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Memorandum in Support
Pass the Consumer Credit Fairness Act
A.6909A/S.4827A

The Empire Justice Center strongly supports the Consumer Credit Fairness Act (CCFA), A.6909 (Weinstein)/S.4827 (Thomas) which proposes a series of changes to New York’s Civil Practice Law and Rules designed to curb the abusive debt collection lawsuits that have become an epidemic in New York State. Hundreds of thousands of debt collection lawsuits are filed against low and moderate income New Yorkers every year. Most of these lawsuits are brought by third-party debt buyers, companies that buy portfolios of old, defaulted debts from original creditors for pennies on the dollar. These lawsuits are fraught with problems which the CCFA addresses.

In many cases, these portfolios include debts that are too old to be sued on, have already been paid or discharged in bankruptcy, or resulted from identity theft or mistaken identity. In cases in which debt is legitimately still owed, debt buyers often pad the amounts owed with fees and interest they are not entitled to under the consumer credit contract. Debt buyers also have been known to engage in “sewer service,” failing to properly serve the consumer-defendant with the lawsuit so the consumer does not appear in court and a “default judgment” is obtained without having to produce proof of the debt.

The Consumer Credit Fairness Act (CCFA) would prevent debt buyers from continuing to exploit gaps in our state’s Civil Practice Law and Rules, while allowing legitimate cases to proceed. CCFA requires a notice to be mailed to the defendants in consumer credit actions by the clerk of the court, ensuring that defendants are given notice of the lawsuit. This practice is already required and has proven effective in the New York City Civil Court and should be expanded to consumers statewide. The CCFA also requires court filings to include more information about the debt sued upon, such as identifying the debt or account and providing proof that the debt is owed to the plaintiff including a copy of the contract. This requirement will substantially decrease the number of unsubstantiated cases and frivolous claims brought against consumers. Additional notice is required to defendants when a plaintiff files a motion for summary judgment. For victims of domestic violence who often experience economic abuse

and identity theft at the hands of their current or former abusive partners, these safeguards provide important protections.

CCFA also reduces the statute of limitations for consumer credit transactions from six years to three years, and extinguishes the right to collect debts if the statute of limitations is expired. These requirements are critical for a few reasons. First, they compel creditors to file claims in a timely manner and better protect low and moderate income consumers from the excessive accumulation of interest charges and late fees. Second, there is a much greater likelihood that a consumer will move to a new address within six years, making it less likely that they will be properly served and alerted to the existence of the lawsuit. The current six year statute of limitations also increases the likelihood that the records related to a specific debt will be lost or destroyed by the original creditor. By shortening the statute of limitations, the Legislature would be reducing the possibility that the passage of time would introduce additional sources of error into any collection action brought in the courts of New York State.

Another strong protection within CCFA is that it outlaws debt buyers essentially going on fishing expeditions and suing on expired debt, understanding they will only prevail in cases in which the debtor presents no defense. Currently, debt buyers are allowed to file suits on old debt putting the burden on the consumer to raise a statute of limitations defense. This provision is critical to protecting consumers. Debt buyers successfully collect time barred debts because the vast majority of consumers in New York State do not have access to legal representation in these cases and do not have the legal knowledge that they should raise a statute of limitation defense. Allowing lawsuits to be filed on time barred debts results in the financial victimization particularly of low and moderate income New Yorkers who lack access to legal counsel.

For these reasons, Empire Justice Center strongly supports passage of the Consumer Credit Fairness Act this session.

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