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Attorney General Letitia James
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Re: Transition Letter from New York City Bar Association Civil Court Committee

Dear Attorney General James:

Congratulations on your recent election to the position of Attorney General for the Office of Attorney General of New York. I am writing to you as the Chair of the New York City Bar Association, Committee on Civil Court (the "Committee"). The members of the Committee are comprised of both civil legal services and private attorneys who regularly practice in the Civil Courts.

Many of the attorneys on the Committee work on and litigate issues related to consumer debt. Consumer debt cases are sometimes minimized as not involving the "essentials of life." However, they threaten low-income New Yorkers' limited wages and assets. This, in turn, threatens the "essentials of life," such as housing, basic income, and personal safety. From 2008 to 2016 there were an estimated 776,000 default judgments entered against consumer defendants in New York City. In 2018 alone, after years of aggressive reforms, the rate of default judgments was approximately 38%. This reflects an astronomical default rate.

In New York, civil court judgments give creditors incredible power: for the next 20 years (or more) a judgment creditor may garnish the debtor's wages, levy their bank accounts, and restrict their access to money. This can sabotage a low-income New Yorker's attempts to pay rent, buy food, or remain financially independent from an abuser. As approximately 97% of

consumer defendants are unrepresented by counsel, many are unaware of defenses available to them or how to articulate those defenses, and they enter into unaffordable and unfair stipulations.

What is more, despite helpful legal reforms, issues of sewer service continue to plague consumer debt litigation, clog court calendars, negatively impact the efficient administration of justice, and create catastrophes for New Yorkers. Many consumers experience the enforcement of the judgment for the first time years after it was entered, meaning cases from 2014, 2009, and even 1999 end up back on a Civil Court docket in 2019. As few consumer defendants have counsel, many agree to settle their cases and forego challenging the service just to obtain immediate relief from the enforcement and have access to their money.

The attorneys on the Committee have witnessed, first-hand, unfair and deceptive practices of unscrupulous lenders in the New York City Civil Courts. For instance, thousands of cases that are filed in the Civil Courts are filed by automobile financing companies that finance the purchase of used cars. These cases often present issues involving fraudulent conduct, and unfair and predatory financing terms. For prospective buyers with poor or no credit, the options for financing are often limited, and prospective buyers often must rely on the automobile dealer to provide financing for the purchase of a vehicle. When the only credit available to secure this necessary purchase is through the dealer, consumers can be forced into deceptive and predatory loans with extraordinarily high interest rates, hidden fees, and unnecessary "add-ons." The finance charge on these loans is often above the New York civil usury rate of 16% and is typically at a rate of 24.9%, which is just below the criminal usury rate of 25%.

As another example, private student loan entities file cases to collect on private student loan debt even when the holding entity does not have the documentation to demonstrate that it actually owns the debt or documentation to substantiate the thousands of dollars in damages that it claims the consumer owes to the trust entity. Many students who are sued in these cases attended for-profit colleges that provided little or no educational benefit to the consumer. Moreover, many of these for-profit colleges entered into recourse agreements[1] with the original lenders to offset predicted losses due to defaulted student loans. The terms or the existence of recourse agreements are never disclosed to the student loan borrowers or the courts when the student loan entity files the debt collection case in court.

For all of these reasons, it is imperative that New York expand General Business Law § 349 to include not just deceptive practices but to prohibit acts that are unfair, unlawful, and abusive. We also advocate for amending G.B.L. § 349 to eliminate the judicial requirement of consumer-oriented conduct[2]; raise the fine to $2,000 and let courts set damages for willful or

[1] As has come under scrutiny by the Illinois Attorney General's office, certain for-profit schools entered into recourse agreements, also referred to as risk sharing agreements, with private student loan lenders that required the schools to deposit a specific percentage of all recourse loans funded in reserve accounts to offset the lender's predicted losses. The borrowers were not privy to the recourse agreement between the lender and the school, and were not provided any information that the lender predicted that the loans would likely fail.

[2] New York courts have read a limitation into the law that the Legislature never intended, by requiring that the misconduct be "consumer oriented." This interpretation restricts the statute's reach to conduct directed at the general public rather than at an individual, and is at odds with the plain language of the statute which refers to "acts" (which may include individual acts) and "practices" (which may be include more widespread conduct). This judicially-

knowing violations; make attorney's fees mandatory, not discretionary, and include costs; and codify current law on organizational and third-party standing, and establish standing for individuals and organizations that test products and services for compliance. [3]

New Yorkers hauled into court in consumer debt cases deserve a fair and efficient system of justice that holds businesses engaged in predatory and unfair lending practices accountable, and protects consumers from delayed, expired, or false claims that threaten their financial stability. Such efforts will serve the dual function of helping to level the playing field for low- and moderate-income New Yorkers faced with unfair and/or untimely lawsuits, as well as promote efficiency in the court system by reducing or eliminating unfounded and time-barred claims.

We welcome the opportunity to speak with you and share more about our experience as practitioners in the New York City Civil Courts and advocates for low and moderate income consumers in New York.

Respectfully,

Civil Court Committee
Shanna Tallarico, Chair

created limitation exposes individuals and small businesses to dishonest vendors; and some courts have interpreted it to exclude typical consumer transactions, such as apartment leases, leaving tenants vulnerable.

[3] This provision allows non-profit organizations with relevant missions to have standing to represent the interests of the general public.