STATE OF NEW YORK
EXECUTIVE DEPARTMENT
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Consumer Protection Board
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Testimony of Mindy A. Bockstein

Before the
New York State Assembly Standing Committee on Consumer Affairs and Protection,
Standing Committee on Judiciary, Standing Committee on Banks

Audrey I. Pheffer, Chair, Committee on Consumer Affairs and Protection
Helene E. Weinstein, Chair, Committee on Judiciary
Darryl C. Towns, Chair, Committee on Banks

250 Broadway, Assembly Hearing Room 1923, 19th Floor
New York City

Regarding
Consumer Protection in the Debt Collection and Debt Management Industries

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Good Morning. I am Mindy A. Bockstein, Chairperson and Executive Director of the Consumer Protection Board (CPB).

I want to thank Assemblywoman Audrey Pheffer, Chair of the Committee on Consumer Affairs and Protection, Assemblywoman Helene Weinstein, Chair of the Committee on Judiciary, and Assemblyman Darryl Towns, Chair of the Committee on Banks, for hosting this hearing.

The CPB, established in 1970 by the New York State Legislature, is the State's top consumer watchdog and think tank. Our core mission is to protect New Yorkers by publicizing information regarding unscrupulous and questionable business practices and product recalls; conducting investigations and hearings; enforcing the Do Not Call Law; researching issues; developing legislation; educating consumers through programs and materials; responding to individual marketplace complaints by securing voluntary agreements; and, representing the interests of consumers before the Public Service Commission and other State and federal agencies.

Debt collection abuses have been a long standing problem for consumers. New York's debt collection law became effective in 1973; the federal Fair Debt Collection Practices Act was enacted into law in 1977. The industry has grown exponentially in the ensuing thirty (30) years since the passage of these laws, and the laws have not kept pace. Modern communications and technologies have simultaneously reduced collection costs and increased yields. Debt buyers, who buy old debt, usually on pennies on the dollar,

and often collecting on the oldest and least documented debts, have become a major force in the industry. The New York City Civil Court recently noted that for the first time in its history, more lawsuits were filed involving collections than eviction proceedings. The vast majority of judgments are obtained via defaults, casting further doubt on the validity of the claim. As consumer debt has risen, so have the number of debt collection complaints. At the Consumer Protection Board, we have received 868 complaints and inquiries regarding debt collection in the last year alone, which is indicative of the trying times we are facing.

Many complaints received by the Consumer Protection Board involve frozen bank accounts and debts that are not validly owed. One recent complaint exemplifies the challenges consumers face in dealing with debt collectors. In 1990, Ron received a hospital bill that was eventually paid by his insurance. Nevertheless, the hospital bill was sent out for collection, and the debt collector managed to obtain a judgment in 1995 against Ron. Ron, however, was a savvy consumer, and obtained a judgment release from the creditor, as the debt was improper. The consumer thought the matter was closed. It wasn't. Fourteen years later, in 2009, a collection law firm improperly froze Ron's bank account, despite the fact that the judgment was improper and, in any event, had been released. The CPB was able to contact the law firm and obtain the release of his funds.

Ron's case is typical. The CPB sees hundreds of cases in which accounts containing exempt funds are frozen, the debtor never receives notice of the lawsuit or

adequate information in the debt validation letter, or the consumer does not owe the debt, either because it was paid off years before or it was simply not the consumer's debt. Like Ron, consumers often have to go through round after round of fighting with debt collectors, as their purported "debt" is repeatedly sold and assigned to one debt collector after another.

The CPB assists consumers in combating abusive debt collection practices through its education efforts, its Debt Collection brochures and materials available online, and through mediation with our consumer advisors. However, more can and should be done on the State level.

The CPB acknowledges that there are several bills pending in the Legislature, which are designed to combat some of the abusive behavior I have underscored today. In the interest of time, I will focus my attention on the proposed Consumer Credit Fairness Act, (A.7558 (Weinstein) /S.4398 (Schneiderman)). This bill shortens the statute of limitations period to two (2) years, from its current six (6) year duration, adds notice and civil procedure requirements, and extinguishes the debt after two (2) years. While the notice component and some of the civil procedure components of this proposed Act are commended, we believe that a shortened statute of limitations may result in unintended negative consequences for consumers. It might encourage debt collectors/creditors to race to the court house, rather than negotiate with debtors to reach a mutually agreeable solution. It is the CPB's position that it is more advantageous for consumers to settle a debt dispute prior to the initiation of a lawsuit. We need to keep in mind that judgments

can be enforced for twenty (20) years, during which time interest continues to accrue. Judgments are also particularly harmful to a consumer's credit score and reputation.

Instead of reducing the statute of limitations period, we recommend imposing more stringent requirements upon creditors in order to obtain a judgment. Consumers and consumer groups have often complained that debt collectors and subsequent debt buyers do not provide any substantiation for their claims that a consumer owes money. Often the debt collectors or purchasers of the debt receive the barest of information (name, Social Security number, and debt amount) from the creditor or previous debt buyer. Usually, debt collectors and buyers of debt are not provided with any supporting evidence such as the contract, the account payment history, and the customer notes, which can be frustrating for the consumer who is denying and contesting the debt. Further, because the debt collector/debt buyer receives no history of the account, this actor might not know that the debt has been satisfied or resolved at some earlier point in the collection process.

To combat this pervasive problem, in order to obtain a judgment, creditors should have to produce the original contract/credit card agreement, and a written account statement, detailing the principal, interest, and fees that comprise the amount sought in the lawsuit. Moreover, where a debt buyer is suing for a debt, the debt buyer should be required to establish the "chain of title" for the debt. Finally, the creditor should be required to produce customer notes upon request by the consumer.

Unfortunately, courts traditionally rubber stamp the scant evidence provided to them in collection suits, and, as a result, thousands of judgments have been entered which have questionable merit. The above outlined measures would go a long way in ensuring that the debt is legitimate. We urge consideration of these provisions and the engagement of OCA on this issue.

As the Federal Trade Commission noted in its recent report, it receives more than 70,000 third party-debt collection complaints per year, and thus it is not feasible for federal government law enforcement to be the "exclusive" or primary means of deterring all possible law violations.[1] The FTC declared that private actions, permitted under the FDCPA, are "critical."[2] Unfortunately, New York State residents do not have this "critical" recourse at their disposal because courts have interpreted New York State's debt collection law, which expands the FDCPA to include "principal creditors," to preclude a private right of action.[3] Thus, unless the Attorney General opts to take a consumer's case, a wronged consumer cannot obtain true recourse under State law. Law enforcement resources are stretched too thin to adequately address debt collection abuse, and thus a private right of action is an important remedy to afford our residents.

Finally, I am pleased to report that the Governor intends to introduce a Program Bill this week which attempts to address some of these issues. Specifically, it requires a debt collector to provide a debtor with a clear "debtor's rights" notice, which includes

[1] Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change, A Workshop Report*, p. 67 (February 2009).
[2] *Id.*
[3] *See Varela v. Investors Insurance Holding Corp.*, 81 N.Y.2d 958 (1993).

informing the debtor that he or she is entitled to validation information for the debts that the debtor is alleged to owe. It requires each creditor and debt collector to send a notice to the last known address of the debtor advising the debtor that his or her debt his been sold or transferred. In addition, the bill provides for a private right of action which has been championed by Assemblyman Gianaris in A. 3532. The Governor's office looks forward to working with you and the sponsors of the relevant legislation to enact meaningful debt collection reform this session.

I wish to thank the Assembly for holding this hearing today and providing me with the opportunity to briefly discuss this important issue and highlight some of our work in this area. As we continue our efforts to protect consumers, I pledge my Agency's ongoing commitment to protect consumers, and look forward to working with you and your legislative colleagues and advocates to achieve our mutual goals on behalf of New Yorkers.

Thank you.