

CIVIL COURT OF THE CITY OF NEW YORK

CHIEF CLERK'S MEMORANDUM

Subject: Default Judgments and
Time Barred Debt in Consumer Credit Actions

Class: CCM- 186
Category: GP-20
Eff. Date: May 13, 2009

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BACKGROUND

The Federal Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p, designed to eliminate abusive debt collection practices, provides consumers certain rights. The FDCPA states that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Included in this conduct is the making of a false representation of the legal status of any debt, or taking or threatening to take action that cannot legally be taken. Under the FDCPA debt is defined as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to a judgment. It further defines a debt collector to be any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. A debt collector is in violation of the FDCPA if he/she knowingly files a suit on a claim that is barred by the statute of limitations. Based on the aforementioned, for consumer credit actions where the plaintiff is a debt collector, we now direct the following:

DIRECTIVE

A request for a default judgment entered by the Clerk following CPLR §3215, must be accompanied by an affidavit by the debt collector (who may be the plaintiff or plaintiff's attorney) stating that after reasonable inquiry, he/she has reason to believe that the statute of limitations has not expired.

Date 5/13/09

/s/
Fern A. Fisher
Deputy Chief Administrative Judge

/s/
Jack Baer
Chief Clerk