

the defendant is a corporation incorporated under the laws of the State of Delaware and is not licensed to do or doing business in the Southern District of New York, all of which more clearly appears in the affidavits of K. L. and V. W. hereto annexed as Exhibits C and D, respectively.

4. To dismiss the action on the ground that the court lacks jurisdiction because the amount actually in controversy is less than ten thousand dollars exclusive of interest and costs.

Signed: \_\_\_\_\_  
*Attorney for Defendant.*

Address: \_\_\_\_\_  
*Notice of Motion*

To: \_\_\_\_\_  
*Attorney for Plaintiff.*

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room \_\_\_\_, United States Court House, Foley Square, City of New York, on the \_\_\_\_ day of \_\_\_\_, 193 \_\_, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed: \_\_\_\_\_  
*Attorney for Defendant.*

Address: \_\_\_\_\_

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961.)

#### EXPLANATORY NOTES

1. The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7(b).

2. As to paragraph 3, see U.S.C., Title 28, §1391 (Venue generally), subsections (b) and (c).

3. As to paragraph 4, see U.S.C., Title 28, §1331 (Federal question; amount in controversy; costs), as amended by P.L. 85-554, 72 Stat. 415, July 25, 1958, requiring that the amount in controversy, exclusive of interest and costs, be in excess of \$10,000.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

The change in nomenclature conforms to the official designation of a district court and of a court of appeals in Title 28, U.S.C., §§43(a), 132(a); and the more appropriate reference to "United States Court House, Foley Square, City of New York" in Form 19 replaces the outmoded reference.

#### Form 20. Answer Presenting Defenses Under Rule 12(b)

##### First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

##### Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without de-

priving this court of jurisdiction of the present parties, and has not been made a party.

##### Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

##### Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

##### Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

##### Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

#### NOTE

The above form contains examples of certain defenses provided for in Rule 12(b). The first defense challenges the legal sufficiency of the complaint. It is a substitute for a general demurrer or a motion to dismiss.

The second defense embodies the old plea in abatement; the decision thereon, however, may well provide under Rules 19 and 21 for the citing in of the party rather than an abatement of the action.

The third defense is an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in Rule 8(c).

The answer also includes a counterclaim and a cross-claim.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1946 AMENDMENT

The explanatory note incorporates revisions made by the Advisory Committee at the same time amendments to certain rules of the Federal Rules of Civil Procedure were made. See also rule 12(b), as amended.

#### Form 21. Answer to Complaint Set Forth in Form 8, With Counterclaim for Interpleader

##### Defense

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

##### Counterclaim for Interpleader

1. Defendant received the sum of \_\_\_\_\_ dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.