



TESTIMONY
PRESENTED AT:

**PUBLIC HEARING TO EXAMINE THE RE-OPENING AND
OPERATION OF NEW YORK'S COURTS DURING THE
COVID-19 PANDEMIC**

PRESENTED TO:

**NEW YORK STATE JOINT
SENATE STANDING
COMMITTEES ON
JUDICARY, CODES, AND
HOUSING, CONSTRUCTION
AND COMMUNITY
DEVELOPMENT**

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Thank you to the New York State Senate Standing Committees on Judiciary, Codes, and Housing, Construction and Community Development for holding this important hearing on the New York State Unified Court System and COVID-19. Mobilization for Justice, Inc. (MFJ) envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this by providing the highest quality direct civil legal assistance, conducting community education and building partnerships, engaging in policy advocacy, and bringing impact litigation. We assist more than 10,000 New Yorkers each year in the areas of disability rights, children's rights, economic justice, and housing rights, benefitting over 25,000. Through weekly hotlines, courthouse clinics, and representation in legal actions and administrative hearings, MFJ staff work to ensure a level playing field for New York's poor and working poor.

I am Director of Litigation for Economic Justice and I directly supervise MFJ's Consumer Rights Project, which provides advice, counsel, and representation to low-income New Yorkers on a range of consumer problems. I also co-chair the New York City Consumer Advocates Taskforce and I serve regularly as a consumer expert at the court-based Civil Legal Advice and Resource Office (CLARO).

I. Debt Collection Cases and Defendants

Over the past 10 years, *over one million* debt collection lawsuits have been filed in New York City Civil Court against New Yorkers. Most of these lawsuits are brought by third-party debt buyers, which are companies that buy portfolios of old, defaulted debts from original creditors for pennies on the dollar. Numerous reports about the collection industry have found that debt buyers receive very little documentation about the debts they purchase, and sometimes the

sellers explicitly refuse to warrant that any of the information they sell is accurate.¹ Furthermore, debt buyers and creditors often file these cases through an automated process without meaningful scrutiny and with little oversight by attorneys. *Id.*

The debt collection lawsuits that flood New York courts, and of which there will be a surge once debt collection attorneys are allowed to commence new actions *en masse* again in New York City Civil Courts, are abusive for numerous reasons: many of the debts are in fact too old to be sued on, have already been paid or discharged in bankruptcy; result from identity theft or mistaken identity; or arise because of economic abuse. Even in cases where the consumer may owe some money, debt buyers often sue for grossly inflated amounts, padding the debts with unauthorized fees and interest. Consumers often do not receive notice of these lawsuits, and therefore do not appear in them to defend themselves, which results in the entry of default judgments.

The consequences of these default judgments can be devastating. Debt buyers and creditors enforce judgments by freezing people's bank accounts and garnishing their wages, leaving low- and moderate-income New Yorkers and their families unable to pay for their basic needs, including housing, food, or medication. The consequences of a judgment are especially noxious when people have had no prior notice that they were sued.

II. Debt Collection and Communities of Color

Communities of color are particularly vulnerable to short- and long-term economic uncertainty because of systemic inequities that render wealth accumulation so much more difficult for persons of color as compared to their white counterparts. According to 2016 Federal Reserve data, the median net worth of Black households (\$17,600) is one-tenth the wealth of white

¹ See Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* iii (Jan. 2013), available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf> and Chris Albin-Lackey, *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor*, 2 (Human Rights Watch, Jan. 2016) available at www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debtbuying-corporations-and-poor#.

households (\$171,000), while the median net worth of Latinx/Hispanic households lags similarly far behind (\$20,700).² Black Americans in particular suffer from a deep racial wealth gap because of the lasting consequence of slavery, segregation, redlining, and institutionalized racism. Without a financial cushion, communities of color are unable to weather economic storms.

The widespread unemployment created by the COVID-19 crisis has already caused many New Yorkers to fall into debt, or go further into debt, subjecting them to unfair debt collection, enforcement of judgments with abusive interest rates, and negative credit reporting. It is well established that debt collection generally and debt collection lawsuits specifically, disproportionately impact communities of color; therefore those communities hit hardest by the COVID-19 crisis will be disproportionately impacted by the inevitable onslaught of collection efforts and actions.³ An increase in debt collection lawsuits will subject New Yorkers of color to more economic strain, and expose those who must defend themselves in person at courthouses to increased health risks. If New Yorkers do not defend themselves, or if they lose those cases because they cannot afford attorneys, the debt collectors will engage in aggressive enforcement of judgments, which, in New York have shockingly high and abusive interest rates,⁴ thus exacerbating the financial impact of the COVID-19 crisis on communities of color.

III. Resources and Accommodations for *Pro Se* Consumers

Over 96% of defendants sued in debt collection cases are unrepresented.⁵ In our experience, most *pro se* litigants are individuals who are low-income, seniors, of limited English proficiency

² Board of Governors of the Federal Reserve System, Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances, Accessible Data (2016), available at <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-andethnicity-evidence-from-the-survey-of-consumer-finances-accessible-20170927.htm#figure1>.

³ See The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*, 17 (May 2020), available at <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.

⁴ See N.Y. Civil Practice Law and Rules Section 5004 (setting interest rates on judgments at “the rate of nine per centum per annum.”)

⁵ See New York City Bar Association, Report on Legislation by the Consumer Affairs Committee and Civil Court Committee (June 2019), available at: <https://s3.amazonaws.com/documents.nycbar.org/files/20072920-CCFA.pdf>

(LEP), and/or have disabilities. Because of these special circumstances, many unrepresented parties do not have the technology and/or ability to use e-filing or participate in virtual court appearances. Many consumers lack computers, printers, scanners, fax machines, or high-speed internet, and in fact many of them do not even have email addresses: less than 10 percent of the people who sought help from MFJ in 2019 provided us with email addresses. Because of the high numbers cases and the vulnerabilities of this population, the Court has made resources available to help *pro se* consumers, including court rules that pertain specifically to consumer credit transactions, “Do It Yourself” forms, and court-based limited scope legal assistance programs, including CLARO and Volunteer Lawyer for the Day (VLFD).

IV. COVID-19-Related Problems with the Courts

The COVID-19 crisis has hit all industries, professions and branches of government, and the New York State Office of Court Administration is no exception. As the Court continues to shift its response to the crisis, which is understandably ever changing, it has failed to establish consistent procedures for debt collection cases. For example, there are no clear protocols for motion practice or hearings in consumer credit actions, for seeking emergency relief, for filing answers, or even for obtaining court files. Further, practices vary depending on the courts, and sometimes even within clerks’ offices.

With regard to consumer debt cases, the Court’s communications with consumers directly and with attorneys who represent consumers--including via mail, by phone, and on the Court’s website--has also been lacking. MFJ staff and volunteers have heard from numerous clients, and experienced ourselves, the frustration of being passed from one office to another to answer a

(citing FOIL Officer, Office of Court Administration, 2018 New York City Civil Court Consumer Credit Filings (April 5, 2019); NYS Permanent Commission on Access to Justice, Report to the Chief Judge of the State of New York (November 2018), *available at*: http://ww2.nycourts.gov/sites/default/files/document/files/2018-12/18_ATJComission_Report.pdf (last visited on April 14, 2019); Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers (May 2010), *available at*: <http://mobilizationforjustice.org/wpcontent/uploads/reports/DEBT-DECEPTION.pdf> (last visited May 6, 2019).)

simple question; of not being able to reach a human being in various clerks' offices; and of being instructed to make calls to specific phone numbers that go unanswered. Compounding the problem of lack of communication and dissemination of information for *pro se* litigants is the fact that court-based programs and clinics are currently suspended because of the COVID-19 crisis.

As the various courthouses plan for full reopening, consumer advocates have witnessed tremendous deference to the collection bar, but very little consideration for the *pro se* litigants or their vulnerabilities, which have been exacerbated by the COVID-19 crisis. Further, in light of the devastating health consequences of the COVID-19 crisis, no consumers should be required to travel to and enter courthouses in order to attend in-person hearings until specific criteria have been established that guarantees their safety.

V. Recommendations

- The Court should continue to limit court proceedings to only essential cases, and as it continues to reopen, should not rush to resume collection cases without meeting safety benchmarks and without proper procedures and protocols in place, as well as adequate notice to the parties.
- Judges should freely provide adjournments and grant automatic extensions upon request.
- No default judgments in consumer debt cases should be entered until well after the COVID-19 crisis is over and future requests to vacate defaults obtained during the crisis should be summarily granted.
- The Court should not require in-person appearances and should ensure that the rights of litigants and the public are preserved in the context of virtual hearings.
- Under no circumstances should the COVID-19 crisis be used as an excuse to implement alternative dispute resolution measures designed to quickly resolve debt

collection cases and clear up dockets, which will deny *pro se* defendants sued in meritless cases their day in court.

- The New York State Legislature should swiftly pass the Consumer Credit Fairness Act (A6909C/S4827C), which will help alleviate the problem of unfair and abusive debt collection lawsuits--which are particularly harmful to New Yorkers facing the economic devastation of the COVID-19 crisis--by leveling the playing field for unrepresented litigants sued in consumer debt cases. And the Legislature should pass A10479/S07946, which would reduce the currently punitive rate of nine percent on consumer debt judgments to a maximum of three percent.
- The Court should work closely with consumer advocates and legal services providers to ensure that the unique perspectives of *pro se* litigants are taken into consideration when making decisions that will affect thousands of New Yorkers.
- The Senate should hold OCA accountable by regularly requesting data and reporting and holding future hearings.

Thank you for the opportunity to provide this written testimony. To discuss this testimony in more detail or if you have any questions, please contact Carolyn E. Coffey (ccoffey@mfjlegal.org).