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**TESTIMONY OF ROBERT MARTIN,
CHAIR OF THE CONSUMER AFFAIRS COMMITTEE
IN SUPPORT OF THE CONSUMER CREDIT FAIRNESS ACT (A.7558/S.4398)**

**NEW YORK STATE JOINT ASSEMBLY COMMITTEE HEARING:
Consumer Protection in the Debt Collection and Debt Management Industries
May 14, 2009
New York City**

I am Bob Martin, Chair of the Consumer Affairs Committee of the New York City Bar Association, and I appreciate the opportunity to testify today on behalf of the Association, my committee and the Civil Court Committee. The testimony will focus on our support of the Consumer Credit Fairness Act (A.7558/S.4398). This bill would amend the CPLR to ensure that persons who are sued in consumer credit transactions receive the benefit of fair procedures, including, as but one example, that a debt collector or debt buyer must meet certain pleading requirements before being allowed to proceed. The Committees believe that this legislation is necessary to maintain a basic level of fairness and due process with regard to the adjudication of consumer credit disputes in the Civil, City, District, and County Courts of New York.

It is no secret that New York courts are suffering under the exponentially increasing weight of consumer credit litigation. In 2008, for example, nearly 300,000 debt collection lawsuits were filed in New York City alone. These cases are overwhelmingly brought against low- and moderate- income New York debtors, many of whom are elderly or disabled, and nearly all of whom are unrepresented. Approximately 80% of these cases result in “default” judgments – automatic wins for the debt collector because the defendant failed to appear. The consequences of these judgments can be devastating, preventing low- and moderate-income New Yorkers from being able to support their families, secure housing, and obtain employment. The Committees have serious concerns about the fairness of these proceedings for several reasons.

First, evidence suggests that defendants rarely receive notice that they are being sued. Many of the process servers hired to serve papers in consumer credit actions engage in “sewer service” – the practice of failing to serve court papers and filing false affidavits of service with the courts. The New York State Attorney General recently brought civil and criminal charges against a process service agency that allegedly failed to serve New Yorkers in tens of thousands of cases. The Committees believe that the practices uncovered by the Attorney General are far from unique, but instead are standard practice in consumer credit actions. *See, e.g.,* MFY Legal Services, Justice Disserved (June 2008) (available at http://www.mfy.org/Justice_Disserved.pdf).

Second, a significant number of debt collection cases are filed by debt buyers and not by original creditors. Debt buyer plaintiffs do not always have accurate information regarding the account holder, account, and payment history. In an era when identity theft and mistaken

identity are all too common and judgments in consumer debt cases have far-reaching ramifications for consumers with regard to employment, housing and access to credit (among other areas), debtor-defendants need sufficient information and additional protections to ensure that they are being sued for valid claims and are indeed proper parties to the case. These additional protections will also help prevent New York courts from routinely entering default judgments on invalid debts.

Third, while all plaintiffs in consumer credit actions are represented by counsel, 99% of defendants are not. *See, e.g.,* Urban Justice Center, *Debt Weight* (Oct. 2007) (available at http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf). Unrepresented debtor-defendants are at a significant disadvantage. Unknowingly, these defendants routinely waive important defenses such as the absence of personal jurisdiction, the plaintiff's lack of standing to bring the claim, or the statute of limitations. Similarly, unrepresented defendants often have significant questions about the debt for which they are being sued, but do not know that they have the right to ask the plaintiff for proof of its claims. Meanwhile, debt buyer plaintiffs are able to manipulate complicated rules of civil procedure and lax pleading requirements to their advantage.

The highlights of the proposed legislation are:

1. An additional mailing from the court to the debtor-defendant, using a notice prepared by the plaintiff and submitted to the clerk, would be required before a default could be entered. This requirement is similar to the notice requirement already in place in New York City.
2. Actions arising out of consumer credit transactions would be governed by a two-year statute of limitations, and debt collectors would be barred from collecting debts on which the statute of limitations has expired.
3. The bill would permit defendants to raise lack of personal jurisdiction in their answer and preserve that defense for trial without the necessity of filing a separate motion to dismiss within 60 days as under current law.
4. The bill would provide for additional pleading requirements in consumer credit transaction matters. For example, the plaintiff would need to provide the name of the original creditor, the last four digits of the original account number, the date and amount of the last payment, and an itemization of the amount sought including principal, finance charges, fees, and other items. The plaintiff would also need to annex a copy of the written contract. The bill would additionally specify pleading requirements applicable in proceedings to confirm arbitration awards in consumer credit transactions, such as requiring the plaintiff to annex the agreement to arbitrate.
5. In cases in which the plaintiff is not the original creditor, the plaintiff would be required to submit an affidavit from the original creditor, together with proof of any assignments of the debt. Default judgment applications in matters based on a consumer credit transaction would be reviewed by a judge.

Abusive debt collection lawsuits exploit current gaps in our state's civil procedure laws and rules. The Consumer Credit Fairness Act helps to fill those gaps. By adopting statewide an

additional notice requirement already in place in New York City, it ensures that more New Yorkers will receive notice that they have been sued in a debt collection lawsuit. By requiring court papers to include basic information about a debt, the bill ensures that debtor-defendants will be better able to identify the debt or account on which they are being sued. By providing that default judgment applications in debt collection lawsuits will be evaluated by judges, the bill better protects debtor-defendants against default judgments on debts for which the plaintiff does not possess legitimate proof. By reducing the statute of limitations on debt collection lawsuits from six years to two years, the act encourages creditors to file claims in a timely manner and better protects low- and moderate-income New Yorkers from the unfair and excessive accumulation of interest and fees. The proposed legislation also protects unrepresented defendants from unintentionally waiving the defense that a debt is past the statute of limitations or that they were improperly served.

The Committees do have one concern about the legislation as drafted. We believe that it is possible that the shorter statute of limitations and enhanced pleading requirements could be interpreted to apply to private transactions in which one individual makes a personal loan to another. We believe that such an interpretation could unfairly burden private individuals who are seeking to collect debts legitimately owed to them. We would be happy to suggest language for an amendment to avoid this interpretation.

I also note that the Consumer Affairs Committee recently submitted a report in support of A.3926/S.4817, which would require the licensing of debt collection agencies. This bill, like the Consumer Credit Fairness Act, addresses the regulation of debt collection activity in the modern age, and it would help ensure that collection agencies adhere to acceptable standards of conduct. The report on A.3926/S.4817 is attached to my written testimony.

Thank you for the opportunity to appear before you today, and we will be happy to work with you further on this and other issues in the consumer law field.