

SOUTH BROOKLYN LEGAL SERVICES

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January 8, 2010

Donald S. Clark, Secretary
Federal Trade Commission
Room H-135 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Debt Collection Roundtable – Comment, Project No. P094806

Dear Secretary Clark,

Thank you for inviting me to testify at the December 4, 2009, Debt Collection Roundtable. My comments focus on your questions concerning the garnishment of exempt money by debt collectors.

South Brooklyn Legal Services (SBLS) has considerable expertise in this area. SBLS is a not-for-profit that provides free civil legal services to over 5,000 low-income people each year. Since 2001, SBLS has helped hundreds of impoverished Social Security recipients whose bank accounts were frozen (i.e. garnished) by debt collectors. In court, SBLS constitutionally challenged laws that required a bank to garnish an account known to contain only exempt, direct deposit Social Security payments.¹ SBLS has sued debt collectors who used deception and guile to take exempt benefits.² SBLS also helped draft New York's Exempt Income Protection Act

¹ *Mayers v. N.Y. Cmty. Bancorp Inc.*, No. CV-03- 5837, 2005 WL 2105810.(E.D.N.Y. Aug. 31, 2005)(action later withdrawn following passage of the Exempt Income Protection Act.); *Huggins v. Pataki*, 2002 WL 1732804 (E.D.N.Y. 2002)(action dismissed, subsequent appeal to Second Circuit later withdrawn following death of plaintiff.)

² E.g. *Washington v. Gutman, Mintz*, 07 CIV. 4096 (EDNY 2007)(FDCPA claim against creditor who, over 22 months, restrained homeless woman's SSI account three times for the same debt.); *Miceli v. Gold*, 08 CV 2794 (SDNY 2008)(FDCPA claim against attorney who refused to return electronically deposited Social Security and child support payments taken from disabled secretary's bank account.); *Evans v. Van Ru*, 09 CV 7025 (SDNY 2009)(FDCPA claim against student loan collector for threatening to garnish SSI payments (which is prohibited) unless impoverished debtor entered into a payment plan); *O'Brien v. Hanson*, 09-CV-0629 (EDNY 2009)(constitutional challenge to child support notice that fails to disclose policy of

(EIPA), which automatically exempts the first \$1,740 of any bank account hit with a garnishment order (or the first \$2,500 if the account receives electronically exempt payments such as Social Security.)

- **TO WHAT EXTENT DO COLLECTORS ATTEMPT TO GARNISH
FEDERALLY-EXEMPT FUNDS IN CONSUMERS' BANK ACCOUNTS?**

Bank Freezes of Exempt Payments Are Frequent

While there are no statistics, experts believe that well over 1 million Social Security and Supplemental Security Income (SSI) recipients each year have their exempt payments frozen by creditors.³ Indeed, the problem has been well documented in Alabama, Florida, Georgia, Illinois, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New York, Oregon, Pennsylvania, and Virginia.⁴ And State courts and lawmakers have sought with mixed results to protect Social Security from creditors in Alabama, Connecticut, the District of Columbia, Georgia, Illinois, Michigan, Maryland, Nebraska, New York, Pennsylvania, and Virginia.⁵

unfreezing bank account of Social Security recipient who lives in poverty.)

³ Prepared statement of Margot Saunders, National Consumer Law Center, *Protecting Social Security Benefits From Predatory Lending and Other Harmful Financial Institution Practices*, Hearing before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives (June 24, 2008) available at http://www.consumerlaw.org/issues/debt_collection/content/June08HouseTestimony.pdf; If one assumes these recipients carry and default on credit cards at the same rate as the general population (in October 2009, 10% of all credit cards were in default), then almost 6 million of the country's 57 million Social Security recipients could have had judgments taken against them just in the last year. Because some individuals default on multiple credit cards, I have reduced the estimate to 1 million. Moody's reported a charge-off rate of 10.04% in October 2009, down from an all time high of 11.49% in August 2009. <http://www.reuters.com/article/bondsNews/idUSN2326386520091123>

⁴ *Supra*, note 3. See also, Schultz, *The Debt Collector vs. The Widow, Viola Sue Kell Thought Her Social Security Benefits Were Safe in the Bank. She Was Wrong*, Wall St. J., (April 28, 2007); Baribeau, *Simone Direct Deposit of Social Security Checks: Safe, Fast – and Disastrous. As Federal Agencies Push for Recipients to Use Direct Deposit, Consumer Advocates Warn of Risks*, The Christian Science Monitor, (March 14, 2007); Schultz, *Closing the Benefits Loophole*, Wall St. J., (May 30, 2009); Abdullah, *Social Security Payments Caught in Illegally Frozen Bank Accounts*, New America Media, (April 23, 2009.)

⁵ For successful measures, See Connecticut General Statutes 52- 367b, (amended 2002); Pennsylvania Civil Procedure Rule 3111.1 (Effective April 7, 2007)); District of

The causes of epidemic are three fold. First, Social Security recipients today are more indebted than ever before, and thus likely to default on their credit card bills that trigger debt collection. For example, older Americans now carry an average of \$6,000 in credit card debt as opposed to \$3,000 in 1992.⁶

Second, in 1991 most Social Security recipients receive their checks in the mail.⁷ A debt collector who seized a bank account in the 1990's was thus less likely to snare exempt payments. Today, almost all Social Security recipients today receive their checks electronically due to a federal mandate.⁸ Because garnishment orders in a number of states prospectively freeze all incoming deposits,⁹ freezing a bank account often captures subsequent Social Security payment needed for rent. This development gives a debt collector unprecedented leverage to coerce a payment plan even when the debtor's only income is exempt from debt collection.

Third, garnishing a bank account costs far less today than ever before. Desk-top publishing enables debt collectors to create in a single day (as opposed to several weeks) thousands of garnishment orders. And, as discussed below, creditors in New York can use electronic bank match programs to locate a debtor's bank account. Such a search takes seconds,

Columbia Code § 16-552 (amended 2008); Michigan Court Rule 3.101.(I)(6)(effective September 1, 2009); Alabama Unified Judicial System, Form C-21 Rev. 11/06 ("Process of Garnishment") (effective November 2006), Cook County, Illinois, Form CCM 0124 ("Citation to Discover Assets to a Third Party", Revised June 30, 2008). Judicial or legislative efforts to protect electronic Social Security deposits failed in Maryland, Virginia, and Nebraska.

⁶ Loonin and Renuart *The Life and Debt Cycle: the Growing Debt Burdens of Older Consumers*, 44 Harv. J. on Legis. 167 (2007).

⁷ The General Accounting Office, *Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain*, GAO-02-913, p. 10 (September, 2002)

⁸ 31 U.S.C. § 3332(a)(1); *Social Security Direct Deposit and Check Statistics*, December 2008. Available at <http://www.ssa.gov/deposit/GIS/data/Reports/T2StateSum.htm>. (86% of Social Security recipients receive their check by direct deposit.)

⁹ Some of the states that maintain a bank freeze prospectively to capture future deposits include: New York (N. Y. C.P.L.R. Sect. 5222(b)), Illinois (735 ILCS 5/2-1402(f)(1)) , Alabama, Unified Judicial System, Form C-21 Rev. 11/06; Pennsylvania (Pa.R.Civ.P. 3111); Georgia (Ga. Code Ann., § 18-4-62); and Michigan (*See Prepared statement of Margot Saunders, National Consumer Law Center, Protecting Social Security Benefits From Predatory Lending and Other Harmful Financial Institution Practices*, Hearing before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives p. 22 (June 24, 2008).

and can be done monthly at little to no cost.

New York City

Nowhere has the bank freeze problem been larger than New York City. From 2002 to 2007, over 2 million consumer credit card judgments were entered in a city with a population of 8 million.¹⁰ Many involved the City's 600,000 Social Security and SSI recipients who get direct deposit and have no income other than their monthly check.¹¹ Once a judgment is entered, a bank freeze is inevitable (or rather, was inevitable until the 2009 Exempt Income Protection Act.)

Under New York law, a creditor with a judgment can electronically match the data bases of banks against its list of judgment debtors.¹² This is known as "Blitzing The Banks."¹³ No debtor can hide from this electronic dragnet. For example, one creditor located a client's account with a few mouse clicks, searching the data bases of the usual suspects (Citibank, HSBC, Banco Popular), as well as such unknowns as First Niagara, The Bank of Smithtown, Nassau Educators Federal Credit Union and Atlantic Bank of New York. Not surprisingly, it found and restrained the client's account (which contained only direct deposit Social Security.)

And because conducting a search and restraining an account costs little, debt collectors do so repeatedly even against account holders who already proved their only income was exempt. For example, a homeless and disabled mother had her SSI payments frozen three times over a 22

¹⁰ Over 2,800,000 consumer law suits were filed in New York City between 2002 and 2007. MFY Legal Services, *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York* p. 3 (June 2008). 80% of these cases resulted in default judgments for the plaintiffs. The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* p. 18 (2007).

¹¹ 1.1 million New York City residents receive direct deposit Social Security or SSI. Social Security Administration, *New York Beneficiaries Supplemental Security Income Direct Deposit and Check Statistics* (November 2009) and Social Security Administration, *New York Beneficiaries Social Security Direct Deposit and Check Statistics* (November 2009). Of that number, 310,000 direct deposit SSI recipients live below the poverty line while another 287,000 Social Security recipients rely on Social Security for 90% of their income. See Fast Facts & Figures About Social Security, p. 7 (2009).

¹² N.Y. CPLR 5222(g); 5224(a)(4).

¹³ Lagnado, Lucette, *Cold-Case Files: Dunned for Old Bills, Poor Find Some Hospitals Never Forget*, Wall St.J. June 8, 2004.

month period for the same debt.¹⁴ Similarly, three debtors challenging the constitutionality of New York's garnishment laws had their bank accounts restrained multiple times by creditors.¹⁵

Many Creditors Won't Let Go of Exempt Money

What happens when a debtor claims to a creditor that his frozen bank account contains only Social Security? Over the last six year, I have represented more than 300 debtors whose Social Security has been snared by debt collectors. All of the creditors understandably require proof that the money in the account is exempt. Obtaining such proof and a release without going to court takes about two weeks and requires trips to the bank and local Social Security office, followed by faxes and phone calls to the creditor.

When I advocate for such an out-of-court release, about 70% of the creditors agree to release the account after reviewing the bank statements and argument faxed to them. The other 30% acknowledge the account contains exempt money, but refuse to lift the freeze unless the debtor enters into a payment plan or makes a substantial payment. Indeed, of the 35 different collection firms my office has dealt with, ten have refused to release the account unless I persuaded my client to surrender a portion of their exempt payments to them. Of those ten, three are among the largest debt collection firms in New York City, collectively filing over 100,000 law suits a year.¹⁶ And one of them, Cohen & Slamowitz, five times refused to release the completely exempt bank accounts of my clients, only relenting when threatened with FDCPA lawsuits.

So common (and illegal) is this pressure tactic, that I developed a form letter for other legal services lawyers to use.¹⁷ On occasion, even that letter does not work. Such was the case of Diane Miceli, a former legal secretary disabled by lupus who lost her child support and Social Security disability payments to a creditor. Only by going to court was I able to retrieve her money.¹⁸ While a Fair Debt Collection Practices Act suit was brought and settled against that

¹⁴ Washington v. Gutman, Mintz, 07 CIV. 4096 (EDNY 2008) (FDCPA claim against creditor for repeated restraints.)

¹⁵ *Mayers v. N.Y. Cmty. Bancorp Inc.*, No. CV-03- 5837, 2005 WL 2105810.(E.D.N.Y. Aug. 31, 2005)

¹⁶ The three firms, Cohen & Slamowitz, Rubin & Rothman, and Forster & Garbus. filed over 103,000 debt collection actions in 2007. MFY Legal Services, *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the Civil Court of the City of New York*, p. 4 (June 2008)

¹⁷ The form letter is attached as exhibit A.

¹⁸ *Lincoln Financial Services Inc., v. Miceli*, 17 Misc.3d 1109(A) (Nassau Ct Civ. Court 2007).

collector¹⁹, its deterrent effect was certainly limited by the meager statutory damage cap of \$1,000.

Needless to say, unrepresented Social Security recipients fare much worse when trying out-of-court to persuade debt collectors to release Social Security payments. Such was the case of Stephen F, an SSI recipient who had his bank account containing only \$53 in SSI frozen. Stephen F. called the debt collection lawyer and explained he was on SSI, that his next check was due in a few days and that he had to pay his rent. The lawyer laughed at him and hung up. Similarly, although Deana J sent a Social Security award letter and numerous banks statements to a collection lawyer, the lawyer ignored her for three weeks until I interceded.

While a consumer with a frozen bank account can always ask a judge to intervene, doing so is time consuming and difficult, especially for the elderly and disabled. For example, 84 year-old, wheelchair-bound Edna Croquette had to enlist her son to drive her to a Brooklyn courthouse to unfreeze her account. After spending almost five hours at the courthouse, Ms. Croquette was ordered to return in two weeks for an exemption hearing. In the meantime, the account remained frozen. The creditor eventually agreed to lift the restraint (the day before the hearing). However, as in all cases, Ms. Croquette had to wait for the bank to process the release. This usually takes ten days, but in her case took three weeks due to bank errors.

- **WHAT SHOULD THE FEDERAL GOVERNMENT, INCLUDING THE FEDERAL BANK REGULATORY AGENCIES, DO TO ADDRESS PROBLEMS REGARDING THE FREEZING, LEVY, OR ATTEMPTED GARNISHMENT OF EXEMPT FUNDS IN BANK ACCOUNTS?**

The U.S. Treasury is authorized to issue regulations that ensure Direct Deposit is safe and used by federal beneficiaries. 31 U.S.C. § 3332(i)(1). Pursuant to this authority, the U.S. Treasury should propose a regulation similar to New York's EIPA that shields from garnishment a set dollar amount of any account receiving exempt, direct deposit payments. The exemption should apply even when the account is commingled with non-exempt funds.

Since SSI recipients are allowed to keep \$2,000 in assets as a safety-net, the set-amount floor should be above \$2,000. Otherwise, many SSI recipients will still need to turn to the courts for protection. Indeed, advocates in Connecticut have complained that its automatic exemption of \$1,000 is so low that many SSI and Social Security recipients still must go to court to protect their exempt payments. Pegging the set-amount to a multiple of at least twice the average Social Security payment (currently \$1,060) will exceed the SSI asset limit and enable the automatic exemption floor to rise with inflation.

Another important feature of a Treasury regulation should be that any garnishment apply only to the balance exceeding the automatic exemption *at the time of the garnishment*. This is

¹⁹ *Miceli v. Gold*, 08 CV 2794 (SDNY 2008).

known as the “snap shot” approach and would work as follows. If the automatic exemption was twice the average Social Security payment ($\$1,060 \times 2 = \$2,120$), and a restraining notice was received against a bank account with a balance of \$2,121, then only \$1.00 would be garnished. Any new deposits, such as an electronic Social Security payment, would be available to the account holder. Also, any checks or automatic payments presented for redemption would be applied against the available \$2,120 (thus diminishing the possibility of bounced checks and bounce check fees.) This snap-shot approach should preempt state laws that require banks to capture future deposits made into the garnished account.²⁰

Some banks maintain that they cannot differentiate a non-exempt electronic Social Security employee payment (which I assume is biweekly) from an exempt Social Security check (which is monthly.) I think such an argument is in bad faith. Banks statements are required to state in plain English the source of every electronic payment and they do so.²¹ Many small and large banks, such as Citibank, HSBC, Banco Popular, and the New York Community Bank have easily recognized exempt, direct deposit payments.²² However, to lay this issue to rest, Treasury should create a code (legible to a human as well as a computer) that identifies federal exempt payments.

With respect to fees, banks should not be allowed to charge any “legal processing” fee if the account is below the automatic exemption floor.²³ When the balance is above the bright line, the bank will of course be required to freeze the balance above that amount. This may trigger bounced check fees. If the customer can later establish that the frozen balance was exempt, the bank must reverse all bounced check fees and legal processing fees triggered by the restraint. Even when the fees cannot be challenged because the account contained non-exempt money, the bank should not be able to collect the bounced fees out of the Social Security moneys.²⁴ Rather, it should only be able to take those fees out of non-exempt moneys.

Finally, child support and federal garnishment orders, which normally pierce the 42 U.S.C. 407(a) exemption, should be treated no differently than other creditors’ garnishment

²⁰ For a non-exhaustive list of states that require banks to garnish future deposits, See *supra* note 9.

²¹ 12 C.F.R. § 205.9(b)(1)(v). See also copies of bank statements and computer screen shots of various banks, attached as Exhibit B.

²² Internal policies of Citibank, New York Community Bank, as well as letters from Astoria Federal and HSBC stating they told creditors the account contained only direct deposit payments are attached as Exh. C.

²³ See discussion *infra* at note 34.

²⁴ See discussion *infra* at note 35.

orders.²⁵ This way, banks will have a simple, uniform rule that applies to all types of garnishments. While a bank can differentiate between consumer creditors and child support or federal creditors by reading the caption of the garnishment order, banks will process garnishment orders faster if they are looking only for two variables (an exempt, direct deposit code and the account balance.)

- **WHAT APPROACHES HAVE STATES OR LOCALITIES TAKEN TO ADDRESS THE GARNISHMENT OF EXEMPT FUNDS AND THE CHARGING OF FEES TO CONSUMERS? HAVE THESE APPROACHES BEEN SUCCESSFUL?**

Connecticut and California protect the first \$1,000 and \$2,450 of any account that receive direct deposit Social Security or SSI payments, regardless of whether the account is commingled with non-exempt money.²⁶ These laws have worked exceedingly well.

Following their model, New York enacted the Exempt Income Protection Act (effective January 1, 2009). The EIPA protects the first \$2,500 of any account that received any direct deposit exempt payments, such as Social Security.²⁷ The look back period is 45 days and it does not matter if the account is commingled.²⁸ For those who do not receive direct deposit, the first \$1,740 of any account is protected as well, even if the account contains only non-exempt deposits.²⁹ If the balance is less than \$1,740 (or \$2,500 for electronic deposit of exempt funds) the restraint is void and no fee may be charged for processing the voided restraint. The EIPA also includes a streamlined exemption claim process (29 days at most from start to finish) when exempt money above the \$2,500 (or \$1,740 floor) is frozen.³⁰

²⁵ See e.g. 42 U.S.C. § 659.

²⁶ Connecticut General Statutes § 52- 367b; Cal Code Civ. Proc. § 704.080.

²⁷ N.Y. C.P.L.R. § 5222(h).

²⁸ N.Y. C.P.L.R. § 5222(h).

²⁹ N.Y. C.P.L.R. § 5222(i). The \$1,716 floor is the equivalent of two month's minimum wage, and reflects New York's long-standing wage exemption laws.

³⁰ Within 20 days of the restraint, the debtor must file an "Exemption Claim Form" with both the bank and creditor's attorney to contest a bank freeze. N.Y. C.P.L.R. § 5222-a(c)(1). Unless the creditor files objections with the court and bank within eight days, the bank must release the account within eight days of receiving the exemption claim. N.Y. C.P.L.R. § 5222-a(c)(3). If the creditor objects, the restraint stays in effect until a judge issues an order following a hearing. N.Y. C.P.L.R. § 5222-a(d). And the judge must act quickly by scheduling a hearing within seven days and issuing a decision within 21 days of the creditor's objection. N.Y. C.P.L.R. § 5222-a(d) and (e). To deter meritless objections by creditors, a debtor may seek

The EIPA has been a huge success. Bank freeze calls are down to trickle at legal services offices as well as the New York City Bar Association's legal referral service.³¹ The calls we do receive involve debtors with account balances exceeding the statutory floor. In such situations, five common problems emerge that a Treasury regulation, as outlined above, should address.

- **The Ongoing vs. Snap-Shot Garnishment Order.** A garnishment order in New York, as in other states, extends prospectively to capture future deposits received by the bank after the garnishment is served.³² Under EIPA, an account with \$2,501 will have \$1 and any subsequent deposits locked up for a year. Because the Social Security Administration needs at least two weeks notice to convert an electronic payment to a paper check, this means the elderly or disabled account holder will lose access to next month's check unless he or she immediately files an exemption claim. Often, the account holder only realizes the problem after it's too late. Any proposed Treasury regulation must restrain only the balance above the statutory floor, and not future deposits.
- **Banks Only Allow Teller Withdrawals.** New York's prospective-restraint rule undercuts EIPA in another way. At least one bank, Chase, suspends all activity on an account when processing a restraint against an account with a balance above the EIPA automatic exemption. Chase does this to capture future deposits, as required in New York. To comply with EIPA, Chase allows the account holder to withdraw cash at a teller. However, Chase does a terrible job of informing the account holder of this right, burying the teller withdrawal provision in a two page letter of legalese.³³ As a result, some Chase account holders are no better off than before EIPA and must either negotiate a release with the creditor or get legal help. A Treasury regulation that adopts the snap-shot approach would enable Chase to abandon this policy.
- **Bank Generate Fees When a Portion of the Account Is Restrained.** Debtors in New York with balances above the statutory limits incur an inordinate number of bounced

attorney's fees, actual damages, and statutory damages (up to \$1,000) when a creditor objects in bad faith to an exemption claim. N.Y. C.P.L.R. § 5222-a(g).

³¹ On December 3, 2009, I spoke with Stacey Rink, a Legal Referral Service Counselor, at the New York City Bar Association who reported one call every two weeks regarding a bank restraint problem. In contrast, Ms. Rink reported on May 22, 2007 that her office received 42 bank freeze calls during the previous week, which she characterized as "an unusually low number" as compared to her experience in the last one and one-half years.

³² N.Y. C.P.L.R. § 5222(b). For a non-exhaustive list of states that require banks to garnish future deposits, *See supra* note 9.

³³ A copy of the Chase notice is attached as Exh. D.

check fees. For example, Chase's practice of "suspending" all account activity when the balance is \$1.00 above the EIPA \$2,500-floor means that checks and automatic payments that should have cleared now bounce triggering fees. Debtors who bank elsewhere encounter this same problem once their statutory exempt balance is exhausted. A snapshot approach would prevent this and is warranted since such fees make direct deposit unreasonably costly in violation of 31 U.S.C. § 3332(i)(2)(a).

- **Bank Fees Charged Even When Restraint Is Void:** The bank account contract a consumer signs allows the bank to charge a fee, typically \$100.00, for processing "legal papers." The EIPA prohibits such fee charging when the account balance is below the statutory floor (\$2,500 or \$1,740) and the restraining notice is thus voided. One New York bank, the Municipal Credit Union, is still charging its customary fee (\$60) under the guise that the restraining notice is accompanied by an information subpoena, and EIPA only bars fee takings involving restraining notices.³⁴ Treasury must issue a regulation that prevents any taking of a "legal fee" when the account balance is below the statutory floor and the garnishment order is void. Treasury is empowered under 31 U.S.C. § 3332(i)(2)(a) to prohibit banks from charging unreasonable fees that discourage use of direct deposit. 20 million Social Security and SSI recipients rely on their monthly checks for 90% or more of their income.³⁵ Moreover, the average Social Security payment is \$1,062.³⁶ Charging \$100 (one tenth of a recipient's income) for processing an information subpoena, garnishment order or other legal paper against an account that is exempt from debt collection is unreasonable.
- **Debtors Who Successful Challenge Restraints Still Lose Social Security Payments in Bank Fees.** On occasion, consumers have complained that they prevailed in their exemption claim, but the bank will not return their bank fees. This was a common problem pre-EIPA, and less so today because few consumers have exclusively exempt money exceeding the \$2,500 floor. Nevertheless, a Treasury regulation needs to prohibit banks from taking Social Security payments to recover legal processing fees and overdrafts triggered by the restraint of exclusively exempt payments. In *Lopez v.*

³⁴ See October 20, 2009 letter from the Municipal Credit Union, attached as Exh. E.

³⁵ The 57 million Americans receive SSI and Social Security. Social Security Administration, *Monthly Statistical Snapshot*, (October 2009.)
http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/ 35% of Social Security recipients rely on their monthly checks for 90% of their income. Social Security Administration, *Fast Facts & Figures About Social Security*, p. 10, (2009), available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/

³⁶ Social Security Administration, *Monthly Statistical Snapshot*, (October 2009.)
http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/

Washington Mutual,³⁷ a bank was allowed to take Social Security to recover its fee without running afoul of the exemption provision. However, *Lopez* involved a completely different situation than a bank garnishment. *Lopez* account holders triggered overdraft fees through their own action -- using ATMs and Debit Cards when their balances were low. Some of the *Lopez* plaintiffs even said they enjoyed the convenience of being able to obtain cash when they were insolvent. Here, the fees are triggered by third party actions, not the account holder's. Any bank fee triggered by the garnishment is akin to an independent debt, like a car loan, owed to a bank. Courts have repeatedly held that banks cannot take Social Security to satisfy such debts. *Tom v. First American Credit Union*, 151 F.3d 1289 (10th Cir. 1998); *Hambrick v. First Security Bank*, 336 F.Supp.2d 890 (E.D.Ark. 2004.)

- **WHAT ACTIONS SHOULD LAWMAKERS, THE COURTS, THE FTC, THE INDUSTRY, OR OTHERS TAKE TO ADDRESS GARNISHMENT OF BANK ACCOUNTS?**

Congress could follow New York's example of setting a bright line test that exempts a set-amount of money in an account the receives direct deposit. However, congressional hearings in 2007 and 2008³⁸ have not produced any meaningful action by either the Senate or House.

Court action is time consuming and provides piecemeal relief. For example, the *Mayers* constitutional challenge to New York's garnishment law lasted five years without resolution. Had *Mayers* prevailed, some direct deposit recipients would still have not been protected from garnishment if their account was commingled. Commingling is quite common.³⁹

³⁷ *Lopez v. Wash. Mut. Bank, Inc.*, 284 F.3d 990 (9th Cir. 2002), reh'g granted and decision amended 311 F.3d 928 (9th Cir. 2002).

³⁸ The Committee on Finance, U.S. Senate held a hearing on Sept. 20, 2007 entitled *Frozen Out: A Review of Bank Treatment of Social Security Benefits*. The Committee on Ways and Means held a hearing on June 24, 2008 entitled *Protecting Social Security Beneficiaries From Predatory Lending and Other Harmful Financial Institution Practices*.

³⁹ See Bank Of America, comment on Notice of Proposed Guidance on Garnishment of Exempt Federal Benefit Funds, OCC:-2007-0015(dated November 27, 2007)(estimating 92% of its 7 million direct deposit Social Security and SSI recipients on occasion deposit non-exempt money into the account.) However, my experience is that in most cases, commingled money has long been withdrawn by the time a garnishment order is served, and thus the account is entirely exempt. To determine this, one has to apply a state's controlling accounting rule. New York's rule, until EIPA, was the first in, first out rule. *Lincoln Financial Services, Inc., v. Miceli*, 17

State laws that void garnishment orders when the account contains only direct deposit Social Security (such as in Illinois, Pennsylvania, Arizona, and for a limited time, Virginia) have proven of little value. Banks ignore such language under the guise that without a bright line rule, it's too difficult to determine if an account contains only exempt money.⁴⁰

The California, Connecticut and now New York solutions are effective, but only for consumers who live in those states. Treasury has the authority to solve the problem for everyone. Until it does so, electronic banking will remain unsafe for millions of Social Security recipients.

Sincerely

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Misc.3d 1109(A)(Nassau Ct Civ. Court 2007), 2007 WL 2917242. The EIPA adopted the more consumer friendly, intermediate balance rule (also followed in California) which assumes any withdrawal from a commingled account is first applied against the non-exempt moneys. N.Y. C.P.L.R. § 5222-a(c)(4).

⁴⁰ See e.g. Kuehner-Herbert *Who Determines Whether A Deposit Can Be Garnished?*, American Banker, (December 15, 2006.)(describing failed attempt in Virginia to require banks to review bank records for direct deposit of exempt payments before honoring restraint.) Similarly, garnishment statute in Illinois and Arizona have always allowed banks to protect exempt deposits from creditors. 735 Illinois Compiled Statutes § 5/2-1402(f)(1) and Arizona Revised Statutes § 12-1578. However, few banks are willing to do so due to the problem of commingling.

Exhibit A

**Use this letter when creditor refuses to lift
the restraint even though the account
presently contains only SSI/SSD.**

SOUTH BROOKLYN LEGAL SERVICES

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May 26, 2005

Sharrin & Lipshy

Attn: Eric Beck

Re: T N
SS# 000-00-0000
North Fork Acc# XXXXXXXXX
Creditor's Index # XXXXX

Dear Mr. Beck,

I appreciate your calling me today to discuss lifting the restraint. Pursuant to our conversation, I would like to point out that it is well recognized that money deposited into an account does not remain there indefinitely, especially when the account balance goes into the negative range. This is known as the first in first out rule of banking.¹

Thus, while it is true that the deposits of \$100 and \$260 on 4/18 and 4/12 may have been

¹ 80 NY Jur NEGOTIABLE INSTRUMENTS AND OTHER COMMERCIAL PAPER § 243; I-T-E Imperial Corporation-Empire Div. v. Bankers Trust Co., 73 A.D.2d 861 (1st Dep't 1980), *aff'd*, 51 N.Y.2d 811 (New York 1980) ("The rule in New York appears to be . . . a rule of first in, first out . . . so that the earliest withdrawal is deemed applicable to the earliest deposit.")

non-exempt moneys collectible, those moneys were withdrawn on 4/20/05 when the bank honored the debtor's check for \$450.00, bringing her account into the negative \$16.60 range. Thereafter, while you issued the restraining notice on 4/18/05, North Fork did not freeze the account until 4/21/05. At that time, the account had no money in it, and in fact was into the negative even more (\$-47.60.) The only deposit after that was SSI by electronic payment. Thus, the only money restrained in the account is exempt SSI payments.

While it is true that you can make the debtor go to court to get this restraint lifted, it also is true that there is no factual issue of proof. Accordingly, should I have to go to court to seek an order to show cause, I will also have to consider a cross claim for abuse of process. An element of an abuse of process claim is that a legitimate process (in this case restraining a bank account for purposes of collecting non-exempt money) is "perverted . . . by seeking some collateral advantage to the plaintiff outside the legitimate ends of the process." Tsafatinos v. Ward; 676 N.Y.S.2d 748 (Civ. Court Kings County, 1998.) . Here, holding the debtor's SSI to extract payments of non-exempt money from another source violates NY CPLR 5222 and 42 USCA 407(a). I'm sure it also violates fair debt collection laws as well.

Please lift the restraint.

Sincerely,

Johnson M. Tyler
SSI/Disability Rights Unit Director
718-237-5548
Johnsont@sbils.org

Exhibit B

HIS 07/28/06 SV 500319785
 RANGE 01/01/06 THRU 07/28/06
 DV-DT TRCD

		AMOUNT	BALANCE
063006	ID@	.67	595.31
062306	DWBS	150.00	594.64
	LEGAL PROCESS FEE		
062106	CC5	210.00	744.64
030406	CC5	50.00	744.64
042806	WDO	50.00	744.64
041906	WDO	50.00	794.64
041906	CC5	50.00	844.64
040506	WDO	200.00	844.64
033106	ID@	.91	1044.64
032906	CC5	35.00	1043.73
032906	WDO	15.00	1043.73
032306	CC5	50.00	1058.73
030206	WDO	200.00	1058.73
030106	DDBS	229.00	1258.73
	1199 NATIONAL PE PENSION		
020706	WDO	100.00	1029.73
020106	DDBS	229.00	1129.73
	1199 NATIONAL PE PENSION		
013106	WDO	100.00	900.73
012406	WDO	70.00	1000.73
012006	CC5	50.00	1070.73
011106	WDO	100.00	1070.73
010506	WD7	1000.00	1170.73
010506	DP5	854.29	2170.73
010306	DDBS	224.00	1316.44
	1199 NATIONAL PE PENSION		

APPLE BANK FOR SAVINGS
 4950 BROADWAY
 NEW YORK, NY 10034

[Handwritten signature]



Transaction Journal

REG. CHK.

BROOKLYN, NY 11223-4705

<u>Date</u>	<u>Description</u>	<u>Credit Amount</u>	<u>Debit Amount</u>	<u>Balance</u>
08/18/2006	Debit Purchase MET FOODS SMC BROOKLYN NY, 0622900CD8901		\$16.90	\$54.94
08/16/2006	Check #782		\$34.00	\$71.84
	Check #782,			
08/15/2006	Check #791		\$25.00	\$105.84
	Check #791,			
08/14/2006	Cash withdrawal Got Cash CBC Br#: 00058 TID:, 1501 KINGS HWAY,BROOKLYN,NY		\$60.00	\$130.84
08/14/2006	Cash withdrawal Got Cash CBC Br#: 00058 TID:, 1501 KINGS HWAY,BROOKLYN,NY		\$100.00	\$190.84
08/11/2006	Check #790		\$211.29	\$290.84
	Check #790,			
08/09/2006	Wire/misc credit SOCIAL SECURITY FOR 00000000	\$468.00		\$502.13
08/08/2006	Check #785		\$87.41	\$34.13
	Check #785,			
08/08/2006	Check #788		\$76.37	\$121.54
	Check #788,			
08/08/2006	Preauth debit HOME DEPOT/EXPO CHECK PYMT. 0789 00000000		\$10.00	\$197.91
08/08/2006	Preauth debit VERIZON ARC CHECK PYMT 0783, 00000000		\$36.53	\$207.91
08/08/2006	Preauth debit LINENS N THINGS CHECKPYMT 0784, 00000000		\$10.00	\$244.44
08/07/2006	Check #786		\$77.81	\$254.44
	Check #786,			
08/07/2006	Check #787		\$15.00	\$332.25
	Check #787,			
08/01/2006	Wire/misc credit LOCAL 1181 PENS1 PENSION, 00000000	\$307.00		\$347.25
07/26/2006	Check #776		\$15.00	\$40.25
	Check #776,			
07/18/2006	Check #780		\$211.29	\$55.25
	Check #780,			

Regular Checking
83180878

Beginning Balance: \$334.58
Ending Balance: \$347.25

Date	Description	Amount Subtracted	Amount Added	Balance
7/05	Fee for Non-Citibank ATM Use	3.00		
7/05	Debit Card Purchase on 07/04 [*] KEY FOOD #1422 SAS BROOKLYN NY 09184	48.83		284.95
7/07	Check # 773	77.81		207.14
7/10	Authorized Transfer VERIZON ARG CHECK PYMT 0775	38.40		
7/10	Cash Withdrawal at CBC 0030783 3830 NOSTRAND AVE, BROOKLYN, NY	40.00		
7/10	Check # 774	15.00		113.74
7/11	Point of Sale Purchase 315 KINGS HIGHWAY BROOKLYN NY 02154	41.02		72.72
7/12	Authorized Transfer SOCIAL SECURITY FOR		488.00	540.72
7/17	Authorized Transfer	50.00		
7/17	Cash Withdrawal on 07/16 [*] at CBC 0030783 3830 NOSTRAND AVE, BROOKLYN, NY	100.00		
7/17	Check # 779	34.15		356.57
7/18	Authorized Transfer WENNER CREDITCARD CHECK PYMT 781	40.00		
7/18	Debit Card Purchase SILVER STAR 8818 BROOKLYN NY 06188	31.03		
7/18	Check # 780	211.29		55.25
7/18	Check # 777	19.00		40.25
7/26	Check # 778	15.00		25.25
8/01	Authorized Transfer LOCAL 1181 PENSION		307.00	347.25
	Total Subtracted/Added	782.33	775.00	

^{*} Transactions made on weekends, bank holidays or after bank business hours are not reflected in your account until the next business day.

Checks Paid											
Check	Date	Amount	Check	Date	Amount	Check	Date	Amount	Check	Date	Amount
773	7/07	77.81	778*	7/28	15.00	779*	7/17	34.15	780	7/18	211.29
774	7/10	15.00	777	7/18	19.00						

*Indicates gap in check number sequence

ThankYou Redemptions Network SM	
ThankYou Points from Citibank relationship	50
ThankYou Points from debit card purchases	51
ThankYou Points forwarded to ThankYou Network	101

This summary only reflects activity linked to the Citibank checking account enrolled in the ThankYou Redemptions Network. Please refer to the ThankYou Terms & Conditions provided upon enrollment of your Citibank Checking account for important details.

Commerce
**History for
Account Number**
From 2/ 6/2006 to 3/ 8/2006

Starting Balance:	\$515.61
-5 Checks:	-\$772.58
-13 Withdrawals:	-\$928.83
3 Deposits:	\$1,408.33
Ending Balance:	\$222.53

Date	Description	Amount	Balance
2/ 6/2006	EFT/ATM Withdrawal - WTHDRL DDA 4216 02/06 10:281504 THIRD AVE NEW YORK NY.	-\$40.00	\$475.61
2/ 6/2006	ACH Withdrawal - AC-HOUSEHOLDCRSVCS2-CHECKPAYMT CK-000000000000138.	-\$75.00	\$400.61
2/ 6/2006	ACH Withdrawal - AC-Merrick Bank -CCARD PMT CK-000000000000139.	-\$80.00	\$320.61
2/ 6/2006	ACH Withdrawal - AC-FST NATL MARIN -PAYMENT CK-000000000000140.	-\$113.43	\$207.18
2/ 6/2006	Check 137	-\$75.00	\$132.18
2/ 7/2006	EFT/ATM Withdrawal - WTHDRL DDA 2392 02/07 14:202610 8th Ave New York NY.	-\$40.99	\$91.19
2/ 7/2006	Check 143	-\$89.51	\$1.68
3/ 1/2006	ACH Deposit - AC-US TREASURY 312 -CIVIL SERV.	\$1,117.29	\$1,118.97
3/ 1/2006	EFT/ATM Withdrawal - WTHDRL DDA 5471 03/01 13:06308 W 125TH ST #1 HARLEM NY.	-\$200.00	\$918.97
3/ 1/2006	POS Debit - POS DEBIT 03/01 EXXONMOBIL POS NEW YORK NY.	-\$31.15	\$887.82
3/ 1/2006	POS Debit - POS DEBIT 03/01 SOU SHOP RITE #275 5605 YONKERS NY.	-\$49.22	\$838.60
3/ 3/2006	ACH Deposit - AC-US TREASURY 303 -SOC SEC.	\$291.00	\$1,129.60
3/ 3/2006	CheckCard Debit - CKCD DEBIT 03/01 BRAND'S WINE & LIQ NEW YORK NY.	-\$39.00	\$1,090.60
3/ 3/2006	Check 146	-\$488.23	\$602.37
3/ 6/2006	ACH Withdrawal - AC-Merrick Bank -CCARD PMT CK-000000000000150.	-\$70.00	\$532.37
3/ 6/2006	ACH Withdrawal - AC-HSBC CREDIT SVC2-CHECKPAYMT CK-000000000000149.	-\$70.00	\$462.37
3/ 6/2006	POS Debit - POS DEBIT 03/03 SOU SHOP RITE #275 1318 YONKERS NY.	-\$70.04	\$392.33

October 18 - November 15, 2005
Page 1 of 4

Chase Statement

Customer Service

ServiceLine: 935-9935 from 212,
516, 716, 718 & 914 area codes.
Otherwise, call 1-800-935-9935.
Hearing Impaired call 1-800-CHASETD
Access Accounts, Pay Bills, Transfer Money
Fast, Easy, Free with Chase Online SM
www.chase.com/bank

Primary Account Number: 039-300587
Number of Checks Enclosed: 0



Fee Schedule Changes Effective 1/9/2006

Insufficient Funds Service Fee will be \$32 per occurrence.
Check Coverage Transfer Fee* will be \$10 for each transfer.
Overdraft Protection Transfer Fee* will be \$10 per transfer from a Chase credit card.

*Waived for the following accounts: Select Banking(R) Checking, Select Banking(R)
Checking with Interest, Chase Premier Platinum CheckingSM and Chase Premier Platinum
Checking with InterestSM.

OVERVIEW

Deposit Accounts - JPMorgan Chase Bank, N.A. ("Bank")

Checking	Account Number	Opening Balance	Ending Balance
Chase Free Checking			
Total		\$ 95.88	\$ 3.78
		\$ 95.88	\$ 3.78

Credit Accounts

Description	Account Number	As of	Available Credit	Balance Owed
Overdraft Line Of Credit	**** 1480	11/15	\$ 164.00	\$ 836.00
Total			\$ 164.00	\$ 836.00

THIS ENDS YOUR STATEMENT OVERVIEW

Chase Free Checking

Summary	Opening Balance	Average Balance
	\$ 95.88	
Deposits and Credits	\$ 2,336.89	\$ 343.48
Checks, Withdrawals and Debits	\$ 2,428.99	
Ending Balance	\$ 3.78	

Deposits and Credits

Date	Description	Amount
10/26	US Treasury 303 Soc Sec 102605	
11/01	1199 National Pe Pension 110105	\$ 1,133.00
11/08	Transfer From-Overdraft Line Of CR # **** 1480	\$ 868.67
11/09	Transfer From-Overdraft Line Of CR # **** 1480	\$ 148.30
11/10	Transfer From-Overdraft Line Of CR # **** 1480	\$ 52.02
		\$ 149.00

You will receive detailed statements when applicable for Retirement, Credit, and Securities accounts.

Wachovia Bank, N.A.
NY4331
66 9th Avenue
New York, NY 10011
Tel 646 336-0302
Fax 646 336-0308

Wachovia

1ST PRIOR CYCLE ACTIVITY

ACCT NBR
PROD DESC

STMT DATE 09/27/2005
STMT AMT

157.00-

08/26/2005

DAILY BAL

176.55-

08/29/2005

30.00- NSF FEE FOR ITEM
AUTOMATED DEBIT

001560165465,
PROGRESSENGYCARO
DAILY BAL

\$40.66
DRAFTS
206.55-

09/02/2005
3031036030

30.00- NSF FEE FOR ITEM
AUTOMATED DEBIT

002133666692,
TIME WARNER CABL
DAILY BAL

\$73.65
BANKDRAFT
236.55-

09/06/2005

1,041.00+

AUTOMATED CREDIT US TREASURY 303
CO. ID.

MISC. 242300086A SSA

DAILY BAL

SOC SEC

804.45+

09/07/2005
9110000001

401.40-

WITHDRAWAL - WAL-MART

WALMART-#2256 HENDERSON

09/02
NC 4027P006172

2.00-

MISCELLANEOUS FEE

309.00-

ATM NON-WACHOVIA WITHDRAWALS

WITHDRAWAL - BROOKLYN HOME DEPOT

550 HAMILTON AVE BROOKLYN

09/02
NY 2022W003143

DAILY BAL

101.05+

47.90-

AUTOMATED DEBIT METLIFE

CO. ID. 9110000001 050907 PPD

PAYMENT

30.00-

MISC 10000515659
NSF FEE FOR ITEM 001526069387,
AUTOMATED DEBIT AARP HEALTH CARE PREMIUM

\$161.00

DAILY BAL

23.15+

09/08/2005

687.00+

DIRECT MAIL - LOCAL 3127 PENSION FUND

30.00-

NSF FEE FOR ITEM 001526069387,
AUTOMATED DEBIT AARP HEALTH CARE PREMIUM

\$161.00

*** INCLUDES TRANSACTIONS POSTED FROM 08/26/2005 TO 09/27/2005 ***
*** INFORMATIONAL COPY ONLY - NO ENCLOSURES ***

NO. 458 P. 2

WACHOVIA BANK

09/27/2005 11:55AM



FleetOne Gold Statement

8/17/2004 through 9/15/2004

Page 3 of 10

Telephone Banking 1-800-841-4000

Account continued from previous page

Personal Regular Checking

Account Activity		Account Number Telephone Banking Access		
Date	Description	+/-	Credit/Debit	Balance
8/27	Debit Card Purchase Hsn*hsn 197927619 800-284-3900 FL	-	\$60.74	\$711.11
8/27	Debit Card Purchase Hsn*hsn 197927748 800-284-3900 FL	-	\$38.99	\$672.12
8/27	Debit Card Purchase Hsn*hsn 197900684 800-284-3900 FL	-	\$35.29	\$636.83
8/30	CLIC.NY. Ins Prem 020042400322855 Ppd	-	\$50.00	\$586.83
8/30	CLIC.NY. Ins Prem 020042400322971 Ppd	-	\$31.80	\$555.03
8/30	Check Paid # 1748	-	\$30.00	\$525.03
8/31	Debit Card Purchase Shopnbc* 390937922 800-676-5523 MN	-	\$75.00	\$450.03
8/31	Debit Card Purchase Hsn*hsn 198717082 1of3 800-284-3900 FL	-	\$48.36	\$401.67
8/31	Debit Card Purchase New York Amsterdam News 2129327400 NY	-	\$35.00	\$366.67
9/01	Bank of Amer Pension 020042361033399 Ppd	+	\$607.34	\$974.01
9/02	Debit Card Purchase Hsn*hsn 198925306 800-284-3900 FL	-	\$76.85	\$897.16
9/03	Debit Card Purchase P H Pruden 691-4212470 NY	-	\$100.00	\$797.16
9/03	Debit Card Purchase QVC*3084979400 800-367-9444 PA	-	\$40.75	\$756.41
9/07	Debit Card Purchase Div*directv Service 800-347-3288 CA	-	\$200.00	\$556.41
9/07	Debit Card Purchase Cablevision/NETTE00 of 800-3557499 NY	-	\$187.86	\$368.55
9/07	Debit Card Purchase Shopnbc* 387658023 800-676-5523 MN	-	\$100.00	\$268.55
9/09	Debit Card Purchase U-Store-It #513 8888786734 NY	-	\$37.00	\$231.55
9/10	Deposit	+	\$394.00	\$625.55
9/10	Debit Card Purchase Hsn*hsn 199918894 800-284-3900 FL	-	\$40.73	\$584.82
9/10	Debit Card Purchase QVC*3086014151 800-367-9444 PA	-	\$28.48	\$556.34
9/10	Automatic Line of Credit Pymt	-	\$171.50	\$384.84
9/13	Debit Card Purchase QVC*3086175103 800-367-9444 PA	-	\$65.32	\$319.52
9/13	Debit Card Purchase Hsn*hsn 200390489 800-284-3900 FL	-	\$35.83	\$283.69
9/14	Debit Card Purchase QVC*3086251689 800-367-9444 PA	-	\$42.65	\$241.04

continues

North Fork Bank



TON AVE
ormation: (877) 694-911

INTEREST CHECKING
Statement of Account
Account Number

January 19, 2007 - February 1
Page 1 of 2



NY 11226-8522

22-00660

BROOKLYN NY 11238-1524

Questions?
Call 800-975-4722 or write:
HSBC
Montague Street Office
200 Montague Street
Brooklyn N.Y. 11201

MORE BRANCHES, MORE
MORE WAYS TO SERVE YOU
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TELEPHONE EXPRESS BANKING

STMT SVGS

Previous Balance
+Deposits/Credits
-Checks/Debits
-Service Charge
+Interest Paid
Ending Balance
Days in Statement

Average Daily
Days in Earned
Interest Earned
Annual Percentage
Interest Paid
Interest Withheld

Rate
1 .400%

Description
Maintenance Fee

Take advantage of your HSBC Debit MasterCard with PayPass and enjoy security and convenience of deducting funds directly from your check account without the risk or hassle of carrying cash. Make purchases anywhere MasterCard is accepted, including online, with no finance charges on payment dates or monthly bills. Spend time doing the things you enjoy effortlessly tracking your spending with free Personal Internet Bank

MasterCard and PayPass are registered trademarks of MasterCard International, Incorporated.

SUMMARY OF ACTIVITY FOR THE PERIOD 01/19/07 TO 02/16/07

DATE OF LAST STATEMENT WAS 01/18/07

INTEREST PAID THIS YEAR

YOUR BALANCE ON 01/18/07 WAS .02
THERE WERE CHECKS AND OTHER SUBTRACTIONS -1,221.82
THERE WERE DEPOSITS AND OTHER ADDITIONS 1,259.25
THERE WERE CHARGES AND FEES OF -2.00
INTEREST POSTED THIS PERIOD .01
YOUR BALANCE ON 02/16/07 35.46

TRANSACTION DETAIL

DESCRIPTION	DATE POSTED	DESCRIPTION OF TRANSACTIONS	CHECKS AND OTHER SUBTRACTIONS	DEPOSITS AND OTHER ADDITIONS
Beginning Balance	01/31/07	ATM OR OTHER ELECTRONIC BANKING TRANSACTION		220.00
99 HOME CARE E PENSION	01/31/07	DEPOSIT		100.00
TREASURY 303 SOC SEC	01/31/07	MONTHLY IMAGE CANCELLED CHECK RETURN FEE	2.00	
THDRAWAL	01/31/07	INTEREST EARNED AND PAID FROM 12/30/06		.01
RVICE CHARGE		THROUGH 01/31/07 INCLUSIVE		
99 HOME CARE E PENSION		AVERAGE DAILY AVAILABLE BALANCE \$130.49		
TREASURY 303 SOC SEC		ANNUAL PERCENTAGE YIELD EARNED 0.08%		
THDRAWAL	02/01/07	DEPOSIT FROM LOCAL 807 LABOR-PENSION		183.25
RVICE CHARGE	02/01/07	PAYMENT TO TIME WARNER CABLE PAYMENTS	200.00	
T PMT 04/30/07 THRU 05	02/02/07	DEPOSIT FROM US TREASURY 310-SOC SEC		756.00
TREASURY 303 SOC SEC	02/05/07	CASH WITHDRAWAL ON 02/03 AT HSBC ATM	400.00	
99 HOME CARE E PENSION		342 FULTON ST BROOKLYN NY		
THDRAWAL	02/05/07	PAYMENT TO GERBER LIFE INS-INSURANCE	74.25	
GAL FEE	02/06/07	PAYMENT TO TRINIS COMMUNIC-PHONE SERV	165.00	
RVICE CHARGE	02/08/07	CHECK #2884	81.29	
T PMT 05/31/07 THRU 06	02/08/07	CHECK #2885	43.28	
ding Balance	02/09/07	CHECK #2888	72.00	
	02/09/07	CHECK #2886	34.00	
	02/12/07	CASH WITHDRAWAL ON 02/09 AT HSBC ATM	100.00	
		342 FULTON ST BROOKLYN NY		
	02/12/07	CASH WITHDRAWAL ON 02/10 AT 559-563 FULTON ST	42.00	
		BROOKLYN NY		
	02/12/07	PAYMENT TO HSBC BANK USA NA-ACH PYMT	10.00	

Please examine your statement at once. For your convenience, instructions for balancing your account are included.

If you change your address, please notify your branch new address! All deposited items are credited subject

Continued on next page

Gps ef qptjubdpvout paf of e bubo l TCD Cbol csbodi rpbufe jo Dbrjpsob-Efrbx bsf-EjtusjdugpDprn cjb-Gpsieb-Cfx Ksfz-C
Qf oatzmbajb-Xbtijohupo-psgpsqfstpbobdpvout paf of e cz urfngi paf ps Jufsofuuf bddpvout bsf ifra cz l TCD Cbol VTB- OVB
Gps ef qptjubdpvout paf of e buboz pu fs l TCD Cbol csbodi rpbufe jo boz pu fstubf-uf bddpvout bsf ifra cz l TCD CboljpbobnCob

Exhibit C



Youssef A Nasr
President and Chief Executive Officer

August 26, 2003

Ian F. Feldman
The Legal Aid Society
953 Southern Boulevard
Bronx, NY 10459

Re:

Dear Mr. Feldman:

I have received your letter dated August 8, 2003. While we regret the circumstances that prompted you to write, I appreciate the opportunity to respond.

Upon receipt, of the restraining notice in question, the Bank identified the source of deposit as Social Security from the U.S. Treasury and notified Joseph M. Shur of Relin, Goldstein & Crane LLP accordingly. Mr. Shur directed HSBC to proceed with the restraint. Regrettably, HSBC Bank USA is legally obligated to comply when served with a Legal Retraining Notice and therefore had no other recourse but to abide with the order.

Specific to your question concerning the \$100.00 legal processing fee, this fee is disclosed within the Terms and Charges Disclosure and referenced in the Rules for Deposit Accounts provided to the account holder at account inception. We have enclosed an additional copy of this material for your review.

We recognize, however, that at times extenuating circumstances may exist, as a gesture of goodwill, have reversed the \$100.00 legal processing fee previously assessed. This credit will appear on Ms. next monthly statement.

If you have any questions or concerns, please feel free to call Gene Monesi of our Executive Office toll-free at 1-877-472-2005.

Yours sincerely,

Enclosure

cc: Lisa A. Manley, Senior Vice President, Direct Banking



One Astoria Federal Plaza
Lake Success, NY 11042-1085
516-327-3000
www.astoriafederal.com

MARCH 14, 2006

BROOKLYN NY,

LEVY
AFS File No.:

Astoria Federal Savings and Loan Association ("Astoria") has been served with the above referenced Levy. In response, we have performed a search of our records which has revealed no property in your name may be utilized to satisfy the Levy. The only funds on deposit with Astoria Federal are funds originating from the direct deposit of monies such as **Social Security**, which are exempt from attachment. Therefore, the Levy is being returned unsatisfied.

If you have any questions regarding this matter, please do not hesitate to contact a telephone banking specialist at 1-800-ASTORIA (278-6742).

Sincerely,
ASTORIA FEDERAL SAVINGS
Regulatory Compliance Department

cc:

Citicorp Data Systems Incorporated Tel 210-677-6500
Litigation Support (Texas) Fax 210-677-6515
100 Citibank Drive
San Antonio, TX 78245



January 11, 2008

South Brooklyn Legal Services
105 Court Street
Brooklyn, NY 11201
Attn: Edward Josephson

**RE: Subpoena in the Matter of Denis Mayers et al. v. New York Community Bancorp, Inc.
et al.
Citibank Ref. No.: 07-011421**

Dear Mr. Josephson:

This letter is in response to the above referenced subpoena. Enclosed you find the training manuals, procedural manual as well as process changes for Citibank's Restraining Orders Unit.

It is our understanding that by providing you with the enclosed records the Bank has complied with the above referenced subpoena. Should you have any questions regarding this matter, please do not hesitate to contact me directly at 210-677-6561 and my fax number is 210-547-9184.

Sincerely,

Heather Wear, Paralegal
Litigation Support Unit

Process Clarification

Process: Return of No Posted Exempt Funds to
Financial Center (FC) of Domicile

Effective Date: Immediately

Description: This process clarification applies to all no post credits received by Litigation Support that qualify as exempt funds.

Revised Process:

When a no posted "exempt funds" credit is received by Litigation Support on an account that is frozen due to a restraining order, the funds are to be credited to the FC of domicile's subledger 320-01 indicating they type of funds received and that the funds are due to the client. The Financial Center is responsible for returning the funds to the client according to their policy and procedures.

Exempt funds are not subject to attachment and therefore are not to be applied against the judgment unless otherwise indicated by the Court Order.

Exempt funds include, but are not limited to the following:

- Supplemental Security Income (SSI)
- Social Security
- Public Assistance (Welfare)
- Alimony and/or Child Support
- Unemployment Benefits
- Disability Benefits
- Workers Compensation Benefits
- Public or Private Pensions
- Veterans Benefits
- Trusts, Custodial Accounts, (ACF), annuities, insurance contracts, and IRAs are also exempt.

Process Change Notification

Process: Reviewing account activity to for
Treasury Deposits

Effective Date: Immediately

Description: This process change applies to all services for which Treasury Deposits are considered exempt funds.

Revised Process:

When reviewing account activity to determine whether or not the funds are exempt, take the following steps:

1. Review all transaction activity (debits & credits) on the account and create screen prints of the activity for the last 60 days for the file.
2. Conduct a trans code specific search to determine what portion of the funds may be considered exempt Treasury Deposits using transaction code 227 through 228 (see attached).
 - a. "Y" each transaction to obtain a detailed description of the deposit.
 - b. If the description is "Deposit" and the batch-track number begins with "61" you must obtain copies of the deposited items to determine whether or not the funds are exempt.

It is our responsibility to exercise due diligence in an attempt to identify exempt funds. If there is any questions as to whether or not funds are considered exempt, refer the transaction history to your manager for a decision.

Remember the presence of a non-exempt deposit does not automatically qualify the entire balance as co-mingled, the amount and frequency of non exempt deposits must be taken into consideration. (i.e. if an account has 4 deposits in the last 60 days, 3 of which are exempt deposits in the amount of \$500 and 1 non exempt deposit in the amount of \$50 all but \$50 would be considered exempt).

4-Sep-07

1

CITI-0187

Process Change Notification

Revised Process Cont'd:

Exempt funds include, but are not limited to the following:

- Supplemental Security Income (SSI)
- Social Security
- Public Assistance (Welfare)
- Alimony and/or Child Support
- Unemployment Benefits
- Disability Benefits
- Workers Compensation Benefits
- Public or Private Pensions
- Veterans Benefits
- Trusts, Custodial Accounts, (ACF), annuities, insurance contracts, and IRAs are also exempt.

The majority of exempt deposits will appear as either a transaction code 227 or 228. The transaction descriptions vary and may be as clear as "Social Security" or "Treasury", but may also be as vague as "DEPOSIT" which will require further research to be conducted by the Litigation Support Representative including obtaining copies of checks included in a deposit to determine whether or not funds are exempt.

4-Sep-07

2

CITI-0188

Citibank, N.A. - Restraining Orders Unit-East
Operational Procedures Manual 2004

NOTE: The research clerk should keep the following in mind:

1. services that do not require a block (IRS levy, judgments with sufficient funds) are processed before services that require blocks. The exception being, "large money judgments."
2. do not hold items that need to be processed by the write-up staff. A fair amount would be to take over no more than 3 at a time.

Effective April 29, 2004 on "low balance" IMMA's: if the account balance is \$1.00 or less, the Research staff should block the account. Funds will not be removed from the account by the Write-Up staff. If the balance is \$1.01 or more, the Research staff will NOT block the account and the Write-Up staff will remove the funds from the account and place a block the following morning.

6.2 Exempt Funds

There are certain funds that are considered "exempt", i.e., depending on the type of the service, not all types of funds in a depositor's account are subject to the attachment.

"State and federal laws prevent certain money or property from being taken to satisfy judgments".

Some types of assets that are included in the seizure process are as follows:

- Checking accounts
- Savings accounts
- Money Market accounts
- Certificate of Deposit accounts

When performing a search to locate accounts to attach for a Third Party Order, it is important to determine if any of the funds in the above accounts contain part or all exempt funds.

Some types of assets that are excluded from the seizure process are as follows:

- Uniform Gift to Minors Act accounts (UGMA)
- Mortgage Escrow and Security Deposit Accounts
- Interest on Lawyers Trust Accounts

See memo from Linda Coribello (dated 12/30/03 attached) regarding "exempt funds" as well as memo from George Stronghilos regarding deposit dates for SS and SSI.

Important: If an account contains exempt funds along with non-exempt deposits, we use the term co-mingled. Co-mingled funds are subject to the same rules as exempt funds except that we will attach the account and we will notify the servicing agent that a court order must be obtained in order to release the funds. In some cases, co-mingled, as well as "exempt", funds are subject to attachment. In these instances the write up sheet as well as the pink should be noted as follows:

"Commingled funds - subject to attachment".

Memorandum

Citibank, N.A. - Restraining Orders Unit-East
Operational Procedures Manual 2004

To: All ROU Personnel
From: Linda Coribello
Date: 12/30/03
Re: Exempt Funds/Handling of incoming services

The following is a general overview of the types of services incoming in the ROU unit and how they should be handled.

Please be guided accordingly. The author does not take responsibility for any misconceptions of the party researching.

State and federal laws prevent certain property from being taken to satisfy Judgments or Orders. Such money is said to be "exempt". The following is a PARTIAL list of money that May be exempt. Please note that every service should be treated on a case-by-case basis:

Supplemental Security income (SSI)

Social Security

Public Assistance (welfare)

Alimony or Child Support

Unemployment Benefits

Disability Benefits

Workers' compensation benefits

Public or private pensions

Veterans Benefits

Trusts, custodial accounts (ACF), annuities, insurance contracts and IRA'S are also exempt.

Money deposited as security for rental or real property to be used as a residence of the judgment debtor or the judgment debtor's family'; and money deposited as security with a gas, electric, water, steam, telegraph or telephone corporation are exempt from application to the satisfaction of money judgments

IRS Levies-We can take regular Social Security but SSI is exempt as well as certain pensions and annuities, workers' compensation, unemployment benefits and disability payments. Please view statements and account history.

New York State Levies-Everything referred to above is exempt.

Child Support Levies-Nothing is exempt except SSI. Please note that a Child Support Levy takes priority over any other Levy. We can accept interstate services from child support agencies.

If we have a court order served from a governmental agency or Surrogates court order for an appointment of a Guardian for an incapacitated person that states "all funds" then all funds should be restrained. If there are only exempt funds in a specific account than a telephone call must be made to the governmental agency advising them of the exempt funds. If they want us to release they must follow up in writing.

Citibank, N.A. - Restraining Orders Unit-East Operational Procedures Manual 2004

Escrow accounts/Iola should not be blocked if in the name of the Judgment Debtor except by court order. Escrow accounts held for a specific client (Judgment Debtors) can be restrained.

Lotto accounts and premium accounts are not subject to levy if the accounts are set up as special deposit accounts. We would need documentation from the financial center to ascertain this. If there were other accounts I would not attach the Lotto or premium accounts. If the Lotto account or the premium account is the only account and the Judgment balance is substantial I would request additional information from the branches.

If accounts are specified and are not in the name of the Judgment Debtor, a telephone call should be made to the Judgment Creditor's attorney advising them that the account is not in the name of the Judgment Debtor. No information should be given to the attorney with the name of the specified account unless a Subpoena is served. If they persist they should follow up in writing that they want the account restrained. Pursuant to New York State Law a Creditor who specifies an account that is incorrect is held liable for damages.

ACF accounts are normally not blocked unless a service comes in as "Mary Jones as custodial for Joseph Jones" and Joseph Jones is the Judgment Debtor and is now emancipated.

Please be careful when searching names with Jr., and Sr. There are many father, son mother, daughter etc. situations. If the social does not match and the name and address match calls should be made to the Creditor's attorney for a date of birth or the branch where the account is domiciled should be called. If there is no social and there is a JR or Sr. on the service and not titled on the account the account should be blocked.

Please be advised that if anyone has questions or an account is titled that is not clear, I will be more than happy to assist.

Blocking is always safer than not blocking. A majority of Citibank, N.A.'s losses are for monies lost. If we block an account incorrectly we can always release, credit service fee and send an apology letter.

**'Hit' Account Procedure
(continued)**

Say: "I'd like everyone to watch as I demonstrate the process. Use your workbooks to take notes. You will have an opportunity to practice this after the demonstration."

**Scenario #1 – Trainer
Facilitated Example**

Facilitator Notes:

- Using the account you have selected from the training region, demonstrate the steps from the procedure on the following page.
- As you review progress through the scenario, ask questions to facilitate a discussion about what you are doing and why.

Scenario #1:

In this scenario a restraining order has been received. In this first basic example, the account information (checking) was provided. You need to locate the customer's checking account, place a hold for \$1,00.00, and a block on the account. After performing both of these tasks, the account should be noted.

Procedure:

1. Using the Citiphone Training Region, locate the checking account in Citismart.
2. Check the account notes to make sure there has not been a hold or block with this restraining order before.
3. Verify the customer name, SSN and address on the account. (*Print Screen*)
4. Check the available balance on the 1/102 screen. (*Print Screen*)
5. Check the preauthorized credits (tran code 227) to determine if funds are exempt or commingled. (*Print screen*)

New York Community Bank Policy Manual**BA 2002-041102-001 03/2004****Legal Processing****Introduction:**

Retail Operations/Legal Dept. assumes the bank's responsibility for follow up on all items relating to Legal Process served upon the Bank which concern the search for depositor accounts and the placing of holds on these accounts

When an Adverse claim against one of our depositors is properly served on the Bank, we have a legal obligation to comply with the instructions contained in the claim.

Responsibility:

Currently – 6 F/T employees plus Department Head (partial – for administration and advice).

Forms: Legal Process Items may include, but are not limited to, the following:

1. Subpoena Duces Tecum
2. IRS Summons
3. Information Subpoena
4. Restraining Notice
5. Execution Notice
6. Sheriff/Marshal Levy
7. NYS Tax Compliance Levy
8. IRS Levy

If any of the above is served at the branch, the branch should:

- Fax a copy to Legal Dept. at 516 683-8363
- Send original interoffice to Retail Operations/Legal Dept., Westbury 2ND fl

Action:**Subpoena, Subpoena Duces Tecum, Grand Jury Subpoena, IRS Summons**

An IRS Summons or Subpoena Duces Tecum (subpoena for records or documents only), properly served upon the Bank, requires that certain information and/or documents be provided to the Court, Attorney or Government Agency requesting the information.

Legal Dept. will receive all such documents directly or from the branch and will proceed with the following steps:

1. Ensure that the Summons or Subpoena is an original document and has been properly served on the bank
2. Log the information on the Subpoena Log located in Excel and saved on Shared Network.
3. Read the Summons/Subpoena carefully to determine what is being requested.
4. For any Subpoenas that contain a "Non-Disclosure" clause, care must be taken that the depositor is not informed.
5. Search the on-line system using the information provided, i.e., name, social security number, accounts numbers, etc. Prepare copies of documents and an invoice for agency or attorney for copies.
6. If Summons or Subpoena is not a non-disclosure type and funds are available in customer's account, charge account \$100.00 legal processing fee using journal debit transaction, and send notification letter with copy of Subpoena to customer. The offset journal credit for the legal fee is miscellaneous income GL433300110BBR.
7. The copies that are returned to agency or attorney should be accompanied with a copy of the Summons or Subpoena and a letter that "certifies the documents are true and accurate facsimiles of records maintained at the Bank during the normal course of business."
8. A file is set up for each Subpoena/Summons received, and is titled under the name of the party or depositor referenced on the legal document. The original legal document and copies of all records provided will be kept in the file.
9. After all documents have been forwarded, the Subpoena log is updated to indicate that the Subpoena is completed.

Information Subpoena

When a judgment has been entered in court in favor of a plaintiff (judgment creditor) and against a defendant (judgment debtor), the judgment creditor is entitled to seek information regarding the property belonging to the judgment debtor. An Information Subpoena is accompanied by an original and copy of questions and a postage paid return envelope.

An Information Subpoena properly served on the bank must be answered under oath within 7 days of receipt. Service of an Information Subpoena may be made by registered or certified mail, return receipt requested. A Restraining Notice often accompanies it. The subpoena must be signed by the Clerk of the Court, or the Attorney for the judgment creditor as an officer of the Court.

Legal Dept. will receive all such documents directly or from the branch and will proceed with the following steps:

1. Read the subpoena carefully for the name, address, social security number, and/or possible account numbers of the judgment debtor.
2. Search the on-line system using the information given to see if the debtor has a relationship with the bank.

If the Judgment Debtor has a relationship with the bank:

1. Each question on the subpoena should be answered separately and fully, and no spaces should be left blank. If a question does not apply, a line may be drawn through the space following the questions, or N/A (not applicable) may be written in the space.

2. An Information Subpoena does not require that a hold be placed on accounts belonging to the judgment debtor unless a Restraining Notice accompanies it. If a Restraining Notice accompanies the Information Subpoena, follow the procedures under the section called **Restraining Notice**.
3. The completed subpoena is signed and stamped before it is returned in the envelope provided.
4. A file folder is created containing copy of the completed subpoena. The folder is filed alphabetically by the last name of the judgment debtor in the appropriate file drawer.
5. For Information Subpoenas with questions relating to loans or mortgages only, a copy is filed in Legal Dept., but the original Subpoena is forwarded to Loan Servicing to provide the answers to the issuing attorney.

If the Judgment Debtor has no relationship with the Bank:

1. Stamp the answer sheet with the "Please be advised that there are no records...at New York Community Bank" stamp, date and sign, and return to the issuing attorney.
2. File a copy in the "No Accounts" file.

If the Judgment Debtor has no open accounts with the Bank:

1. Stamp the answer sheet with the "Please be advised that there are no assets...at New York Community Bank" stamp, date and sign, and return to the issuing attorney.
2. File a copy in "Completed" file.

Service of Bulk Info Subpoenas where no records or open accounts are found:

1. The standard "No Accounts" form letter may be used to save time. A copy of the letter and duplicate copies of the subpoenas are filed in the Bulk Subpoenas file drawer.

Restraining Notice

A Restraining Notice is an enforcement device, which is issued by the judgment creditor's attorney, and is the legal equivalent of an injunction. When properly served by certified or registered mail, or in person, it requires that the Bank search our records for accounts belonging to the judgment debtor listed on the notice, and if we locate accounts, that we place a legal hold on the funds contained in the accounts up to twice the amount of the judgment.

The procedures are as follows:

1. Using the information contained on the notice regarding the judgment debtor, e.g. name, address, social security number, possible account numbers, search the on-line system for records.
2. If no accounts are located, file the Restraining Notice in the file marked No Accounts.
3. If accounts are located, deduct a \$100.00 legal processing fee from the account(s) using a journal debit transaction. For description type "Legal Processing Fee." Do a journal credit to the Miscellaneous Income GL 433300110BBR for the amount of the fee.
4. Place a hold code 08 on the account, and a monetary administrative hold for twice the amount of the judgment. Put the name of the judgment creditor, the issuing attorney and the attorney's telephone number in the description section of the administrative hold.
5. IT runs a program each night which hot-cards any ATM or Visa Debit Cards associated with frozen accounts.

Special Exemption: Certain funds are exempt from attachment in accordance with CPLR 5227, for example, Social Security, SSI, Disability Benefits, etc. Therefore, if an account receives direct deposit and it can be clearly determined that the funds in the account represent ONLY exempt funds, and the proceeds of the direct deposit are used almost entirely by the customer between deposit periods, then an exception may be made and no hold will be placed on the account. HOWEVER, if there are other types of funds in the account then we must restrain the account. If there are any doubts, a supervisor must be notified. An exception to this will be made when the restraining notice involves Child Support Enforcement. The bank's policy regarding receipt of legal process (Restraining Notices and Levies) for CHILD SUPPORT ONLY will be as follows: the only direct deposits considered exempt funds with regard to CHILD SUPPORT ENFORCEMENT by federal and state governments will be direct deposits of Supplemental Security Income (SSI). All other funds and direct deposits, including direct deposits of Social Security, will be subject to restraint for CHILD SUPPORT ONLY. (If this occurs, the customer will receive a special letter from the bank informing him/her of the legal process served on the bank, and detailing the government's ruling on this issue.)

6. If an Information Subpoena accompanies the Restraining Notice, follow the procedures for Information Subpoenas.
7. Send a letter to the customer informing them of the Restraining Notice. Include a copy of the Notice with the letter. If the balance in the account(s) was less than the amount of the legal processing fee charged by the bank resulting in the closing of the account, send the appropriate notice to the customer. (See form letters attached to this file.)
8. A file folder should be set up containing the Restraining Notice, correspondence, and all printouts of the CIF and Account Hold Information. Use the name of the judgment debtor, and place the folder alphabetically in the Open Restraining Notices File Drawer.
9. A Restraining Notice is good up to one year from the date of the Restraining Notice or until it is released by the issuing attorney or vacated by the court. (NJ restraining notices may have a longer lifetime – up to two years – review paperwork). The open file should be reviewed periodically to remove any restraining notices, which have expired. The holds should be removed from these accounts, and the file should be placed in the Completed Restraining Notice drawer, alphabetically by the accountholder's last name.
10. All information relating to accounts held for any legal process served on the bank is saved on the Legal Log each day. The updated Log is saved each day on the Shared Network under Retail Operations – IRA – Legal Log.

Execution Notice with Levy

The judgment creditor's attorney issues an Execution against Property to a sheriff or marshal. The Execution notice directs the sheriff/marshal to enforce the judgment by levy against the property of the judgment debtor. Property may or may not be specified in the Execution Notice.

Generally, the bank will receive an Execution Notice attached to the sheriff's/marshal's levy. It should contain the court in which the judgment was entered, identify the judgment creditor and the judgment debtor, state the date of entry and amount of original judgment, the amount still unpaid, and provide a notice to the judgment debtor.

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
DENIS MAYERS, NANCY CICCONE, and :
ELBA QUINONES, :

CV-03-5837 (CPS/JMA)

Plaintiffs, :

-against- :

AFFIDAVIT

NEW YORK COMMUNITY BANKCORP, INC., ET AL :

Defendants. :
-----X

STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

JOHN FENNELL, being duly sworn, deposes and says:

1. I am a Vice-President of NEW YORK COMMUNITY BANK, and as such, I am familiar with banking operations and more particularly, NEW YORK COMMUNITY BANK'S policy on restrained accounts as attached hereto as Exhibit "A".

2. NEW YORK COMMUNITY BANK'S policy provides that when a notice is received purporting to restrain a customer's account an investigation is made as to the source of funds in the customer's account. This is done as expeditiously as possible.

3. The purpose of the investigation is to determine if there are funds in the customer's account and whether or not those funds may be restrained.

4. This policy is designed to protect all parties interests. The creditor, the depositor and the Bank. The Bank does not want to restrain an account if the sole source of funds are electronically deposited, Social Security, SSI, Disability Benefits, etc. NEW YORK COMMUNITY BANK'S policy lists those funds as special exemptions from restraining notices.

5. This policy has been effective in protecting depositors in that when a determination is made that the funds in the depositor's account are exempt, the creditor's attorney is notified and advised that there will not be a hold on the account.

6. NEW YORK COMMUNITY BANK has had good experience with its policy and has not found it burdensome in employing that policy.

JOHN FENNELL

Sworn to before me this

15 day of October, 2004.

Notary Public

LOUIS M. RICCIO
Notary Public, State of New York
No. 41-8558990
Qualified in Queens County
Commission Expires 9/30/06

Exhibit D

JPMorgan Chase Court Orders and Levies
P.O. Box 260164
LA2-2808
Baton Rouge, LA 70826

Customer Service Information

Telephone	866-578-7022
Fax	225-332-7274

, NY

As required by state law, we've placed a hold on your Chase account(s)

Dear

We recently received the enclosed Restraining Notice in the amount of \$1 which enforces a court judgment against you. Because you're the defendant in this notice, state law required us to immediately place a hold of up to twice the judgment amount on your Chase account(s). You may however qualify to withdraw part of your funds as outlined in the attached New York State Exemption Notice. If you believe you qualify, please visit any Chase branch location or call us at the number above.

Important: If you think we placed this hold on your account(s) by mistake, please call us at the telephone number above.

Here are additional details about the hold:

Received Date	Account Number Ending in	Amount of Hold
Thursday, Aug 20, 2009		\$2
Thursday, Aug 20, 2009		\$2

We know this situation is difficult because you can't access your money and the legal system is complicated. Although we're not permitted to give you legal advice, we've provided some information below to help you understand and resolve this issue.

Hold Amount

As a result of the hold, you can't withdraw the amount of the hold above from your account(s), in person, at an ATM or online. In addition, you can't use this money to pay outstanding checks or complete any other banking transactions, such as online payments or wire transfers. Please note: The hold amount may be less or greater than the amount that's currently in your Chase accounts.

Fees

You may need to adjust your account balance to reflect some fees that will result from the hold:

- We'll charge your account(s) a separate Legal Processing fee of \$125.00, which is different than the other fees below.
- Checks you've recently written from the account(s) above may be returned as unpaid. If this happens, your account(s) will be charged Overdraft or Insufficient Funds fees. If the remaining balance in your account(s), after we deduct the hold amount and Legal Processing fee, isn't enough to cover any other unpaid checks, your account(s) will be charged additional Insufficient Funds fees. We would like to help you avoid additional fees.

Legal Advice

If you need legal advice, you should consult your attorney. If you're unable to afford a private attorney, visit the Legal Services Corporation Web site at www.lsc.gov to determine where to go in your area for assistance.

Getting your money back

You may be able to get your money back. New York State laws protect certain money and other property, such as Social Security, Supplemental Social Security (SSI), public assistance (welfare), alimony or child support, unemployment benefits, disability benefits, public or private pensions, workers' compensation and veterans benefits, from being used to pay most judgments or orders. However, the protection generally doesn't extend to business accounts.

We recommend you immediately read the attached Exemption Notice carefully. If you think your funds are covered, follow the instructions for completing the enclosed Exemption Claim Form, and return to both Chase and the judgment creditor's attorney within 20 days of the postmark on this notice.

Releasing the hold on your account(s)

We can only accept a written release of a Restraining Notice, and the release must be signed by the judgment creditor's attorney or the court. Generally, you're the only one who can ask the court to release your funds.

For more information about the hold release or to obtain a written release, please call the judgment creditor's attorney at **5166868950** or the court at the telephone number on the enclosed Restraining Notice. If you obtain a written release, please ask the attorney to fax it to us at the number above for the fastest service. Or, the attorney can mail the release to us at the address above.

We're required by law to hold the funds in your accounts until:

- We send the funds to the judgment creditor according to the court order terms; or
- The period of time we're required to hold your funds expires. If there's a **hold expiration date**, you'll see it on the enclosed Restraining Notice; we recommend you review the notice carefully.

We hope this information was helpful and you're able to resolve this difficult matter soon. Please call us at the telephone number above if you have any questions.

Sincerely,

Court Orders and Levies

Enclosure(s)

CIVIL PRACTICE LAW AND RULES

Section 5222(b): Effect of restraint; prohibition of transfer duration. A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or he is in the possession or custody of property in which he knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor or support collection unit has stated in the notice, that a specified debt is owed by the person served to the judgment debtor or that the judgment debtor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to this notice, except as set forth in Subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in Subdivisions (h) and (i) of this section and except under direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor in an amount equal to twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

I hereby certify that this Information Subpoena complies with Rule 5224 of the Civil Practice Law and Rules and that I have a reasonable belief that the party receiving this Subpoena has in their possession information about the debtor that will assist the creditor in collecting the judgment.

TAKE FURTHER NOTICE THAT DISOBEDIENCE OF THIS RESTRAINING NOTICE IS PUNISHIBLE AS A CONTEMPT OF COURT

~~DELETED~~
David Cohen/Mitchell Slomowitz, Esqs.
Attorneys for the Plaintiff
Cohen & Slomowitz, LLP
P.O. Box 9004, Woodbury, NY 11797
(516) 686-8993 FAX: (516) 908-7898

IF THE BANK IS NOT IN POSSESSION OF ANY ASSETS OF THIS DEBTOR, IT WILL NOT BE NECESSARY TO RESPOND TO THIS INFORMATION SUBPOENA. IF THE BANK IS IN POSSESSION OF EXEMPT FUNDS, DO NOT RESTRAIN ANY PART OF THE EXEMPT FUNDS IN THE DEBTOR'S ACCOUNT



Exhibit E



22 Cortlandt Street
Legal Department, 27th Fl.
New York, N. Y. 10007-3107
Tel: (212) 238-3364
Fax: (212) 479-2975
Email: pveltre@nymcu.org

Phillip J. Veltre
Deputy General Counsel

October 20, 2009

RECEIVED

OCT 22 2009

New York State Banking Department
One State Street
New York, NY 10004-1511

CONSUMER HELP UNIT
BANKING DEPT.
STATE OF NEW YORK

Attention: Natalia Gurova, Consumer Relations Representative

Re: Your File # 09 C 484

Dear Ms. Gurova:

I have been asked to respond to your letter of April 9, 2009 (which was apparently only just recently forwarded to MCU). As you may be aware, I had a very lengthy telephone conversation with Ms. Jane Azia of the Banking Department in April of this year concerning the issues raised in the complaint letter of Johnson M. Tyler, Esq.

Municipal Credit Union's position with regard to these issues is essentially unchanged from that described in my letter of February 13, 2009 to Sheldon Barasch, Esq. of DC 37 Municipal Employees Legal Services (a copy of such letter was attached to Mr. Tyler's letter and for your convenience is also attached to this letter). Basically, MCU disagrees with Mr. Johnson's interpretation of the relevant statutes and our schedule of fees. MCU's interpretation of the relevant statutes is set forth in greater detail in my letter to Mr. Barasch and, for the sake of brevity, will not be repeated herein.

Despite MCU's continued belief that there is no restriction in the law prohibiting the imposition of a fee in connection with the processing of an information subpoena, I can disclose to you that MCU is currently considering voluntarily revising its schedule of fees so as to significantly decrease and/or eliminate this fee in the circumstances complained of in Mr. Johnson's letter.

If you require any further information concerning the issues raised in this complaint, please feel free to contact me.

Very truly yours,

Philip J. Veltre
Deputy General Counsel

ml
Enclosure



22 Cortlandt Street
Legal Department, 27th Fl.
New York, N. Y. 10007-3107
Tel: (212) 238-3364
Fax: (212) 479-2975
Email: pveltre@nymcu.org

Phillip J. Veltre
Deputy General Counsel

February 13, 2009

DC 37 Municipal Employees Legal Services
125 Barclay Street
New York, NY 10007-2179

Attention: Sheldon Barasch, Esq.

Dear Mr. Barasch:

The request made in your letter of February 4, 2009 seeking a refund of the \$75.00 fee which Municipal Credit Union imposed for the processing of an information subpoena in the above-entitled matter, must be denied. My office respectfully disagrees with your interpretation of CPLR Section 5222(j).

Section 5222(j) is entitled: "Fee for banking institution costs in processing a restraining notice for an account". As such, it clearly is applicable only to fees assessed in connection with the processing of restraining notices. Section 5222(j) places no prohibition on fees assessed in connection with the processing of information subpoenas. As you know, these are separate types of legal documents, created and authorized under separate provisions of the CPLR. Specifically, information subpoenas are issued in accordance with the provisions of CPLR Section 5224, which was not amended along with the other amendments made to the CPLR effective January 1, 2009.

The State legislature's decision not to enact a prohibition on fees assessed in connection with the processing of information subpoenas, appears to clearly have been rooted in the legislature's understanding of the burden and costs incurred by financial institutions in processing information subpoenas (and retaining records in connection with the same).

I trust this letter satisfactorily explains MCU's position that no statutory prohibition exists against the imposition of this fee.

If you wish to discuss this matter in greater detail, please feel free to call me. I am

Very truly yours,

Philip J. Veltre
Deputy General Counsel

ml