

### 3.02 | MOTIONS AGAINST THE COMPLAINT

Although most defenses to a complaint must be asserted in the answer, a defendant has the option of asserting certain defenses in the form of a motion to dismiss the complaint before filing the answer. See Federal Rules of Civil Procedure 12(b). A motion is an application to the Court asking that the Court take some particular action in the case. Motions to dismiss the complaint typically make the following arguments:

- (1) the Court lacks the power to decide the subject matter of the case or to compel a defendant to appear;
- (2) service of process was not sufficient; or
- (3) the complaint fails to state a claim on which relief can be granted.

If such a motion is made by a defendant in your case, you will have ten (10) days after it is served in which to file a response (or some other amount of time to file a response as set by the Court). It is very important to respond to such motions to dismiss; otherwise, the case may be dismissed without your having an opportunity to present an argument to the Court.

*(US District Court, New York, Western District // Buffalo, NY 14202  
Pro Se Litigation Guidelines)*

