Rule 3212. Motion for summary judgment. (a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In

any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

(h) Standards for summary judgment in certain cases involving public petition and participation. A motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of the civil rights law, shall be granted unless the party responding to the motion demonstrates that the action, claim, cross claim or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(i) Standards for summary judgment in certain cases involving licensed architects, engineers, land surveyors or landscape architects. A motion

for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action in which a notice of claim must be served on a licensed architect, engineer, land surveyor or landscape architect pursuant to the provisions of subdivision one of section two hundred fourteen of this chapter, shall be granted unless the party responding to the motion demonstrates that a substantial basis in fact and in law exists to believe that the performance, conduct or omission complained of such licensed architect, engineer, land surveyor or landscape architect or such firm as set forth in the notice of claim was negligent and that such performance, conduct or omission was a proximate cause of personal injury, wrongful death or property damage complained of by the claimant or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant a preference in the hearing of such motion.

(j) Additional notice in any action to collect a debt arising out of a consumer credit transaction where a consumer is a defendant.

1. At the time of service of a notice of motion any part of which requests summary judgment in whole or in part, where the moving party is a plaintiff and the respondent is a consumer defendant in an action to collect a debt arising out of a consumer credit transaction, and where the consumer defendant against whom summary judgment is sought is not represented by an attorney, the plaintiff shall submit to the clerk a stamped, unsealed envelope addressed to the defendant together with the following additional notice in English and Spanish to be printed in clear type no less than twelve-point in size:

IMPORTANT NOTICE

The Plaintiff has asked the Court to enter judgment against you by making a Motion for Summary Judgment. Keep this Notice and the envelope it came in. The Motion for Summary Judgment was separately served on you. To avoid entry of judgment:

(1) You must appear in court as directed below:

WHERE: Name of Court, Street Address, Room Number

WHEN: Date and time

(2) You should oppose the motion IN WRITING.

HOW TO OPPOSE THE MOTION:

(1) State the legal reasons why the court should not enter judgment against you, including your defenses.

(2) State the facts that support your defenses.

(3) Attach affidavits and/or exhibits to support the facts you assert.

(a) Affidavits are sworn statements of witnesses (including you) who state facts they know to be true. The affidavit should state the facts and how the witness knows them. Also, the affidavit should explain any exhibits. An affidavit of service is an affidavit that states how and when papers were served. An affidavit must be signed in front of a notary. Free forms are available on the New York State Court system website at: _____.

(b) Exhibits are copies of documents. Exhibits are usually attached to affidavits.

(4) Have someone (not you or another defendant in the lawsuit) mail a copy of your opposition to the plaintiff's attorney before your court date and have them prepare an affidavit of service by mail.

(5) Bring a copy of your opposition and the affidavit of service to your court date.

(6) Attend your court date.

IF YOU NEED MORE TIME:

If you need more time to prepare your written response, you should appear at your court date and ask the judge for more time. You can also ask the judge to refer you for legal help.

IF YOU NEED LEGAL HELP:

You may seek legal help from a private attorney or a legal aid office. Some courts have free legal assistance programs for people without lawyers. You can find resources on the New York State court system website at: _____.

2. The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph one of this subdivision and note the date of mailing in the case record. Summary judgment shall not be entered based on defendant's failure to oppose the motion unless there has been compliance with this section and at least fourteen days have elapsed from the date of mailing by the clerk or nineteen days if the plaintiff's notice of motion demands additional time under subdivision (b) of rule 2214 of this chapter.

3. The chief administrative judge shall issue a Spanish translation of the notice in paragraph one of this subdivision and shall maintain and publish the URL address for the web page containing consumer credit resources for unrepresented litigants.