Defendant's Motion to Dismiss the Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Casey Thornbury,
Plaintiff,

v.

Morgan Ellery,
Defendant.

No. 1:26-cv-00000 (ABC)

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT UNDER FED. R. CIV. P. 12(b)(6) AND 28 U.S.C. § 1367(c)(3)

Papers filed with this motion:

A. Notice of Motion
B. Memorandum of Law, with Certificate of Compliance
C. Declaration of Morgan Ellery, with Exhibit 1
D. Proposed Order
E. Certificate of Service

1. Notice of motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Casey Thornbury,
Plaintiff,

v.

Morgan Ellery,
Defendant.

No. 1:26-cv-00000 (ABC)

NOTICE OF MOTION TO DISMISS

TO THE COURT, PLAINTIFF **Casey Thornbury** AND PLAINTIFF'S COUNSEL OF RECORD, Dana Whitlock, Whitlock Rowe Example Law PLLC:

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, the Declaration of Morgan Ellery dated October 16, 2026 and its Exhibit 1, and the Complaint (ECF No. 1) and its exhibits, Defendant **Morgan Ellery** ("Defendant"), who appears without a lawyer, will move this Court, before the Honorable [name], United States District Judge, at the United States Courthouse, [street address of the courthouse], New York, New York, on a date and at a time to be designated by the Court, for an order:

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

1.

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

under Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing Count I of the Complaint, which is brought under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., with prejudice, for failure to state a claim upon which relief can be granted;

2. under 28 U.S.C. § 1367(c)(3), declining to exercise supplemental jurisdiction over Count II of the Complaint, which is brought under state law, and dismissing Count II without prejudice; and

3. granting any other relief that the Court finds just and proper.

PLEASE TAKE FURTHER NOTICE that the grounds for this motion are as follows:

(a) Count I does not plead facts that plausibly show that Defendant is a "debt collector" as 15 U.S.C. § 1692a(6) defines that term. The Complaint alleges that Defendant, in Defendant's own name, asked for rent that was owed to Defendant.

(b) Independently, Count I is time-barred under 15 U.S.C. § 1692k(d). Every letter on which Count I rests was sent and received more than one year before the Complaint was filed, and the Complaint itself pleads the dates.

(c) Once Count I is dismissed, no claim within the Court's original jurisdiction remains. The Complaint alleges that both parties are citizens of the same State, and the case is at its earliest stage.

PLEASE TAKE FURTHER NOTICE that, unless the Court orders otherwise, Local Civil Rule 6.1(b) requires any answering papers to be served within 14 days after service of these moving papers and any reply papers to be served within seven days after service of the answering papers, with the time computed under Rule 6 of the Federal Rules of Civil Procedure.

Dated: October 16, 2026
New York, New York

Respectfully submitted,

/s/ Morgan Ellery**Morgan Ellery**, Defendant, pro se
100 Example Street, Apt. 4, New York, NY 10000
morgan.ellery@example.com
(212) 555-0142

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Casey Thornbury,
Plaintiff,

v.

Morgan Ellery,
Defendant.

No. 1:26-cv-00000 (ABC)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

Submitted by:

Morgan Ellery
Defendant, pro se
100 Example Street, Apt. 4, New York, NY 10000
morgan.ellery@example.com
(212) 555-0142

Dated: October 16, 2026

TABLE OF CONTENTS

Preliminary Statement
Statement of Facts
Procedural History and Timeliness
Legal Standard
Argument
I. Count I does not plausibly allege that Defendant is a debt collector
A. The Complaint pleads no debt "owed or due another"
B. The Complaint pleads no business whose principal purpose is debt collection
C. The exception for a creditor who uses another name does not apply
II. Count I is time-barred on the face of the Complaint
A. The one-year period runs from each alleged violation
B. Every letter falls outside the one-year period
C. The Complaint pleads no basis for an equitable exception
III. The Court should decline supplemental jurisdiction over Count II
A. No independent basis for jurisdiction over Count II is pleaded
B. The balance of factors favors dismissal without prejudice
IV. Rule 12(b) defenses considered
Conclusion
Certificate of Compliance

TABLE OF AUTHORITIES

Cases

Ashcroft v. Iqbal, 556 U.S. 662 (2009)
Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988)
Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002)
Erickson v. Pardus, 551 U.S. 89 (2007) (per curiam)
Henson v. Santander Consumer USA Inc., 582 U.S. 79 (2017)
Rotkiske v. Klemm, 589 U.S. 8 (2019)
United Mine Workers v. Gibbs, 383 U.S. 715 (1966)

Statutes

15 U.S.C. § 1692a(6)
15 U.S.C. § 1692k(d)

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

28 U.S.C. § 1332(a)
28 U.S.C. § 1367

Rules

Fed. R. Civ. P. 6(a), 8(a)(2), 10(c), 12 and 41(b)
S.D.N.Y. Local Civ. R. 6.1(b) and 7.1

PRELIMINARY STATEMENT

This is a dispute between a former tenant and an individual landlord. Plaintiff **Casey Thornbury** ("Plaintiff") alleges that, after Plaintiff moved out of an apartment that Defendant owns, Defendant sent three letters that asked for unpaid rent. Plaintiff says that the letters violated the Fair Debt Collection Practices Act (the "FDCPA") (Count I). Plaintiff also says that Defendant breached the lease by keeping the security deposit (Count II).

Count I fails for two independent reasons. First, the FDCPA imposes the liability that Count I asserts on a "debt collector." The Complaint does not allege facts that make Defendant one. According to the Complaint, the rent was owed to Defendant under a lease that Defendant signed as landlord, and Defendant asked for that rent over Defendant's own name. The Complaint rests on one theory, that Defendant collects debts "owed another," but it names no other person to whom the rent was owed. Second, an FDCPA claim must be brought within one year from the date on which the violation occurs. The last of the three letters is dated June 9, 2025 and was received, the Complaint says, on June 12, 2025. The Complaint was filed on September 14, 2026, more than three months too late.

Without Count I, what remains is a state-law contract claim between two citizens of the same State. The case has not passed the pleading stage. The Court should decline supplemental jurisdiction over Count II and dismiss it without prejudice, so that Plaintiff may bring it in a state court.

STATEMENT OF FACTS

The facts below come from the Complaint (cited as "Compl." with the paragraph number), from its exhibits, and from the lease that the Complaint quotes and sues on. Defendant accepts them as true only for this motion.

A. The parties and the lease. Plaintiff is a natural person and a citizen of New York. Compl. ¶ 4. Defendant is a natural person, a citizen of New York, and the owner of the apartment at 200 Placeholder Road, Apartment 3B, New York, NY 10000 (the "Apartment"). Compl. ¶ 5. Defendant "owns and rents out three apartments." Compl. ¶ 6.

On February 20, 2024, Plaintiff and Defendant signed a written lease of the Apartment for a term that ended on February 28, 2025 (the "Lease"). Compl. ¶ 9. The Lease names Defendant as landlord and Plaintiff as tenant. Compl. ¶ 10. The Complaint quotes the rent clause, under which Plaintiff agreed to pay "$2,400 per month to Landlord." Compl. ¶ 11 (quoting Lease ¶ 4). It also quotes the deposit clause, under which Plaintiff paid a security deposit of $2,400. Compl. ¶ 12 (quoting Lease ¶ 9). The Complaint does not attach the Lease. A true copy is Exhibit 1 to the Declaration of Morgan Ellery.

B. The letters. Plaintiff moved out on February 28, 2025. Compl. ¶ 14. The Complaint alleges that Defendant then mailed three letters (together, the "Letters"), each of which is attached to the Complaint:

1. a letter dated March 17, 2025, received on March 20, 2025 (Compl. ¶ 16 and Ex. A);

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

2.

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

a letter dated April 21, 2025, received on April 24, 2025 (Compl. ¶ 18 and Ex. B); and

3. a letter dated June 9, 2025, received on June 12, 2025 (Compl. ¶ 20 and Ex. C).

Each Letter states that "you owe me $4,800 in rent" for January and February 2025 and asks Plaintiff to pay "me, your former landlord." Compl. Exs. A, B and C. Each is signed "Morgan Ellery, Landlord." Id. No Letter names any other creditor, agency, attorney or company. Id. The Complaint alleges that the Letters were harassing and overstated the balance. Compl. ¶¶ 17, 19, 21. It alleges no communication after the third Letter. See Compl. ¶¶ 20-23.

C. The claims. Count I alleges that the Letters violated the FDCPA. Compl. ¶¶ 25-32. On Defendant's status it says, in full: "Defendant is a 'debt collector' because Defendant regularly attempts to collect debts owed or due another." Compl. ¶ 26. It also calls the rent "a debt allegedly owed to Defendant under the Lease." Compl. ¶ 15. Count II alleges that Defendant breached the Lease by not returning the $2,400 deposit. Compl. ¶¶ 33-38. The Complaint invokes federal-question jurisdiction over Count I and supplemental jurisdiction over Count II. Compl. ¶¶ 2-3. It does not invoke diversity jurisdiction.

PROCEDURAL HISTORY AND TIMELINESS

Plaintiff filed the Complaint on September 14, 2026. ECF No. 1. The summons and Complaint were served on Defendant on September 28, 2026. ECF No. 6. Defendant did not receive or return a request to waive service.

A defendant who has not waived service must respond within 21 days after being served with the summons and complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). Excluding the day of service and counting every day after it, as Rule 6(a)(1) requires, the period ends on October 19, 2026, which is not a Saturday, a Sunday or a legal holiday. Defendant files and serves this motion on October 16, 2026, within that period and before any answer. See Fed. R. Civ. P. 12(b). Defendant has made no earlier motion under Rule 12 and has filed no answer. No scheduling order has been entered, no discovery has been served, and no trial date has been set.

Under Rule 12(a)(4)(A), if the Court denies this motion or postpones its disposition until trial, Defendant's answer is due within 14 days after notice of the Court's action, unless the Court sets a different time.

LEGAL STANDARD

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

The Court "must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). That rule covers facts. It does not cover legal conclusions: "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. The duty to plead the grounds for relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

On this motion the Court may consider the Complaint and the Letters attached to it. A written instrument that is an exhibit to a pleading is part of the pleading. Fed. R. Civ. P. 10(c). The Court may also consider a document that is not attached "where the complaint 'relies heavily upon its terms and effect,' which renders the document 'integral' to the complaint." Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002). The Lease is such a document. The Complaint quotes it, Compl. ¶¶ 11-12, and Count II sues on its terms, Compl. ¶¶ 33-38. Defendant does not rely on the bare fact that Plaintiff had notice of the Lease or a copy of it.

Defendant offers nothing else. If the Court concludes that the Lease is a matter outside the pleadings, Defendant asks the Court to exclude it and to decide this motion under Rule 12(b)(6) on the Complaint and its exhibits alone. See Fed. R. Civ. P. 12(d). Every ground stated below stands without the Lease.

ARGUMENT

I. COUNT I DOES NOT PLAUSIBLY ALLEGE THAT DEFENDANT IS A DEBT COLLECTOR

Count I depends on the allegation that Defendant is a "debt collector." Compl. ¶ 26. The FDCPA defines that term in two main ways. It covers a person "in any business the principal purpose of which is the collection of any debts." 15 U.S.C. § 1692a(6). It also covers a person "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." Id. In addition, it reaches a creditor who, in collecting the creditor's own debts, "uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." Id. The Complaint pleads facts that satisfy none of the three.

A. The Complaint pleads no debt "owed or due another." This is the only theory that the Complaint names. Compl. ¶ 26. The Supreme Court has read these words to focus on "third party collection agents regularly collecting for a debt owner—not on a debt owner seeking to collect debts for itself." Henson v. Santander Consumer USA Inc., 582 U.S. 79 (2017). On the facts alleged, Defendant is a debt owner who sought to collect for Defendant's own account. The rent was "owed to Defendant under the Lease." Compl. ¶ 15. The rent clause makes it payable "to Landlord," and Defendant is the landlord. Compl. ¶¶ 10-11. Each Letter asks Plaintiff to pay "me, your former landlord." Compl. Exs. A-C.

The Complaint identifies no other person to whom any debt was owed, no debt of any other tenant that Defendant tried to collect for someone else, and no arrangement under which Defendant collects for anyone. The sentence that Defendant "regularly attempts to collect debts owed or due another," Compl. ¶ 26, repeats the statute. It is a formulaic recitation, and the Court need not accept it. Twombly, 550 U.S. at 555. The specific facts in the Complaint and its exhibits also contradict it.

B. The Complaint pleads no business whose principal purpose is debt collection. Henson did not decide this separate part of the definition, and Defendant does not argue that it did. The point here is simpler: the Complaint does not plead it. It does not allege that collecting debts is the principal purpose of any business that Defendant runs. The only business it describes is that Defendant "owns and rents out three apartments." Compl. ¶ 6. The business described is renting apartments. A request for overdue rent, made in three letters to one former tenant, does not support a plausible inference that debt collection is the principal purpose of that business. If Plaintiff now argues this theory, the Complaint lacks the "sufficient factual matter" that Iqbal requires. 556 U.S. at 678.

C. The exception for a creditor who uses another name does not apply. A creditor who collects under a name that indicates a third person is collecting may be treated as a debt collector. 15 U.S.C. § 1692a(6).

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

The Complaint does not allege that Defendant used such a name. The Letters attached to it show the opposite: each is signed "Morgan Ellery, Landlord," and none refers to a collection agency, an attorney or any other third person. Compl. Exs. A-C.

Because the Complaint does not plausibly allege that Defendant is a debt collector under any part of the definition on which Count I could rest, Count I should be dismissed.

II. COUNT I IS TIME-BARRED ON THE FACE OF THE COMPLAINT

Count I should be dismissed for a second and independent reason. Defendant raises this ground in the alternative to Point I, and the Court may reach it first.

A. The one-year period runs from each alleged violation. An action to enforce liability under the FDCPA must be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). The Supreme Court has held that, absent the application of an equitable doctrine, the period "begins to run on the date on which the alleged FDCPA violation occurs, not the date on which the violation is discovered." Rotkiske v. Klemm, 589 U.S. 8 (2019).

B. Every letter falls outside the one-year period. The only violations alleged are the three Letters. Compl. ¶¶ 16-21, 27-31. The Complaint pleads the date of each, and the attached copies confirm the dates. Measured from the date of each Letter, the one-year period expired as follows:

1. First Letter, dated March 17, 2025: the period expired no later than March 17, 2026.
2. Second Letter, dated April 21, 2025: the period expired no later than April 21, 2026.
3. Third Letter, dated June 9, 2025: the period expired no later than June 9, 2026.

Plaintiff filed the Complaint on September 14, 2026. ECF No. 1. That is more than three months after the last of these dates. The result does not change if the period is measured from receipt instead. Plaintiff received the third Letter on June 12, 2025, Compl. ¶ 20, and the Complaint still came more than one year later.

C. The Complaint pleads no basis for an equitable exception. The Complaint does not plead equitable tolling or any other doctrine that would extend the time. Nor does it plead facts that could support one. Plaintiff alleges receipt of each Letter within days of its date. Compl. ¶¶ 16, 18, 20. Plaintiff does not allege that Defendant hid the Letters, their author or their contents, or did anything to keep Plaintiff from filing within one year. A date of discovery cannot help Plaintiff under Rotkiske, and in any case the Complaint alleges immediate knowledge.

These dates do not depend on any disputed fact. Defendant takes them from the Complaint and accepts them as true for this motion. No amendment consistent with the dates that Plaintiff has already pleaded would make a claim on the three Letters timely. Count I should be dismissed with prejudice.

III. THE COURT SHOULD DECLINE SUPPLEMENTAL JURISDICTION OVER COUNT II

Count II is a state-law claim for breach of the Lease. Compl. ¶¶ 33-38. Defendant denies that claim but does not ask the Court to decide its merits. The Court should decline to exercise supplemental jurisdiction over it once Count I is dismissed.

A. No independent basis for jurisdiction over Count II is pleaded. The Complaint relies on supplemental jurisdiction for Count II. Compl. ¶ 3. Diversity jurisdiction, in the part that could apply to

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

two individuals from within the United States, requires a dispute between "citizens of different States." 28 U.S.C. § 1332(a). The Complaint alleges that Plaintiff and Defendant are both citizens of New York. Compl. ¶¶ 4-5. On those allegations diversity is absent, and Count II can remain here only as a supplemental claim.

B. The balance of factors favors dismissal without prejudice. A district court may decline supplemental jurisdiction when it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). The Supreme Court has said that "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). That is not a mandatory rule. But "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent" jurisdiction doctrine will point toward declining jurisdiction over the remaining state-law claims. Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988). Those factors are judicial economy, convenience, fairness and comity. Id. This is the usual case:

1. **Judicial economy.** This motion is the first paper that Defendant has filed. No discovery has taken place, and the Court has not ruled on any question about the Lease. No work would be repeated.
2. **Convenience.** Both parties are citizens of New York, and the Apartment and the events alleged are in the same State. Compl. ¶¶ 4-5, 14. A state court there would be no less convenient for anyone.
3. **Fairness.** Plaintiff would lose no rights. Dismissal would be without prejudice. The limitations period for Count II "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).
4. **Comity.** Count II asks how a residential lease and a security deposit clause apply under state law. It raises no federal question. The state courts have the stronger interest in that issue.

The Court should decline supplemental jurisdiction and dismiss Count II without prejudice.

IV. RULE 12(b) DEFENSES CONSIDERED

Defendant has considered each defense listed in Rule 12(b). Defendant was personally served with the summons and Complaint, is a citizen of New York, and lives in this District, where the Apartment is also located. Defendant therefore raises no defense under Rule 12(b)(2) (personal jurisdiction), Rule 12(b)(3) (venue), Rule 12(b)(4) (process) or Rule 12(b)(5) (service of process). Defendant understands that a defense in this group that was available and is omitted from this motion is waived under Rule 12(g)(2) and (h)(1), and does not attempt to reserve one. Defendant is aware of no person who must be joined under Rule 19 and whose absence would support a motion under Rule 12(b)(7).

Nothing in this motion waives any defense that Rule 12(h)(2) or (3) preserves, or any affirmative defense that Defendant may plead in an answer if one is required. The allegations that Defendant accepts as true for this motion are not admissions for any other purpose.

CONCLUSION

For these reasons, Defendant respectfully requests that the Court enter an order:

1. granting Defendant's motion in full;
2. dismissing Count I of the Complaint with prejudice under Fed. R. Civ. P. 12(b)(6), because it does

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

not plausibly allege that Defendant is a debt collector and, independently, because it is time-barred under 15 U.S.C. § 1692k(d);

3. declining supplemental jurisdiction over Count II under 28 U.S.C. § 1367(c)(3) and dismissing Count II without prejudice, so that the dismissal of Count II does not operate as an adjudication on the merits under Fed. R. Civ. P. 41(b);

4. in the alternative, if the Court denies any part of this motion, setting Defendant's time to answer the remaining claims at 14 days after notice of the Court's decision, as Fed. R. Civ. P. 12(a)(4)(A) provides; and

5. granting any other relief that the Court finds just and proper.

Dated: October 16, 2026
New York, New York

Respectfully submitted,

/s/ Morgan Ellery**Morgan Ellery**
Defendant, pro se
100 Example Street, Apt. 4, New York, NY 10000
Email: morgan.ellery@example.com
Telephone: (212) 555-0142

CERTIFICATE OF COMPLIANCE

I certify under Local Civil Rule 7.1(c) that the foregoing Memorandum of Law was prepared on a computer and contains 3,015 words, excluding the parts of the document that the rule does not count. In making this certification I relied on the word count of the word-processing program used to prepare the document, the program used to prepare this document. The Memorandum of Law complies with the 8,750-word limit of Local Civil Rule 7.1(c).

I further certify that the body text is in 12-point type or larger and double-spaced, apart from headings, footnotes and block quotations, and that all margins are at least one inch, as Local Civil Rule 7.1(b) requires.

Dated: October 16, 2026

/s/ Morgan Ellery**Morgan Ellery**, Defendant, pro se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Casey Thornbury,
Plaintiff,

v.

Morgan Ellery,
Defendant.

No. 1:26-cv-00000 (ABC)

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

DECLARATION OF Morgan Ellery IN SUPPORT OF MOTION TO DISMISS

I, **Morgan Ellery**, declare under 28 U.S.C. § 1746 as follows:

1. I am the Defendant in this action. I make this declaration from personal knowledge, only to place before the Court a document that the Complaint quotes and on which the Complaint relies. I do not offer this declaration to dispute any fact alleged in the Complaint.

2. On February 20, 2024, I signed, as landlord, a written lease of the apartment at 200 Placeholder Road, Apartment 3B, New York, NY 10000, with Plaintiff **Casey Thornbury** as tenant. Plaintiff signed the same document as tenant on the same day.

3. I have kept a signed copy of that lease in my own records since that day. Attached as Exhibit 1 is a true and complete copy of it, changed only by the redactions described in paragraph 5.

4. Exhibit 1 is the lease that the Complaint describes in paragraph 9 and quotes in paragraphs 11 and 12, and that Count II alleges I breached. The quoted rent clause is paragraph 4 of Exhibit 1. The quoted deposit clause is paragraph 9 of Exhibit 1.

5. To protect personal information, I have redacted Exhibit 1 as Fed. R. Civ. P. 5.2(a) requires. I made no other change to it.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2026.

/s/ Morgan Ellery**Morgan Ellery**

INDEX OF EXHIBITS

Exhibit 1: Residential lease dated February 20, 2024 between **Morgan Ellery**, landlord, and **Casey Thornbury**, tenant, for 200 Placeholder Road, Apartment 3B, New York, NY 10000 (redacted).

The three Letters are Exhibits A, B and C to the Complaint (ECF No. 1) and are not attached again.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Casey Thornbury,
Plaintiff,

v.

Morgan Ellery,
Defendant.

No. 1:26-cv-00000 (ABC)

[PROPOSED] ORDER

Defendant **Morgan Ellery** has moved to dismiss the Complaint (ECF No. 1) under Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1367(c)(3). The Court has considered the Notice of Motion, the Memorandum of Law, the Declaration of Morgan Ellery and its exhibit, any papers in opposition and reply, and the Complaint and its exhibits. For the reasons stated in Defendant's papers, it is hereby

ORDERED that Defendant's motion is GRANTED; and it is further

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

ORDERED that Count I of the Complaint, brought under the Fair Debt Collection Practices Act, is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief can be granted; and it is further

ORDERED that the Court declines to exercise supplemental jurisdiction over Count II under 28 U.S.C. § 1367(c)(3), and Count II is DISMISSED WITHOUT PREJUDICE; and it is further

ORDERED that the Clerk of Court is directed to terminate the pending motion and to close this case.

SO ORDERED.

Dated: [date of entry]

[Signature of the United States District Judge]

CERTIFICATE OF SERVICE

I certify that on October 16, 2026 I served true and complete copies of the following papers:

1. Notice of Motion to Dismiss;
2. Memorandum of Law in Support of Defendant's Motion to Dismiss the Complaint, with Certificate of Compliance;
3. Declaration of Morgan Ellery, with Exhibit 1; and
4. Proposed Order

on Plaintiff **Casey Thornbury**, the only other party to this action, by placing them in a sealed envelope with first-class postage prepaid and depositing it in the United States mail, addressed to Plaintiff's counsel of record at counsel's last known address:

Dana Whitlock, Whitlock Rowe Example Law PLLC
300 Sample Avenue, Floor 2, New York, NY 10000

I do not file or receive papers through the Court's electronic-filing system in this action. I delivered the originals to the Clerk of Court for filing on the same day.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2026.

/s/ Morgan Ellery**Morgan Ellery**, Defendant, pro se

WORKSHEET: OTHER GROUNDS TO ADD NOW (DELETE THIS PAGE BEFORE FILING)

Each paragraph below is a model. Add a heading, your facts with Complaint paragraph numbers, and the matching relief. Change Point IV so that it no longer says that the defense is not raised.

1. Lack of subject-matter jurisdiction, Rule 12(b)(1). "The Complaint should be dismissed for lack of subject-matter jurisdiction. A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists, and the Court may refer to evidence outside the pleadings. Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). The Complaint invokes [basis], but [facts that show the basis is missing]. The Court must dismiss an action whenever it determines that it lacks subject-matter jurisdiction. Fed. R. Civ. P. 12(h)(3). The dismissal should be without prejudice."

2. Lack of personal jurisdiction, Rule 12(b)(2). "The Complaint should be dismissed for lack of

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.

personal jurisdiction over Defendant. Defendant is a citizen of [State] and [facts about residence, business and contacts with the forum]. The Complaint alleges no connection between Defendant and this forum except [allegation, with paragraph number]."

3. Improper venue, Rule 12(b)(3). "Venue is improper in this District because [facts]. Where venue is laid in the wrong district, the court shall dismiss, or if it be in the interest of justice, transfer the case to a district or division in which it could have been brought. 28 U.S.C. § 1406(a). Defendant asks the Court to dismiss or, in the alternative, to transfer the action to [district]."

4. Insufficient process, Rule 12(b)(4). "The summons served on Defendant was defective in that [missing name, seal, signature or other defect in the paper itself]. A copy of the summons as received is Exhibit [number] to Defendant's declaration."

5. Insufficient service of process, Rule 12(b)(5). "Before a court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied. Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987). On a Rule 12(b)(5) motion the plaintiff bears the burden of proving adequate service. See Burda Media, Inc. v. Viertel, 417 F.3d 292 (2d Cir. 2005) (quoting this rule in a parenthetical to a district court decision). The proof of service states that the papers were [method], but [facts, supported by declaration]. In addition, more than 90 days have passed since the Complaint was filed. Fed. R. Civ. P. 4(m)." (Delete the last two sentences if the 90 days have not passed. If they have passed, the court dismisses without prejudice or orders service within a set time, and must extend the time if the plaintiff shows good cause.)

6. Failure to join a required party, Rule 12(b)(7). "The Complaint does not join [name], a person who must be joined under Rule 19 because [facts]. [State whether joinder is possible and what happens to the action if it is not.]"

7. Fraud not pleaded with particularity, Rules 9(b) and 12(b)(6). "Count [number] alleges fraud. A party alleging fraud must state with particularity the circumstances constituting fraud. Fed. R. Civ. P. 9(b). The Complaint does not identify [the statement, the speaker, the date and place, or why it was false]."

Downloaded from legaldraftapp.com. General information, not legal advice. Have a qualified lawyer review this document before you rely on it.