as lawyers is deeply rooted in the nation’s history and the history of the common law. *See Faretta v. California*, 422 U.S. 806, 820 n.16 (1975) (requiring litigants to proceed with counsel “would sever the concept of counsel from its historic roots,” because “[t]he first lawyers were personal friends” and “often lack[ed] any professional training,” (citing 1 F. Pollock & F. Maitland, *The History of English Law* 211–13 (2d ed. 1909))).



accessing free legal advice they need to understand and vindicate their rights and avoid wrongful deprivation of property and the harmful consequences that result. While the UPL rules bar Plaintiffs’ actions as the unauthorized “practice of law,” the Supreme Court in *Button* made clear that “a State cannot foreclose the exercise of constitutional rights by mere labels” where—as here—the Plaintiffs’ actions involve the exercise of protected constitutional rights and contribute to the aims motivating the state’s regulation in the first place. 371 U.S. at 429.

To be sure, other applications of the UPL rules may serve the important purpose of protecting consumers from the risk of bad advice and protecting the integrity of the court system and may be sufficiently tailored to doing so that they satisfy heightened scrutiny. *Cf. Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) (upholding a restriction against strict scrutiny). But where, as here, the UPL rules restrict Plaintiffs’ political, truthful, and non-misleading speech on the basis of its content and prevent Plaintiffs from associating to advocate and educate low-income New Yorkers about their legal rights and those rules serve no corresponding public purpose, due to the protections the Plaintiffs have adopted and New York’s own recognition of the problem, they infringe Plaintiffs’ First Amendment rights and cannot be validly applied.

## **II. THE REMAINING PRELIMINARY INJUNCTION FACTORS SUPPORT AN INJUNCTION.**

While Plaintiffs’ likelihood of success on the merits of their claims is “the dominant, if not the dispositive, factor” in determining the need for an injunction, the remaining injunction factors further confirm the need for preliminary relief. *N.Y. Progress & Prot. PAC*, 733 F.3d at 488. First, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Plaintiffs’ inability to provide free and reliable legal advice prevents them from engaging in this

essential form of political advocacy and would also harm the communities they serve, as the lack of free legal advice results in the practical denial of access to the justice system, the wrongful deprivation of property, and severe follow-on consequences. *See Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489 (2021) (per curiam) (“risk of irreparable harm” from “depriv[ation] of [money] with no guarantee of eventual recovery”).

Second, an injunction will cause the state no cognizable harm because “[t]he Government does not have an interest in the enforcement of an unconstitutional law.” *N.Y. Progress & Prot. PAC*, 733 F.3d at 488 (citing *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)). That is especially so here because, as explained above, applying the UPL rules to Plaintiffs would not advance the government interests those rules are meant to protect. *See supra* at 16–19.

Finally, awarding an injunction is in the public interest for much the same reasons. As a threshold matter, “securing First Amendment rights is in the public interest.” *N.Y. Progress & Prot. PAC*, 733 F.3d at 488. More still, the application of the UPL rules to prevent Plaintiffs from providing free, truthful, and quality-controlled advice causes grave harm to the public: Thousands of New Yorkers are deprived of the opportunity to assert their rights in court when facing debt collection lawsuits and may face significant and long-lasting harm as a result—and courts are deprived of the opportunity to ever evaluate those claims. Meanwhile, the public would see no corresponding benefit from applying the UPL rules here, which would not serve the rules’ intended ends. As applied to Plaintiffs and their carefully cabined program, the UPL rules harm rather than help New Yorkers and risk undermining public perceptions of the judiciary’s ability to “do equal right to the poor and to the rich.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803).

## CONCLUSION

For the foregoing reasons, this Court should grant a preliminary injunction enjoining the application of New York’s UPL rules to Plaintiffs’ intended conduct.

Dated: New York, New York  
January 25, 2022

Respectfully submitted,

/s/ Gregory Silbert  
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*\*Pro hac vice* motion forthcoming

*Counsel for Plaintiffs*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UPSOLVE, INC. and REV. JOHN UDO-  
OKON,

Plaintiffs,

-v-

LETITIA JAMES, in her official capacity as  
Attorney General of the State of New York,

Defendant.

Case No. \_\_\_\_\_

**DECLARATION OF  
GREGORY SILBERT IN  
SUPPORT OF  
PLAINTIFFS' MOTION  
FOR A PRELIMINARY  
INJUNCTION**

I, Gregory Silbert, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner at Weil, Gotshal & Manges LLP and am duly admitted to practice in the State of New York and before this Court. I represent Plaintiffs Upsolve, Inc. and Reverend John Udo-Okon in this matter. I submit this declaration and its accompanying exhibits in support of Plaintiffs' Motion for a Preliminary Injunction.

2. Annexed hereto as **Exhibit 1** is a true and correct copy of the Declaration of Rohan Pavuluri.

3. Annexed hereto as **Exhibit 2** is a true and correct copy of the Declaration of Rev. John Udo-Okon.

4. Annexed hereto as **Exhibit 3** is a true and correct copy of the Declaration of Tashi Lhewa.

5. Annexed hereto as **Exhibit 4** is a true and correct copy of the Declaration of Pamela Foohey.

6. Annexed hereto as **Exhibit 5** is a true and correct copy of the Declaration of William (“Tyler”) Evertsen.

7. Annexed hereto as **Exhibit 6** is a true and correct copy of the Declaration of Liz Jurado.

8. Annexed hereto as **Exhibit 7** is a true and correct copy of the Declaration of Christopher Lepre.

I hereby declare under penalty of perjury that the foregoing statements made by me are true and accurate to the best of my knowledge, information, and belief.

Dated: New York, New York  
January 25, 2022

Respectfully submitted,

By: /s/ Gregory Silbert  
Gregory Silbert

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC. and REV. JOHN UDO-  
OKON

Plaintiffs,

-v-

LETITIA JAMES, in her official capacity  
Attorney General of the State of New York,

Defendant.

Case No. \_\_\_\_\_

**DECLARATION OF ROHAN PAVULURI**

1. My name is Rohan Pavuluri. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I co-founded Upsolve—a 501(c)(3) nonprofit organized under the laws of the State of New York—and currently serve as Chief Executive Officer of Upsolve. I also serve in a volunteer capacity as a Board Director of the National Center for Access to Justice, a member of the Emerging Leaders Council of the Legal Services Corporation, and a member of the Making

Justice Accessible Initiative of the American Academy of Arts and Sciences. I got the conviction to start Upsolve during my time as a volunteer at the Access to Justice Lab at Harvard Law School.

3. Upsolve is an organization that engages in education and advocacy with the mission of ensuring that all Americans can understand and access their legal rights for free, fight the cycle of poverty, and achieve economic mobility.

4. Upsolve started by empowering people to file for bankruptcy on their own using a web application. Upsolve designed an application that asks people questions about their finances in language they can understand and then uses this information to help them generate legal forms they can file with the court to relieve their debt on their own and re-enter the economy. Upsolve also provides free education and online community that enables users to support each other emotionally.

5. Upsolve is now the largest nonprofit organization providing bankruptcy-related resources in the United States. It is also one of the widest-reaching legal-related nonprofit organizations launched in the last two decades nationwide and a leading non-partisan political advocacy organization working toward a more accessible civil legal system. Many low-income self-represented debtors have used its tools to file for simple, no-asset Chapter 7 bankruptcy, relieving more than \$400 million in debt.

6. Upsolve also provides free online education that reaches over 150,000 individuals per month covering topics like student loans, wage garnishment, debt collection lawsuits, eviction, repossessions, foreclosures, and other topics at the intersection of financial distress and the civil legal system.



7. Upsolve does not and has never received or requested any compensation from its users for the service it provides. It instead relies primarily on charitable donations from individuals and institutions.

8. Until now, Upsolve has provided free software and education—not legal advice or representation—aimed at addressing the serious gap in available free services for low-income Americans with overwhelming debt, to whom free legal services, especially full representation, are in short supply. Upsolve has provided technology and education to self-represented debtors with simple no-asset Chapter 7 bankruptcy cases for whom full-representation may not be necessary. These individuals benefit from free online education, automated form generation, and checks for consistency, which Upsolve’s web-based platform provides.

9. From the beginning, the dual purpose of Upsolve has been to (1) directly improve people’s lives and (2) advocate for a more accessible legal and financial system.

10. Upsolve’s advocacy over the last five years has taken the form of op-eds, speeches, conference and panel presentations, policy proposals, media outreach, and conversations with elected officials, Bar Associations, judges, legal scholars, and state agencies.

11. In May 2021, I delivered a TED Talk on the access to justice crisis and Upsolve’s vision for a more accessible legal system. The talk has been viewed over 1.4 million times. See TED, An App that Empowers People to Solve Their Legal Problems (May 2021), [https://www.ted.com/talks/rohan\\_pavuluri\\_an\\_app\\_that\\_empowers\\_people\\_to\\_solve\\_their\\_legal\\_problems?language=en](https://www.ted.com/talks/rohan_pavuluri_an_app_that_empowers_people_to_solve_their_legal_problems?language=en). In August 2021, I wrote an Op-Ed in CNN with Congressman Joe Kennedy III about the need for a new civil right in America: the right to access your rights, regardless of how much money is in your bank account. See Joe Kennedy and Rohan Pavuluri,

We need a new civil right, CNN (Aug. 8, 2021 8:24 PM), <https://www.cnn.com/2021/08/08/opinions/access-to-justice-gap-civil-rights-kennedy-pavuluri/index.html>.

12. Upsolve's success in providing technology-enabled support and free online education to self-represented debtors has been recognized and lauded by a number of legal institutions and media outlets, including TIME, the ABA Journal, New York Times, the Wall Street Journal, and the Washington Post. Upsolve has been funded by a variety of leading philanthropic institutions, including the Robin Hood Foundation and the Hewlett Foundation.

**THE ACCESS TO JUSTICE GAP IN DEBT COLLECTION IN NEW YORK**

13. My work in bankruptcy has shown me that there are other areas of our civil legal system where low-income Americans cannot access their legal rights because they cannot afford a lawyer, there are not enough free lawyers, and there is no adequate model of non-lawyer assistance. These problems are acute in New York City, where I live and Upsolve is headquartered.

14. Based on our research and conversations with members of the Upsolve community, we have found that responding to debt collection actions is one area where the demand for straightforward, simple, and low-cost legal advice far exceeds the available supply of such advice. The result is that most low-income people in New York are unable to access the justice system to vindicate their rights. Indeed, debt collection lawsuits are one of the main reasons why Upsolve users consider bankruptcy. Debt collection lawsuits affect millions of people each year, including thousands of New Yorkers, and can have devastating consequences.

15. Based on our experience, we have learned that low-income individuals often fail to understand and access their rights and fail to participate in the lawsuits against them, even where those lawsuits lack merit or ask for more money than the person owes. While representation by attorneys would be one way to fill this gap, our experience suggests that most low-income people

who are facing debt collection actions cannot afford a paid attorney and free attorneys are in too short supply.

16. Responding to a debt collection lawsuit is not complicated. New York State provides a one-page fill-in-the-box form for litigants to file that allows debt collection defendants to raise common affirmative defenses to owing the debt they are being sued on.

17. Nonetheless, the overwhelming majority of debt collection defendants in New York still fail to file an answer and therefore default.

18. Based on our experience, it appears that many people are unaware of their rights, unaware of the fill-in-the-box form provided by New York State, or do not understand how to fill it out or why they might want to respond to the lawsuit, given their lack of experience with the legal system, the complexity of the legal system, and the stress, intimidation, and discomfort caused by having to interact with the legal system. Furthermore, our understanding is that many defendants who do respond fail to adequately protect their rights by failing to assert the appropriate affirmative defenses—and thus risk forfeiting those defenses.

### **THE AMERICAN JUSTICE MOVEMENT**

19. In order to address this access to justice problem, Upsolve is prepared to launch a new project: the American Justice Movement (“AJM”). Attached to this Declaration, as Exhibit A, is the “Action Plan” Upsolve has prepared describing the program and its planned implementation to potential partners and funders.

20. As the Plan describes, Upsolve has already invested its own existing staff and financial resources in developing this program and is preparing to hire dedicated staff for the program. Moreover, Upsolve has received a commitment of funds restricted to the American Justice Movement, which will allow Upsolve to hire staff to implement the program immediately. Once started, Upsolve will seek additional funding to expand the program further.

21. The purpose of AJM is to create and support an association of professionals who are not lawyers and low-income individuals uniting to ensure meaningful access to the courts and raise awareness of the access to justice gap that prevents low-income Americans from understanding and accessing their legal rights when they cannot afford a lawyer and cannot find pro bono counsel. AJM is not being organized for any commercial purpose.

22. AJM will do so by recruiting a corps of “Justice Advocates,” who are professionals who are not lawyers. Upsolve will train the Justice Advocates to provide free, carefully circumscribed legal advice on how to respond to a debt collection action in New York.

23. In order to ensure that AJM works in the interest of the low-income New Yorkers it is designed to help, Upsolve will exercise careful oversight over the selection, training, and performance of Justice Advocates and will provide Justice Advocates with careful guidelines they must adhere to in order to provide advice under AJM’s auspices.

24. Upsolve has prepared a Training Guide that specifies the assistance Justice Advocates may provide. The Training Guide also includes strict quality-control requirements that Justice Advocates must adhere to—including confidentiality and conflict-of-interest protections identical to those followed by lawyers providing pro bono representations, and consistent with New York’s Rules of Professional Conduct.

25. In designing these safeguards, we ensured that AJM will advance the interests in protecting consumers from harmful advice and ensuring the integrity of our judicial system that underpin New York State’s regulation of the practice of law. We have designed the Training Guide in consultation with experts in debt collection law to ensure that all advice provided will be in clients’ best interests and will leave them better off than they would have been without the assistance.

26. Upsolve has worked with Tashi Lhewa, the Supervising Attorney of the Legal Aid Society's Consumer Law Project, and Professor Pamela Foohey, a consumer-law expert at Cardozo Law School, in preparing this guide to ensure that all advice Justice Advocates will provide is in the clients' best interests and does not risk making clients worse off than they would be going it alone.

27. The Training Guide clearly defines the narrow limits of the program and requires Justice Advocates to refer clients to other resources when the assistance needed is outside the scope of the Justice Advocates' training. By empowering low-income New Yorkers to answer the lawsuits against them and raise potential defenses to liability, AJM is designed to help increase public confidence in the legal system by ensuring that courts have the opportunity to fully and fairly adjudicate the cases before them.

28. Specifically, as the Training Guide describes, Justice Advocates may provide advice under the auspices of AJM if they provide that advice for free, they ensure that their clients agree to the limited nature of the advice being provided, and they provide only advice described in the Training Guide. Moreover, AJM will track every instance of advice giving—which amounts to closer supervision than the bar ordinarily has over legal advice giving—and will routinely follow up with clients to ensure that Justice Advocates are providing advice consistent with the terms of the Training Guide and other guidelines set by AJM.

29. In developing the American Justice Movement, we have spoken with many low-income individuals who have told us they would benefit from such advice. Upsolve is also in the process of recruiting and training Justice Advocates.

30. Rev. John Udo-Okon is one individual who would like to participate as a Justice Advocate. Rev. Udo-Okon is prepared to provide free legal advice consistent with the Upsolve

Training Guide and has potential advisees—members of his community—who would imminently seek and benefit from his advice.

31. Upsolve therefore stands ready to implement AJM immediately.

32. Unfortunately, Upsolve is chilled from engaging in this advocacy and association because of regulations governing the unauthorized practice of law, which prevent professionals who are not lawyers from providing legal advice. It is also unlawful to aid or solicit the unauthorized practice of law. On information and belief, these laws are consistently enforced in New York, and the Attorney General frequently investigates and prosecutes individuals engaged in the unauthorized practice of law. Providing individualized advice to a person about whether or how to respond to a debt collection action qualifies as legal advice, even when the advice simply involves helping the person understand, fill out, and submit New York's simple form.

33. These regulations mean that as soon as AJM launches, Upsolve, its officers and employees, Rev. Udo-Onkon, its advisees, and any others who aid our project or solicit our advice face the risk of criminal and civil liability. That threat has caused us to refrain from implementing the program. If the threat were eliminated, we would launch the program immediately.

34. The chill on our associational and speech rights is particularly severe because this entire effort is grounded in our desire to engage in advocacy and expression on behalf of low-income Americans.

35. Through my work at Upsolve, I have come to believe that it is one of the greatest civil rights injustices of our time that millions of people who are poor cannot access their civil legal rights because they cannot afford lawyers to help with the problems they face. By and large, when you cannot afford a lawyer, and you cannot find one for free, you simply cannot access the justice system to vindicate your rights. I believe this injustice is one of the most urgent and

fundamental civil rights issues of our time. I co-founded Upsolve and now AJM as an advocacy effort to help close this access to justice gap and draw attention to these problems more broadly, including beyond the debt collection context. I firmly believe these injustices compromise our rule of law, undermine public perceptions of the fairness of the justice system, and undermine our democracy.

36. AJM's mission to engage in this advocacy effort is also grounded in the belief that the access to justice gap is a racial justice issue. People of color have been—and continue to be—disproportionately impacted by the access to justice gap, in part because of historical disparities in education, employment, health, and wealth. Language barriers and cultural differences can also make accessing justice particularly hard for low-income immigrant communities. AJM is built on the recognition that among the people who can help solve these problems are professionals who are not lawyers and are already embedded in those communities. This includes clergy, patient advocates, social workers, community organizers, and so many others who are already living and working to help communities in need, and who often better reflect their full diversity than the attorneys who are available to individuals in these communities. AJM would empower these faith leaders and other individuals to meet the needs of their communities by helping each other advocate for their interests, and in turn help America truly live up to its founding ideals.

37. The chilling effect of potential liability is causing Upsolve irreparable harm. Every day that goes by means more low-income New Yorkers—including many visitors to Upsolve's website and members of Rev. Udo-Onkon's church and community—will be deprived of their property and their civil legal rights due to the lack of free assistance to help them vindicate those rights. This problem is especially acute as debt collection activity accelerates in the aftermath of the COVID-19 pandemic while alternative resources to assist low-income defendants remain

limited as a result of the pandemic. This state of affairs undermines Upsolve's mission and gravely harms the interest of the individuals we serve.

38. AJM's advocacy work to provide free legal advice is in furtherance of Upsolve's slogan and political belief that "Civil Rights Should Be Free." I believe now is the time to launch AJM to help make that belief a reality and to ensure access to the courts for all individuals rich and poor.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 10 day of January, 2022.

A handwritten signature in black ink, appearing to be 'Rohan Pavuluri', written over a horizontal line.

Rohan Pavuluri



# Exhibit 1A



## Action Plan: The American Justice Movement

### Executive Summary

Today, Upsolve is one of the most impactful nonprofit membership organizations in America helping low-income families access their civil legal rights. We do this through our free online education, community, self-service technology tools, and advocacy.

About two million individuals consume our free legal education per year and our self-service legal tools have helped low-income families relieve over \$400 million in debt. Our average user has less than \$1,000 in savings and earns under \$20,000 per year.

Upsolve exists to address one of the fundamental civil rights injustices of our time: Low-income Americans who cannot afford lawyers often don't receive equal justice under the law. People have a constitutional right to a free attorney in criminal cases, but not civil cases. So if a person needs legal help in a civil case but cannot afford a lawyer or cannot find free legal help, which is often in limited supply due to the high educational costs required, she will be forced to go it alone. The effects of legal fees in poverty law can be like modern-day poll taxes: If you can't afford the fees, you can't access your rights.

Over the last three years, we've learned that education and software alone cannot solve this civil rights injustice. The way to truly bring about equal justice under the law is to empower professionals who are already acting in the public interest – clergy, patient advocates, librarians, social workers, community organizers, and frontline nonprofit staff – to provide free legal advice to poor and working-class people who need legal help but can't afford lawyers and can't find free legal help.

The access to justice crisis gap harms economic mobility, contributes to the cycle of poverty, and comes at a financial cost to the entire public. This civil rights issue is also a racial justice issue: the status quo has a disproportionate impact on communities of color, preventing many people from vindicating their legal rights. Communities of color often have disproportionately fewer lawyers, and especially lack trustworthy legal advocates that reflect the diversity of their own communities.

Given our track-record reaching, educating, and assisting low-income families at scale about their civil legal rights, Upsolve is launching the **American Justice Movement (AJM)** to empower individuals who cannot afford lawyers to receive free legal advice from trained and vetted professionals who are not lawyers. AJM is a non-partisan political movement that aims to strengthen the American democracy by safely expanding the rule of law to people who are unable to access our courts.



The first initiative of the American Justice Movement is the **Consumer Rights Project**. Upsolve will train outside nonprofit professionals to be AJM Justice Advocates. These professionals will provide personalized, free legal advice to low-income individuals and families who have been sued by their debt collectors and need help responding to that lawsuit.

We believe the American Justice Movement will help low-income families understand their rights and curtail unsavory behavior from certain creditors. Our goal is to create a more accessible and humane financial and legal system.

## Problem

Debt collection lawsuits are one of the most common civil legal issues in America. According to a study by the Pew Charitable Trust, 1 in 4 civil cases is a debt collection lawsuit.<sup>1</sup> This amounts to about 4 million debt collection lawsuits every year. In recent decades, debt collection lawsuits have more than doubled. Almost always, these lawsuits are for less than \$10,000 and often less than \$5,000.<sup>2</sup>

Over 70% of debt collection lawsuits end in default judgments against the defendant because the defendant simply does not show up. This means that nearly 3 million Americans lose their debt collection lawsuits and lose their property and face the risk of wage garnishment, bank seizures, eviction, and lasting damage to credit without the plaintiff needing to ever prove their case and without the court ever needing to consider any facts at all.<sup>3</sup> **It is a civil rights injustice that low-income Americans suffer these grave harms, losing their property rights without being able to meaningfully access the courts to have a neutral determination of their rights.**

Very few private attorneys exist to represent individuals who have been sued for their debts. This is because the low dollar amounts of these claims make it difficult for private attorneys to build a sustainable business model around debt collection defense representation. And there aren't close to enough free lawyers in America—especially in light of the high educational costs—to meet the demand of every single person who needs legal help. One 2010 report stated that the leading free program serving low-income NYC residents facing debt collection lawsuits received funding sufficient to serve less than 2% of the approximately 300,000 New

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<sup>1</sup> The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts* (May 2020), <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



York City residents sued each year by debt collectors.<sup>4</sup> The COVID-19 pandemic has limited the availability of this service and others like it.

Research on debt collection lawsuits further shows that exceedingly few defendants in New York have an attorney, compared with nearly 100% of plaintiffs. Nationally, studies estimate that over 90%—and in some cases 99%—of individuals sued for their debt receive no legal advice at all.<sup>5</sup>

On the other side of these lawsuits, debt buyers can take advantage of economies of scale to cheaply bring hundreds or thousands of mass-produced lawsuits, with little risk that they will ever have to prove their case since so many low-income New Yorkers default. As a result, there is reduced incentive to check the quality of their claims or the supporting evidence, and increased risk of fraud and abuse. Research shows that although many debt collection suits have merit, a substantial portion are meritless or overstated.

Civil debt collection lawsuits may well be the area of poverty law where there's the largest gap between a need for legal advice and the amount of legal advice available – either paid or unpaid. Our conversations with Upsolve website visitors align with this data. Most Upsolve users we've talked to have been unable to afford or receive legal advice after they've been sued for their debt. It's their top unmet legal need.

There's also striking data on the racial disparities in debt collection lawsuits. A study of judgments over a five-year period in St. Louis, Chicago, and Newark, New Jersey, found that even after accounting for income, the rate of default judgments in mostly black neighborhoods was nearly double that of mostly white ones.<sup>6</sup>

## Solution

We believe individuals sued for their debt would benefit from free, individualized legal advice about their rights from trained Justice Advocates.

Because low-income Americans cannot afford paid lawyers and free lawyers are in too short supply to meet this need, Upsolve is launching the American Justice Movement to meet this

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<sup>4</sup> The Legal Aid Society et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* (May 2010), [https://www.neweconomynyc.org/wp-content/uploads/2014/08/DEBT\\_DECEPTION\\_FINAL\\_WEB-new-logo.pdf](https://www.neweconomynyc.org/wp-content/uploads/2014/08/DEBT_DECEPTION_FINAL_WEB-new-logo.pdf).

<sup>5</sup> The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts* (May 2020), <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.

<sup>6</sup> Paul Kiel and Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, ProPublica (Oct. 8, 2015), [HYPERLINK "https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods"](https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods) \h <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>



need with professionals who are not lawyers. AJM will train nonprofit professionals to be AJM Justice Advocates under AJM.

To receive advice from Justice Advocates, low-income individuals will answer a series of standard and scripted questions about their debt collection lawsuit. In our own conversations and research, we've learned that debt collection lawsuit defense is an area of the law where many judges and attorneys understand the value in training Justice Advocates who are not attorneys to provide free legal advice.

Based on the information an individual shares, the Justice Advocates will provide free individualized legal advice about whether and how to draft and file an answer, so the client can respond to the lawsuit. Providing this advice and assisting low-income individuals in responding to their debt collection lawsuits will ensure that plaintiffs cannot secure a judgment without proving their case. For many of these individuals, the lack of response is not due to their unwillingness to respond and is not because they concede that the lawsuit has merit. Rather, they lack either the financial resources to seek legal counsel or lack the support to understand their rights and the procedures associated with responding to their complaints. As a result, these individuals receive automatic default judgments against them, which can result in potentially life-altering consequences down the road. Across the board, consumer lawyers and advocates agree that responding to the initial complaint is the first important, and critical, step in a debt collection lawsuit.

Specifically, the Justice Advocate will be trained to provide free, routine legal advice on whether and how to draft an answer. This is extremely simple in New York given the straightforward check-the-box answer forms that the State already provides.

Potential advice, based on the specific situation of the user, could include:

- Advising an individual to check the box on the answer form to indicate that the plaintiff must verify the debt amount.
- Advising an individual to check the box on the answer form to indicate that they do not owe the plaintiff if they're the victim of mistaken identity.
- Advising an individual to check the box on the answer form to indicate that the plaintiff is collecting debts that are time-barred if the debt is outside the applicable statute of limitations.
- Advising an individual to check the box on the answer form that they were not served properly if the plaintiff did not meet their obligations when serving the lawsuit papers.
- Advising an individual to indicate on their forms whether their income or assets are protected in a debt collection lawsuit, based on the exemptions available in the state.
- Advising an individual on how to submit the form.



The Justice Advocates must make clear to clients the limited scope of the advice they are able to provide and will require clients to acknowledge the nature of the advice. Some clients will require more attention, and, in these scenarios, the Justice Advocates will inform the clients that they may require the attention of an attorney and may provide the user with potential institutions to reach out to for further assistance. To further ensure the integrity of the advice given, Justice Advocates will be required to comply with relevant ethical rules around conflicts-of-interest and confidentiality that attorneys giving similar advice would be required to comply with, and the activities of Justice Advocates will be carefully tracked and monitored.

We choose to recruit and train non-lawyer Justice Advocates for reasons of supply, cost, convenience, and trust. There are many, many more frontline nonprofit staff and other community-embedded professionals than lawyers in America. It is also less expensive for institutions to hire professionals who are not lawyers than lawyers. This enables philanthropic and government funding to go further toward accomplishing its intended means of helping low-income families.

For consumers, it's more convenient to receive help from individuals already embedded in their communities, and, importantly, they're often more likely to trust these individuals. There are already many social workers, community organizers, librarians, and frontline staff embedded in communities across America that better reflect the diversity of the populations they serve than lawyers, who are disproportionately white.<sup>7</sup> These individuals are acting in the public interest. They should be equipped to serve low-income and working-class families who have been sued for their debts and cannot afford legal fees.

We are launching with a focus on New York, where Upsolve is headquartered and where we are most familiar with the state, given that we've had physical offices in NY for over five years. Our New York users and others have come to us expressing the need for this advice and their interest in receiving limited legal advice from professionals who are not lawyers. And New York is where we have found the first interest from potential Justice Advocates willing to take on the role and responsibilities of providing this advice for free and for the purpose of helping low-income Americans access their legal rights.

## **Guidelines for AJM Professionals**

To expand the supply of Justice Advocates, we will recruit clergy, librarians, social workers, community organizers, nonprofit case workers, nonprofit paralegals, and other frontline nonprofit staff.

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<sup>7</sup> Am. Bar Ass'n Comm'n on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), [https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf).



But in order to ensure that Justice Advocates are acting in the public interest and in the best interest of the advice receivers, AJM imposes strict conditions on the Justice Advocates and the advice they provide.

1. We vet and train professionals providing free legal advice to ensure the quality of the Justice Advocates and the advice they provide. As part of this quality-control process, all Justice Advocates must affirm that they will only provide limited legal advice on issues for which AJM provides training and that they are doing so in the interest of increasing access to justice by helping low-income Americans access their civil rights.

2. We require all Justice Advocates providing legal advice to abide by a shared set of standards. At the top of the list:

- a. Justice Advocates must never receive financial or in-kind contributions from beneficiaries for providing legal advice.
- b. Justice Advocates must inform every client that they are not a lawyer before providing any legal advice and clients must acknowledge the limited-scope of the advice being provided.
- c. Justice Advocates must inform individuals receiving advice about the American Justice Movement website, so that AJM beneficiaries can report bad behavior and bad advice.
- d. Justice Advocates must comply with the same confidentiality and conflict-of-interest requirements imposed on lawyers providing pro bono representation.

3. Upsolve will review and investigate complaints about Justice Advocates and will remove Justice Advocates who fail to uphold quality care and assistance requirements and notify them of the risk of further liability if they continue to provide unauthorized assistance.

## Distribution

To reach our target audience, the American Justice Movement will employ two strategies in our first phase:

1. Provide our 150,000+ monthly Upsolve website visitors with access to available Justice Advocates.
2. Recruit and train Justice Advocates, who are already serving communities of need, to raise awareness.

To recruit Justice Advocates to train, we'll conduct outreach to community-based nonprofits that serve communities in need.





## Potential Impact

Nearly 4 million people per year are sued for the debts and receive no legal advice at all. The norm is that they don't respond and they automatically lose their lawsuit, with potentially disastrous consequences. This undermines our democracy and compromises our rule of law. America can and should do better.

The American Justice Movement empowers any low-income or working-class individual or family sued for their debt to receive free, carefully vetted legal advice from a professional in their community. We aim to restore the promise of equal rights under the law by addressing one of the largest unmet needs in our civil justice system.

Free legal advice from AJM professionals will have several concrete advantages in the lives of low-income families. These relate to their personal finances, safety, freedom, and livelihood. The downstream effects of erroneous debt collection lawsuits include homelessness, hunger, and poverty, which come at a cost to all of society.

In the long run, AJM aims to curtail debt collection lawsuits and practices that are unsavory. Debt collection agencies and debt buyers today know that the vast majority of individuals they sue will not respond. And they know that most people who do take action will not receive any legal advice. Some unsavory debt collectors take advantage of that information gap by filing sloppy or unfounded suits.

If more low-income people who were sued in a debt collection action had the ability to receive free legal advice, we believe they would reduce the potential for abuse and encourage debt collection agencies to be more careful in initiating suits in the first place. After all, multiple studies suggest that individuals who receive some kind of representation fare better in debt collection lawsuits than those who respond to their complaint but don't receive any kind of legal advice.

The theory of change built into the American Justice Movement— helping people directly in the near term while fighting to create a more accessible financial and legal system in the long term — is aligned with the Upsolve philosophy for how to maximize our impact in the world.

## Why is this Urgent?

COVID-19 has caused significant financial distress and has limited the degree to which lawyers and courts are able to provide free assistance, with a disproportionate impact on communities in need. Moreover, certain debt collection and eviction moratoriums are set to expire in 2022, which may lead to an unprecedented level of debt collection lawsuits. It will be critical for





individuals from communities in need to be able to understand and access their legal rights when they've been sued by their creditors.

## **Budget & Ask**

While Upsolve has already committed existing staff resources to developing AJM, we have already raised \$100,000 to fund one full-time AJM staff member and are planning to raise additional funds to further broaden the program's reach. We will hire someone with a track record of consumer-rights advocacy, a commitment to social justice, and a deep familiarity with the legal system and the ways it comes up short for poor Americans. This consumer advocate will be responsible for outreach to nonprofit professionals already embedded in communities across New York, training them on how to provide limited scope, free legal advice to individuals sued for their debt, and ensuring that the advice being provided is advancing the interests of the public and consumers.

## **Legality of this Service**

Under existing regulations governing the practice of law, the American Justice Movement cannot provide this service: state law is clear that non-lawyers cannot provide legal advice without facing the risk of prosecution and potentially criminal punishment for engaging in the unauthorized practice of law. It does not matter whether the law is federal, the legal advice is free, the user cannot afford a lawyer, or the area of the law is simple and routine. It does not matter if the advice is a form of political advocacy intended to help communities access the courts, advance racial, social, and economic justice, expand individual freedom, protect property and liberty, or fight debt-based poverty. It also does not matter whether the user prefers to receive free legal advice from a trained consumer advocate who is not a lawyer and fully understands that the consumer advocate is not a licensed lawyer.

But the United States Constitution guarantees all Americans the right to access their legal rights in court, regardless of their race or socioeconomic status. And the Constitution also guarantees the rights of AJM and the Justice Advocates to associate and advocate to ensure that all Americans can understand and access their legal rights. In order to achieve the goal of this program, Upsolve intends to fight in court to protect the right to provide and receive free legal advice for the purpose of expanding access to courts.

Given the risk of state regulations on the unauthorized practice of law, we are asking for a conditional gift. We hope to receive funding to support AJM's Consumer Rights Project if we can be certain that it is legal to offer the services we've outlined above.

# Exhibit 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New  
York,

Defendant.

**DECLARATION OF REV. JOHN UDO-OKON**

1. My name is Reverend John Udo-Okon. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I immigrated to the United States from Nigeria in 1997. Prior to coming to the United States, I carried out missionary work in Northern Nigeria, which included organizing

churches and working with missionaries on a national project to develop Christian arts for Nigerian audiences.

3. In 1999, my wife, Pastor Felicia Udo-Okon, and I formed a small church in the living room of our apartment in the Bronx. We named that church the Word of Life Christian Fellowship International. We then moved into a small storefront we rented, which was in a lower-income neighborhood, plagued by violence and drugs. We eventually relocated the church to the South Bronx, which is among the poorest neighborhoods in New York City.

4. At the church, I preach the gospel by providing service to people in need, with a focus on the needs of community members in the South Bronx. I believe that this is the best service I can offer to a community that is trapped in cycles of poverty that have existed throughout generations.

5. For example, we work with one program to provide food to 8,000 households per month. We also work with schools and mobile food pantries to ensure access to food for local children. To further meet the needs of our community, my church also frequently works with social services centers, clinicians, case workers, and community health workers to engage with community residents and provide them the assistance that they need.

6. Recently, we have begun to provide COVID-19 relief services, including a vaccine equity partnership with New York City in three zip codes in the South Bronx, and enlisting seventeen field workers to link local residents with vaccines. My work on COVID-19 vaccine distribution was recently featured in the New York Times. See Liam Stack, *'A Safe Space': Black Pastors Promote Vaccinations from the Pulpit*, N.Y. Times (Oct. 9, 2021), <https://www.nytimes.com/2021/10/09/nyregion/covid-vaccinations-black-churches.html>.

### **THE NEED FOR LEGAL ADVICE IN THE COMMUNITY**

7. One of the greatest unmet needs in my community is that many people cannot understand or access their legal rights.

8. Our community members face many legal problems—they are at risk of eviction, face harassing calls from debt collectors, and sometimes have their power shut off even when they have critical medical equipment that requires electricity.

9. But our community members cannot afford to hire lawyers to help them with their problems. And the legal system is too complicated for members of our community to do it on their own. In general, there also are not many consumer lawyers based in my neighborhood, and there are very few lawyers who reflect the diversity of my community. Because they do not have access to good legal advice, members of my community often end up acting against their own interests through, for example, not responding to lawsuits in general.

10. As a result, members of my community are shut out from ways to vindicate their own rights, and are left with what feels to them like an oppressive justice system stacked against them. This is a situation that predominantly Black communities like mine face every day, and is one of the many unfortunate examples through which vulnerable populations, like my own community, cannot access and fight for their legal rights.

11. Left without any other options, people frequently come to me with legal problems they cannot solve on their own. But since I know that it is illegal for me to provide legal advice, all I can do is refer members of my community to outside agencies. Unfortunately, these agencies are often overwhelmed with requests for free legal assistance. Members of my community tell me that they are put on long waiting lists before even receiving legal advice, even though in most



cases their situations are quite time sensitive and having to wait means losing the ability to access their rights.

12. Since members of my community cannot afford to pay for a lawyer, cannot access free lawyers quickly enough, and cannot understand the system on their own, they are left without any guidance and, as a result, often without any ways to move forward because they cannot meaningfully access the justice system.

13. Based on my conversations with members of my community, this problem is especially severe when it comes to credit issues and debt-collection lawsuits. In some cases, individuals in the community are being harassed by debt collectors every day. In many other cases, people do not think they owe the debts that are being demanded. But one thing is consistent: people do not know what to do when they are sued on a debt and have nowhere to turn to for help.

14. Many of these individuals face devastating consequences and risk long-term harm to their property, their credit, and their well-being because they do not know how to respond to their debt collection lawsuits. As a result, members of my community often do not participate in their own lawsuits, even when they don't think they owe the debt they are being sued for.

15. I am aware of people losing their homes, and having their credit scores obliterated because they cannot adequately respond to the lawsuits, cannot speak to the debt collectors in a meaningful way, and do not have any assistance in filling out the requisite forms for their lawsuits.

16. In addition to these negative consequences, people in my community are also prevented from accessing opportunities. One area where these disparities come to light is with respect to affordable housing. In this case, the affordable housing is—in theory—supposed to benefit members of my community by providing them with a place to live. However, many of these housing developments have credit score and credit verification requirements, and therefore,

as a result of having their credit damaged by their debt-collection lawsuits, the people who these programs are designed to help are disqualified from even accessing this affordable housing to begin with.

17. There is a critical and immediate need in my community for legal advice on how to respond to debt-collection lawsuits. People seek that advice from me directly. However, due to New York's unauthorized practice of law regulations, I am unable to provide that advice, in fear that I would be arrested or fined.

18. I am already aware of other people in my community who have tried to give this kind of advice. There are many other issues for which people cannot afford or access legal representation. As a result, these people turn to their religious leaders for help. One such religious leader in the South Bronx was accused of practicing law without a license because he was trying to help members of his community out with their legal issues. I fear that I would face the same consequences if I tried to help members of my own community out with their debt collection lawsuits.

19. Because of my religious beliefs, I believe it is my duty to help meet the needs of my community and to advocate for a more fair legal system in which everybody—including the disproportionately poor and disproportionately Black members of my community—can access their legal rights.

#### **THE AMERICAN JUSTICE MOVEMENT**

20. There are hundreds of individuals in my community who would benefit from legal advice about how to respond to debt-collection lawsuits and on other issues right now. Attached to this Declaration as Exhibit A is a petition with 114 signatories who both need and would be willing to receive this legal advice at this very moment. These signatures were collected in a single

day; I have no doubt there are more similarly situated individuals who would welcome this type of program and advice as well. Every day that these community members are not offered advice on how to handle their debt-collection lawsuits means more people facing the risk of wrongly losing their property and facing permanent damage to their credit.

21. I, and other individuals I know, would be ready, willing, and able to provide this type of legal advice immediately and for free. The only thing stopping us is the threat of being prosecuted for violating New York's unauthorized practice of law regulations. I cannot risk this type of punishment.

22. Working with the American Justice Movement to receive the relevant training and provide this narrow advice would greatly benefit members of my community, who I have already established a sense of trust and familiarity with.

23. I would welcome the opportunity to be trained by the American Justice Movement with respect to the narrow scope of legal assistance provided in debt collection lawsuits. I would be willing to comply with the relevant ethical obligations, including confidentiality and conflict-of-interest protections, for the individuals seeking my advice. My assistance will always be free to the people who receive it.

24. After witnessing firsthand the devastating effects of inadequately responding to these debt collection lawsuits, I would explicitly put the needs of the members of my community first, and would do my best in giving advice best suited for their interests, not my own. The reason I am providing this advice is not for my own gain but rather to help increase access to the courts and ensure that all members of my community can access their legal rights, and to advocate for broader awareness of the barriers that people face trying to access their rights.



25. I hope to be able to participate in this program as soon as possible because with each passing day more members of my community are deprived of their own rights and property due to the lack of free legal assistance to help them vindicate those rights.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15 day of December, 2021



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Rev. John Udo-Okon

# Exhibit 2A

*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

**I'm interested in and would benefit from free legal advice from Pastor John Udo-Okon at Word of Life Church, so that I can access my legal rights in court. I'm a resident of New York.**

**Signature**

Donato Chavez.

Adriano

Paula martinez

Shirley

Luis Castro

Juan Carlos

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

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**Signature**

Yesica Suazo

Diomedes Alcantara D. A

Martha Amaya

Aracely Chavez

Fernanda Endara

CARINEM Quinones

Note: Signature may be included as evidence of public interest in this program.

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International*

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Movement

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**Signature**

*Yutik Yara*

*DEBORAH RICKS*

*Sharon Lepin*

*Richard Watkins*

*Alexandra Rodriguez -*

*Mamie Moore*

Note: Signature may be included as evidence of public interest in this program.



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International*

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Movement

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**Signature**

Maria Antonia Castro

Juan Antonio Perez

Victor Rivera

Victoriano Gonzalez

Ana Rodriguez

Carl Wilson

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**Signature**

Eduardo Rodriguez

Henry Diaz<sup>3</sup>

Elvis B

Larry Jackson

Patricia Bunchard

Vannessa Santaliz.

Note: Signature may be included as evidence of public interest in this program.



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International*

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Movement

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**Signature**

Moris Escano

Bonnie Yeji-S

Justin Garcia

Maria Rodriguez

Anthony Bush

He muel

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*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

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**Signature**

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*Francisco*

*María Lozano*

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

*Byron Ryz...*

*H...*

*[Signature]*

*[Signature]*

*[Signature]*

*Maurice Bernes*

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

Filomeno Lo Jo

Mala lo

Valerie Ortiz

NISIDA HEGO





**Note: Signature may be included as evidence of public interest in this program.**



*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

*John Udo-Okon*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*DOLOR*

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

1

Maria Aguiriza

~~Maria Aguiriza~~

~~Santhya R. Nola~~

Gay Mathan

Popan Saultan  
Jiraman Jorge

Note: Signature may be included as evidence of public interest in this program.

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International*

**AJM** American Justice  
Movement

**I'm interested in and would benefit from free legal advice from Pastor John Udo-Okon at Word of Life Church, so that I can access my legal rights in court. I'm a resident of New York.**

**Signature**

Linda Paige

Ann Marie Brown

NATHA LAZO

Maria Fransao

Daniel Quinche

Sebastián Guisasa

**Note: Signature may be included as evidence of public interest in this program.**

*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

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**Signature**

Rosalia almonte

Cindy Jackson

Emanuel Al

Rosa Ioga

Brandon Williams

Ines Guaman

Note: Signature may be included as evidence of public interest in this program.



*Word Of Life Christian Fellowship  
International*

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**Signature**

Graciela Nuyulema

Pedro C PLo

Filomina Noedn

Maria Morochu

Elsa yupangri

Lester Daniels

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*Word Of Life Christian Fellowship  
International*

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**Signature**

Maria Sanagvaray

Rosa Tene

Angel Pineda

Ana Paredes

Demi Barrera

Rafael Sanchez

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*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

BERTHONY GILLES

Chari Benjamin

Genovra Valls

Rick Briggs

W. H. H. H.

H. O. H. H.

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*Word Of Life Christian Fellowship  
International*

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Movement

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**Signature**

Ebony gollman

Donna B.

Abdoul Conliberty

Leah Oka

Quinn

Noela Edwards

Note: Signature may be included as evidence of public interest in this program.



*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

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**Signature**

*Luis Pabon*

*Joseph Reger*

*Glenn Plesner*

*Shawn Simms*

*Ralph Grant*

*Luis Castro*

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

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Movement

**I'm interested in and would benefit from free legal advice from Pastor John Udo-Okon at Word of Life Church, so that I can access my legal rights in court. I'm a resident of New York.**

**Signature**

PERFECTO ROBLES

Glendy Siguán

Eva Esperanza Siguán

Ieticia Sigua Miranda

Note: Signature may be included as evidence of public interest in this program.

*Word Of Life Christian Fellowship  
International*

**AJM** American Justice  
Movement

**I'm interested in and would benefit from free legal advice from Pastor John Udo-Onkon at Word of Life Church, so that I can access my legal rights in court. I'm a resident of New York.**

**Signature**

*Joe Hernandez*

*Cindy Jackson*

Note: Signature may be included as evidence of public interest in this program.

# Exhibit 3



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New  
York,

Defendant.

**DECLARATION OF TASHI LHEWA**

1. My name is Tashi Lhewa. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I am the Supervising Attorney of the Legal Aid Society's Consumer Law Project. I have worked at the Legal Aid Society for more than ten years focused primarily on debt-collection defense. I currently oversee the Project's work providing representation, legislative and regulatory advocacy, trainings and outreach to low-income New York City residents. In particular,

I have extensive experience representing clients in state and federal courts on a variety of consumer debt matters.

3. In addition to my work at the Legal Aid Society, I am a Lecturer in Law at Columbia Law School, I co-host the New York City Consumer Advocates Taskforce and Broken Lease Taskforce, I am a member of the New York City Bar Civil Court Committee, and I serve on the New York State ADR Advisory Committee and New York State Supreme Court (Civil) and Legal Services Advisory Committees on E-filing.

4. I have also served as a consumer law expert and trainer of volunteers for the Civil Legal Advice and Resource Office (CLARO), a program organized through the New York State Courts Access to Justice Program and operated the auspices of the New York City Civil Court, which provides free legal advice to unrepresented debtors. In that capacity I have trained volunteers to provide limited legal advice to unrepresented consumers in debt-collection actions. However, all in-person CLARO programs are currently cancelled due to COVID-19.

5. I received my B.A. from the University of Minnesota, and his J.D. from the University of Minnesota Law School in 2006.

6. In my experience, many self-represented individuals in debt-collection actions in New York State lack the knowledge, experience, or support to adequately protect their interests. In particular, individuals often fail to file an answer or file an answer failing to raise affirmative defenses, even when they have potentially meritorious defenses, and thereby lose the opportunity to raise those defenses.

7. Through my experience representing people in debt-collection actions, I have also learned that there are far more people in need of assistance than there are free legal services

available. The consequences for such individuals of not being able to get free legal assistance can include wrongful wage garnishment, bank seizures, car repossession, eviction, and damaged credit.

**REVIEW OF AMERICAN JUSTICE MOVEMENT TRAINING GUIDE**

8. I have had the opportunity to closely review the entire Justice Advocate Training Guide prepared by the American Justice Movement.

9. Based on my experience, the Training Guide is sufficient to teach a non-lawyer how to provide limited assistance to unrepresented individuals in debt-collection actions to help those individuals respond to debt-collection lawsuits against them. Any unrepresented individual who receives personalized advice based on the Training Guide will be better off than they would be without receiving such advice.

10. To the extent that the Training Guide and attached exhibits include statements that the Justice Advocate may provide or is or will be providing “legal advice,” I do not endorse such statements. Any endorsement of the Training Guide is limited to the accuracy of the substantive information used in responding to consumer debt lawsuits, and not the unauthorized practice of law in any form.

11. Given the limited resources available to unrepresented individuals in debt-collection actions—resources that have been further curtailed as a result of the COVID-19 pandemic—allowing trained professionals who are not lawyers to provide carefully circumscribed assistance is critical to ensuring that all low-income New Yorkers can vindicate their rights in court and will prevent significant harm to consumers who currently fail to adequately represent themselves.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 9th day of December, 2021.

A handwritten signature in black ink, appearing to be 'Tashi Lhewa', written over a horizontal line.

Tashi Lhewa

# Exhibit 4

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New York,

Defendant.

**DECLARATION OF PAMELA FOOHEY**

1. My name is Pamela Foohey. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my review of one document, the Justice Advocate Training Guide prepared by the American Justice Movement Consumer Rights Project, which is part of Upsolve, and my personal knowledge.

2. I am a tenured Professor of Law at Benjamin N. Cardozo School of Law, Yeshiva University. Prior to joining the Cardozo School of Law, I was a tenured Professor of Law at Indiana University Maurer School of Law, from 2020 to 2021, an Associate Professor of Law at Indiana University Maurer School of Law, from 2014 to 2020, and a Visiting Professor of Law at the University of Illinois College of Law, from 2012 to 2014. I received my B.S. in

2004 from New York University, undergraduate Stern School of Business, and my J.D. in 2008 from Harvard Law School.

3. My teaching and research focus on bankruptcy, consumer finance, and commercial law. In the course of my research, I have focused on debt collection, debt collection defense, and debt collection's intersection with people filing bankruptcy. A portion of my research is empirical, including surveying people about their pre-bankruptcy financial issues, which include dealing with collection lawsuits filed by creditors and debt collectors in state courts.

4. Among other articles, my recent research on these topics includes:

- *Portraits of Bankruptcy Filers*, 56 Ga. L. Rev. \_\_ (forthcoming 2022) (with Robert M. Lawless and Deborah Thorne)
- *The Debt Collection Pandemic*, 11 Cal. L. Rev. Online 222 (2020) (with Dalié Jiménez and Christopher K. Odinet);
- *Fines, Fees, and Filing Bankruptcy*, 98 N.C. L. Rev. 419 (2020);
- *Debt's Emotional Encumbrances*, Edward Elgar Research Handbook on Law and Emotion (Susan A. Bandes, Jody Lynce Madeira, Kathryn Temple, and Emily Kidd White eds. 2020);
- *A New Deal for Debtors: Providing Procedural Justice in Consumer Bankruptcy*, 60 B.C. L. Rev. 2297 (2019); and
- *Life in the Sweatbox*, 94 Notre Dame L. Rev. 219 (2018) (with Robert M. Lawless, Katherine Porter, and Deborah Thorne).

5. Through my research, I have observed the struggles faced by many self-represented people in debt collection proceedings. People often fail to adequately assert their legal interests and rights.

6. Through my research, I also have observed that people lack access to free legal services to assist them in responding to debt collection lawsuits.

7. Failure to raise potentially meritorious affirmative defenses in and an inability to access free legal services to defend debt collection lawsuits can lead to wage garnishment, seizure of bank accounts, eviction from housing, repossession of automobiles, and harm to credit scores.

8. Judgments in debt collection proceedings also lead people to file bankruptcy to stop wage garnishments, evictions, and repossessions, and to repair their credit reports and credit scores, which is costly and time-consuming.

9. I have closely reviewed the entire Justice Advocate Training Guide prepared by the American Justice Movement Consumer Rights Project, with an emphasis on the portion of the Training Guide pertinent to the defense that people can raise in debt collection proceedings.

10. Based on my knowledge, the Training Guide provides non-lawyers sufficient information and resources that they need to help unrepresented individuals respond to debt collection complaints such that people will have the opportunity to raise potentially meritorious defenses to the complaints. An unrepresented individual, who is unable to receive free legal services, who receives personalized advice based on the Training Guide will be better off than if they did not receive such advice.

11. In part because I want to avoid any possibility of liability under rules governing the unauthorized practice of law, my review of and endorsement of the Training Guide is limited to the accuracy of the substantive information about asserting affirmative defenses in responding to debt collection lawsuits. To be clear: I do not endorse any statements in the Training Guide and attached exhibits that the Justice Advocate may provide or is or will be providing legal advice.



12. Given the limited resources available to unrepresented individuals in debt collection proceedings, particularly during the continuing COVID-19 pandemic, when debt collection proceedings are predicted to increase, allowing individuals who are not lawyers to provide carefully tailored and circumscribed assistance will significantly enhance low-income New Yorkers' ability to assert their legal rights in court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed the 20th day of December, 2021.

A handwritten signature in blue ink that reads "Pamela Foohey". The signature is written in a cursive, flowing style. Below the signature is a solid black horizontal line.

Pamela Foohey

# Exhibit 5

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New  
York,

Defendant.

**DECLARATION OF WILLIAM EVERTSEN**

1. My name is William (“Tyler”) Evertsen. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I am a sixty-year-old gay man living in Brooklyn, New York. I have two grown children.

3. I am a social worker. I earned Bachelor’s and Master’s degrees in social work from New York University.

4. I currently work at the St. Albans Children's Community Residence through an agency called HeartShare St Vincent's Services. My work focuses on supporting children between thirteen and eighteen years old who have mental health diagnoses and are on the fringes of the foster care system.

5. I have spent most of my career working with children who are in foster care or preventive services. I came into social work because helping people, especially children, is in my nature.

6. I started my social work career as an HIV/AIDS case manager at the same agency where I myself received help in the 1990s after I tested positive for HIV. I was diagnosed HIV positive in 1991 and have been living with HIV for 30 years.

#### **FINANCIAL AND HEALTH HARDSHIPS**

7. Even though my job as a social worker is deeply fulfilling, it does not always pay the bills. I have a lot of student loan debt from my education. The social work field is very transient, so I have had periods of unemployment where I have had to put basic living expenses on my credit cards.

8. I have always struggled financially. In the 1990s, around the time I was first diagnosed with AIDS, I began to accumulate debt. At the time, my only form of income was through collecting Social Security Disability payments, which was not enough to make ends meet. Though I ended up getting my life back on track through my training as a social worker, I continue to have trouble making ends meet given the work opportunities available in my field.

#### **DEBT-COLLECTION LAWSUIT**

9. In 2017, I was sued for a debt I did not owe by a third-party debt buyer called Cavalry SPV I, LLC ("Cavalry"). Cavalry told me I owed them for a debt they bought from another creditor that I know I never took out.

10. I started getting tons of phone calls from Cavalry, telling me I owed this debt, and asking “how are you going to pay today?” Every time they called I told them that this was not my debt. But they were very menacing and continued to harass me.

11. I remember asking them to prove that I took out the loan, and they said “No, we don’t have to do that.” They never gave me any financial information showing I received the money or put it in my bank account. They instead demanded that I prove that I did not borrow the money. I just ignored it as long as I could because I figured they would eventually give up and try to find the real borrower or write the debt off.

12. But they did not give up. As I learned much later, Cavalry sued me and got a default judgment against me for this debt that wasn’t mine.

13. As far as I know, I never received any notice or other paperwork from them or from the court indicating that I was being sued.

14. I lived at the same address for at least five years.

15. The judgment made me feel that I was defrauded, because they never proved that I actually owed the debt. I was also powerless to do anything about it.

16. When dealing with this situation, a lawyer would have been helpful but I could not afford one.

17. The default judgment contributed to my financial distress. I filed for bankruptcy in 2020.

18. I believe that I’m not alone in this experience. Living in the neighborhood I do, which is largely immigrants and people of color, and working with the people that I do, who are highly disenfranchised and on the fringes of society, I see firsthand a lot of trepidation around the legal system. It appears to me that the way the legal system is currently organized makes people

like me nervous and afraid because we lack basic knowledge of and access to information about the legal system and what rights we have available.

19. As a social worker, I have more access to and familiarity with government institutions and processes than many other low-income people I know. But my knowledge about how to navigate the legal system is still very limited. Even if I had learned about the lawsuit against me, I would have had no idea how to respond or who to go to for help.

20. This experience has confirmed for me that it would have been important for me, and probably would be important for other low-income people to get free, accurate legal advice on how to respond to debt collection lawsuits, so they can better understand their rights and decide how to respond.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 23 day of December, 2021.

William Evertsen

William Evertsen

# Exhibit 6



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New  
York,

Defendant.

**DECLARATION OF LIZ JURADO**

1. My name is Liz Jurado. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I was born in Puerto Rico, where I lived until I was four years old. I speak fluent Spanish, as well as English.

3. I currently live in Bay Shore, Long Island, where I have lived for the past twenty-two years. My husband and I have four children.

4. I work for DoorDash, Inc., a technology and logistics company that provides door-to-door delivery of food and other goods. I started as a Dasher Support Labs Agent in June 2019, and my job was to answer questions and resolve issues for the Dashers. I was a top performer and was asked to work with the expansion of DoorDash in Puerto Rico. In November 2021, I was promoted to Trust and Reactive Safety Representative, where I conduct investigations into safety and injury incidents concerning the Dashers.

**MY EXPERIENCE WITH DEBT AND THE LEGAL SYSTEM**

5. I have experienced first-hand the shortcomings of the legal system when it comes to debt collection. My inability to understand and access my rights has caused me substantial stress and anxiety and, at times, has put mine and my family's financial security at risk and risked causing substantial long-term damage to my credit.

6. Specifically, I had one experience with a debt-collection lawsuit for a surprise medical bill relating to childbirth that I did not have the knowledge or support to adequately fight. I received no legal support or assistance in connection with the debt-collection lawsuit, as I was not even notified that I was being sued at the time. As a result, I did not respond, and my anesthesiologist got a default judgment against me.

7. While I was eventually able to find resources on my own to help me figure out how to get that surprise medical bill discharged in bankruptcy, I remain nervous about the possibility of facing another debt-collection lawsuit in the future and wish there were free help available to help me and other people like me learn more about what our rights are.

8. Prior to working at DoorDash, I was primarily a stay-at-home mom. My husband was the primary breadwinner for the household and he supported the children and me, while I focused on taking care of him and our four kids.

9. During this time, we had some credit card debt, student loans, and medical bills, and a car loan. I've received countless harassing calls from debt collectors; they've even called my neighbors. But we were responsible and hardworking and did everything we could to make payments on any debt we owed.

10. Everything changed when my husband lost his job in 2016. He was a manager for twenty years and it is not his fault he got laid off. It had been a dream of mine for a while that my husband would be able to retire because he has done so much for our family over the years. But when my husband lost his job unexpectedly, it was scary to suddenly be the sole breadwinner responsible for making ends meet in my family.

11. To help make ends meet for our family, I got a job managing an office in Bohemia, Long Island, but the pay was not enough to keep up with our expenses. I then started working as a Dasher for DoorDash to earn extra money as an independent contractor to try to make ends meet.

12. Things were okay at first financially, but then they got really rough. We could not afford to pay the whole electric and gas bills and started making small payments, just to pay something. We almost lost our house (which is in my husband's name) to foreclosure because we could not afford the monthly mortgage payment. I had to apply for food stamps, which we really needed. It was a really stressful and scary time, and I hated not being able to provide for my kids.

13. When DoorDash offered me a full-time job with a salary and benefits in 2019, I jumped on it. I was so relieved and happy to finally have a really good job that would allow me to provide for my kids and take care of my husband

14. Just when things were starting to go well again, and three months after I started my new, salaried job at DoorDash in 2019, I received a letter from the Suffolk County Sheriff's Office

saying that they had a judgment against me from 2010 for \$12,774. The letter said that if I did not pay the whole amount due, they were going to garnish my wages.

15. I was completely shocked and scared. I had absolutely no idea what was going on or why the Sheriff's Office was coming after me just as I was getting back on my feet, as I was not aware of any outstanding debt I owed in that amount and I was not aware of having lost any lawsuit.

16. I considered hiring a lawyer to help me deal with this debt but I could not afford a lawyer. I also did not know of any resources that would provide me with legal assistance for free.

17. After I received the letter from the Sheriff's Office, I looked at the papers on my own, and I was able to figure out that back in 2010, after I gave birth to my youngest children, my anesthesiologist, Suffolk Anesthesiology, apparently sued me for thousands of dollars for a surprise medical bill related to getting epidural anesthesia during childbirth. I could not figure out if the medical bill was from 2007 or 2008, as I delivered a child in each of those years and needed an epidural for each birth to manage the labor pains. Everything was otherwise the same for each birth—my doctors, my insurance, my hospital—and I believed that the epidural was covered as a basic part of childbirth. But I got a bill and lawsuit against me for one of the births and not the other. No one at the hospital told me to expect a bill for the epidural anesthesia, a procedure that I know so many women get while giving birth. As far as I know, I never got a letter from the anesthesiologists, or a bill, or even a phone call. It felt so confusing and wrong.

18. The first time I heard about the debt was in 2019, when I received the letter threatening to garnish my wages because of the default judgment against me.

19. I have had the same home address for twenty-two years. My youngest kids are now 13 and 14. I was floored that unknown costs from their births were now coming back to haunt me.

As far as I know, no one from Suffolk Anesthesiology or the court ever communicated anything to me at all about this lawsuit. Even if I had learned about the lawsuit, I would not have known how to respond.

20. When I got the wage garnishment letter, I was so upset because I was caught completely off-guard. I didn't know what to do, but I knew that having my wages garnished would have severe effects for myself and my family. I was incredibly worried because even with my new job, we were living paycheck-to-paycheck and my salary was never quite enough. We were still getting food stamps.

21. The challenges caused by not understanding the legal system and having my wages garnished are especially difficult for me because I have a child with special needs, and have an auto-immune condition myself. If my wages were garnished, I would not be able to pay for our house, clothes and shoes for the kids, the cell phone bill, the electric and gas, the car, extra food, and I certainly wouldn't be able to save anything for my family's future. I am also concerned that unknown bills like this one could harm my credit.

22. What's worse is that all of these very harmful consequences could happen without me understanding my rights or how to fight the debt-collection action against me. The whole thing felt so unfair. I felt like I was being bullied with a bill that I had no knowledge of, or means of fixing it, until it was too late. I was facing permanent, life-altering consequences for something that I didn't even know how to do anything about.

23. I did not receive any legal advice in connection with this threat of wage garnishment.

24. I ultimately decided to file for Chapter 7 bankruptcy in November 2019, largely due to the judgment from the surprise medical bill. I was so grateful to find Upsolve to empower

me to file bankruptcy on my own because I could not afford the fees for a lawyer. I had my hearing in December 2019 and the court discharged my debts—which included the surprise anesthesiology bill—in February 2020.

25. I am slowly rebuilding my credit. I can finally pay my bills on time and I can pay the whole utility bill each month.

26. It was scary to have to deal with the legal system alone without any advice.

27. This experience is why I believe that free, accurate legal advice on how to respond to debt collection lawsuits is so important. In my own situation, I believe it would have been a quick, but reliable solution, and helped me avoid the negative and unforeseen consequences nearly a decade later.

28. I trust Upsolve to run this program in a way that will help people like me. I was comforted by the fact that their services were free; it means they are not trying to gain anything from me.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 23 day of December, 2021.



---

Liz Jurado

# Exhibit 7



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UPSOLVE, INC., *et al.*,

Plaintiffs,

-v-

Case No. \_\_\_\_\_

LETITIA JAMES, Attorney General of New  
York,

Defendant.

**DECLARATION OF CHRISTOPHER LEPRE**

1. My name is Christopher Lepre. I am over the age of twenty-one and competent to testify to the matters set forth in this Declaration. Unless otherwise indicated, the facts stated herein are based on my personal knowledge or upon my review of documents to which I have access.

**BACKGROUND**

2. I currently live in Lynbrook, New York, with my significant other and two children.
3. I work as an instrumentation and electronics technician at a power plant. I have been working at this power plant for eleven years, and have been working in this field since 1996.
4. I am also a veteran. I served this country in the U.S. Navy from 1996 to 2000.

### **FINANCIAL HARDSHIP**

5. In 2015, my car flipped over, causing significant and costly damage that I could not afford to fix. As a result, I was left with mounting debt, worsening credit, and no car.

6. Because of my bad credit, I was unable to find a fair, low-interest loan that I could use to purchase a new car. I needed a car to get to work and take care of my family. In 2017, left with no choice but to take on a high-interest loan, I purchased a used Mercury Mountaineer. I could only put down a small down payment, so I was stuck purchasing a car from one of the only car dealerships willing to sell to individuals, like me, with poor credit. They sold me the car for \$15,000, but with the high interest loan from Credit Acceptance, a subprime auto-lender, the total amount with interest and other costs came to roughly \$21,000. I felt like I was being taken advantage of due to my poor credit, but I had no choice because I needed the car in order to properly care for myself and my family.

7. Based on my experience, the car was a lemon. After three months, it stopped working due to engine problems. I brought the car back to the dealership to have it repaired because I thought the warranty I purchased would cover the repair expenses. However, the warranty company refused to pay, and I could not afford to get the car back. I was once again left without a car and even more debt. And now my whole life has been upended – all because of a car that stopped working shortly after I bought it.

8. The lender, Credit Acceptance, started calling me and demanding that I repay the loan. I tried speaking with them repeatedly to explain that the car didn't work and that I no longer had it. It did not seem fair to me that I would be responsible for full repayment on a loan for a car that had stopped working after only a few months and that the dealer kept. Despite what had happened, Credit Acceptance refused to budge and demanded payment in full.

**MY EXPERIENCE WITH THE LEGAL SYSTEM**

9. The next time I remember hearing from Credit Acceptance was when I received notice of a default judgment against me for \$15,909.79. Prior to this, I don't remember hearing anything about the lawsuit. I don't remember receiving a court date or being told to appear in court. I couldn't respond to the lawsuit or go to court to be heard because I didn't know what I needed to do in order to defend myself.

10. I believe that even if I had received the papers, I would not have known what to do in my lawsuit. And I would have been interested in finding somebody who was willing to give me free legal advice about how to respond to the lawsuit.

11. I now know that there was a default judgment against me because I did not respond to the lawsuit. I wish I had gotten my day in court so that I could have explained to the judge what happened to me. I believe my life would have been much better and different if I had that opportunity. Instead, as far as I know, the judge decided the case without hearing my side and without Credit Acceptance ever having to prove their case to the court with evidence.

12. Before this experience, I thought that in America, the country that I honorably served, we would ensure that everyone gets their day in court before having to suffer the potentially awful consequences of losing a lawsuit. But that is unfortunately not what I experienced.

13. As soon as I received the judgment against me, I called and left voicemails for a few lawyers, who I found through the internet. None of the lawyers returned my calls. I also did not know of any resource that would have provided me with free legal advice, though I definitely would have taken it. I was left with no options and did nothing as a result.

14. Credit Acceptance started to garnish my wages so they could collect on the judgment.

15. I tried again to find a lawyer to help me. I sent emails and left voicemails, but I never heard back from anyone. Even if one of them had responded, I believe that it is unlikely that I would have been able to afford legal representation because of the effect of the wage garnishment on my income and the other needs that my family has.

16. Defaulting in the debt collection lawsuit has severely and negatively impacted my life.

17. The wage garnishment amounts to over \$1,000 a month. Instead of being able to spend my hard-earned salary on my rent or getting a new car so that I could take my child to school or go to the grocery store to get food for my family, I have to repay a judgment from a case where I did not even get the opportunity to be heard in court and never got any legal advice to help me understand what my rights were.

18. The timing of the wage garnishment was also unfortunate because it started at the beginning of the COVID-19 pandemic. In the early days of the pandemic, I had to miss work for two weeks, without pay. The combination of the wage garnishment and this immediate lack of income meant that I could not afford to pay my rent, so I was forced to borrow from my 401(k) retirement savings just to come current. The wage garnishment also caused me to be late in paying my utility bills.

19. One of the worst consequences of not being able to have my day in court was that, on my understanding, the judgment and wage garnishment further damaged my already low credit score. Based on my knowledge and experience, my bad credit means I can only get a very high-interest loan for a car, with an interest rate around 25% per year. I believe that my credit score is in the 400s now.

20. Due to the wage garnishment, I cannot afford a car, particularly at such a high interest rate.

21. The inability to afford a new car not only affects me, but also my family. I cannot take my three-year-old child to the things that she needs to do, I cannot drive my significant other's ten-year-old child to school, and I cannot drive to work. As a result, I have to use Ubers and taxis to accomplish basic tasks, like going to the grocery store or to the pharmacy, and those costs also add up. Now my family and I have to live close to the train station, even if we would rather live somewhere else, so that I can access public transportation to get to my job. It's not easy but I make it work so that I can provide for my family.

22. Even when Credit Acceptance is finished garnishing my wages in April of 2022, I believe that the wage garnishment will continue to affect my credit score and keep it low. I am afraid that I will never be able to get a fresh start because I wasn't able to fight back in court.

23. I did not and still do not understand how the legal process works. I am confused about why I did not get the opportunity to have my side heard by a judge. I don't know how I went from receiving harassing phone calls demanding payment to wage garnishment without ever having my day in court. I wish I knew how to understand and access and use the court system so that I could have avoided the negative consequences of the lawsuit for myself and my family.

24. I believe that if I could have received free legal advice about how to respond to the lawsuit, I would have taken it in a heartbeat. Having access to good, free legal advice could have helped me access the court and potentially avoid the harmful consequences that my family and I have suffered.

25. At the very least, if I had been heard in court, I would feel that the decision was fair and based on all the facts. If I had been heard, I believe I would have more faith that America's

legal system ensures that everyone gets their day in court, no matter who they are or what they have been through in their life.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 18 day of January, 2022.



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Christopher Lepre