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Holly Nelson Lutz, Esq.  
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Dear Ms. Lutz:

The Civil Court Committee of the New York City Bar Association has reviewed the Advisory Committee on Civil Practice's proposed Rule 216.2 addressing privacy concerns in the filing of papers in civil proceedings. We commend the Committee for proposing this rule to protect personal identifying information in court papers and believe court procedures are necessary to protect such information in the electronic age. However, the members of the Civil Court Committee have a few concerns about the effect of the proposed 22 N.Y.C.R.R. § 216.2 on consumer debt cases filed in Civil Court and request your committee's consideration of two modifications to the proposed rule. We believe the changes suggested below are consistent with the recommendations of the Subcommittee on Electronic Court Records of the New York City Bar Association Council on Judicial Administration<sup>1</sup> and thank the Council for their hard work on this issue.

**Financial Account Numbers and Credit Card Numbers**

The proposed Rule 216.2 would require the parties to redact financial account numbers and credit card numbers from papers submitted for filing. In the nearly 300,000 consumer debt cases filed in Civil Court each year, such financial account numbers and credit card numbers are directly at issue. A great majority of these debt collection cases are filed by debt buyers and not by original creditors. Consequently, debtor-defendants do not recognize the plaintiff and cannot identify what financial account or credit card the lawsuit concerns. 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. To address this problem, the Civil Court Committee has advocated for the mandatory inclusion of a

<sup>1</sup> See "Report Recommending a New York State Court Rule Requiring that Sensitive Personal Information be Omitted or Redacted from Documents Filed with Civil Courts" (February 2, 2010).

portion of the original account number in pleadings in consumer debt cases.<sup>2</sup> However, Rule 216.2 as drafted would require the entire account number to be redacted.

We suggest the addition of an exception to Rule 216.2, permitting the inclusion of the last four digits of the financial account number or credit card number in consumer debt cases. This exception would assist debtor-defendants in identifying the account at issue when the plaintiff is a debt buyer. The exception would still ensure that the debtor's personal identifying information is protected, because only a portion of the account number would be included. Moreover, the accounts at issue in consumer debt cases are already in default and closed, making the use of a portion of the account number to commit identity theft nearly impossible.

### **Social Security Number, Telephone Number, and Date of Birth**


The proposed Rule 216.2 would require the parties to redact the entire Social Security number, telephone number, and date of birth from all papers submitted for filing. In consumer debt cases filed in Civil Court, debtor-defendants must often reveal this information to prove that they have been the victim of identity theft or mistaken identity. Rule 216.2 would prevent debtor-defendants and their attorneys from revealing even a portion of this information in papers asserting their defense. We suggest an exception to this rule, permitting the inclusion of the last four digits of the social security number or telephone number and the year of birth in consumer debt cases. By permitting the limited use of a portion of this information, the debtor could still mount an adequate defense in cases of identity theft without revealing enough personal identifying information to risk further identity theft.

### **Conclusion**

These small changes to Rule 216.2 will be of great assistance to debtor-defendants in consumer debt cases filed in Civil Court while still ensuring that their personal identifying information is protected. We thank you for considering our recommendations. Should you have any questions, please do not hesitate to contact us.

Very truly yours,

  
Janet Ray Kalson  
Chair

  
Elizabeth Da Victoria Lobo  
Committee Member

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<sup>2</sup> The Consumer Credit Fairness Act (A 7558/S 4398), currently pending before the New York State Assembly, would amend the Civil Practice Law and Rules to require the mandatory inclusion of the last four digits of the original account number.