



Neighborhood Economic Development Advocacy Project

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**Testimony of Thu Tuyen T. To and Claudia Wilner
on behalf of the Neighborhood Economic Development Advocacy Project**

**Before the Committee on Consumer Affairs
of the Council of the City of New York**

Hearing on Debt Buyers in New York City

February 25, 2009

Thank you for the opportunity to testify today regarding the amending of New York City's administrative code to license all debt buyers. NEDAP supports the City Council's amending NYC's Administrative Code to require licensing for all buyers of consumer debt that directly or indirectly engage in debt collection activities in New York City.

NEDAP is a nonprofit resource and advocacy center that provides legal, technical and policy support to community groups and individuals in New York City's low income neighborhoods and communities of color. Founded in 1995, NEDAP promotes economic justice and works to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. NEDAP operates the NYC Financial Justice Hotline, which provides legal information and referrals to low-income New York City residents. We have helped thousands of consumers since launching the Hotline in September 2005. The majority of our callers are seeking assistance with debt collection matters, particularly debt buyer and creditor lawsuits.

NEDAP agrees with and endorses the analysis and conclusions of the New York City Bar Association in support of this legislation. Claudia Wilner, NEDAP's Senior Staff Attorney, is a member of the Bar Association's Civil Court Committee.

In addition, we wish to share some of our own observations with regard to debt buyers, particularly unlicensed debt buyers, and the manner in which these entities abuse our civil courts and take advantage of low income New Yorkers.

In 2008, NEDAP's Hotline staff assisted 477 people who had been sued in the NYC Civil court. Within this group, 52% of clients were sued by debt buyers, and 40% of those cases were brought by unlicensed debt buyers.

Our reviews of recent annual reports filed by publicly traded debt buying companies, including Encore Capital Group, Inc. (one of the largest debt buyers nationally) show significant annual increases in the percentage of operational funds devoted to litigation. That is no surprise to us. A lawsuit allows a debt collector to turn a seemingly uncollectible debt into a powerful judgment that it can use to freeze a person's bank account or garnish her wages. Judgments are collectible for twenty years, counted from the date of last payment, so the statute of limitations on a judgment

almost never expires. And judgments appear on credit reports, where they harm consumers in myriad ways.

Debt buyers file lawsuits en masse to collect on debts cheaply. Larger debt buyers file tens of thousands of cases against New York City residents every year. Debt buyers rarely effect proper service of these lawsuits, and the majority of defendants never get any notice that they have been sued. Without notice, defendants do not come to court to defend themselves. Thus, it is no surprise that 90% of consumer credit filings result in default judgments. These judgments harm low income New Yorkers, damaging their credit reports, making it difficult for them to find housing and employment, and rendering it impossible for them to build the savings necessary to withstand economic shocks.

At the same time, many of these cases have no merit because the debt is not actually owed by the consumer, or the statute of limitations has passed, or the debt has been previously discharged in bankruptcy. If challenged, debt buyers are often unable to come up with any admissible evidence that the defendant owes any money at all. Even in cases where the consumer does owe some money, debt buyers often sue for grossly inflated amounts.

For example, our client Lillian M. was sued in 2007 by Palisades Collection, then an unlicensed debt buyer. The underlying debt related to an unauthorized charge that appeared on Lillian's credit card, which the original creditor refused to remove. By the time Palisades Collection sued Lillian in 2007, the original creditor was out of business, and the statute of limitations had expired on the debt. Lillian went to court in response to the lawsuit and proved that the debt was past the statute of limitations. The case was discontinued. Recently, Palisades Collection hired a different law firm to sue Lillian again **for the same debt**. Even though Lillian already proved two years ago that this debt is uncollectible, she has to appear in court to defend herself all over again. In this second case, Palisades is taking the position that it is a passive debt buyer that does not require a license from the Department of Consumer Affairs.

Similarly, our client Peter P. was sued by Palisades Acquisition V, an unlicensed debt buyer, in 2006. Peter appeared in court and demanded that Palisades come forward with proof of the debt. Palisades was given many chances, but it was ultimately unable to provide any evidence in support of its claim, and the case against Peter was dismissed with prejudice, meaning that it could never be brought again. One year later, Palisades Acquisition V, still an unlicensed debt buyer, hired a different law firm to sue Peter again **for the same debt**. Even though he had already won his case once, Peter had to appear in court to defend the lawsuit a second time.

Both Peter and Lillian are seniors who rely on exempt income – SSI and Public Assistance – as their sole source of income.

Peter and Lillian are not alone. We recently reviewed our files to see what our clients had to say about the lawsuits brought against them by unlicensed debt buyers. We found that nearly half of the unlicensed debt buyer cases in our records were brought by LR Credit and its affiliate companies. Of clients who were sued by LR Credit, 40% of the cases were clearly meritless because, according to the client, the account was fraudulently obtained, past the statute of limitations, already paid, or previously discharged in bankruptcy. (As a point of comparison, we found that clients could raise these defenses in 35% of cases brought by all debt buyers and only 18% of cases brought by original creditors.) With regard to service, 79% of clients sued by LR Credit reported that they were not properly served with a summons and complaint, although they did receive some notice of the lawsuit, and 60% reported that they never received any notice of the case at all.

Although these issues can be raised and addressed in individual court cases, that is not enough. More oversight is clearly needed. A licensing requirement would give the Department of Consumer

Affairs clear authority to investigate patterns and practices of lawsuit abuse and power to take action to protect NYC residents from abusive, frivolous lawsuits brought by unlicensed debt buyers. In addition, NYC residents would gain an accessible forum in which they could file complaints about abusive litigation practices. DCA could use its subpoena power to conduct investigations, and it could deny licenses to entities that engage in abusive tactics, thus preventing these entities from using our courts to collect debts from NYC residents.

For these reasons, and the reasons cited by the New York City Bar Association, NEDAP supports the proposed legislation to require licensing for all debt buyers. Thank you.