

**Testimony of The Legal Aid Society Before The New York City Council Committee on
Public Safety Regarding the City's efforts to combat Identity Theft.**

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Chairman Vallone and members of the Public Safety Committee, I am Tashi Lhewa, consumer staff attorney with The Legal Aid Society. On behalf of The Legal Aid Society I would like to thank you for holding this hearing and for the opportunity to testify on the crucial issue of identity theft.

The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles some 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems. This includes more than 30,000 individual civil matters as well as law reform cases which benefit some two million low income families and individuals.

Through a network of ten neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

The Legal Aid Society has seen an increasing number of clients who approach our offices with issues relating to identity theft. The majority of victims of identity theft that seek our assistance are immigrant New Yorkers. These individuals and families lack familiarity and knowledge regarding identity protection and go through a vicious cycle whereby a single theft of

their personal information leads to severe consequences for their ability to obtain basic necessities, and also has a lasting impact on their ability to obtain credit.

Identity theft is a serious problem because among other things it can take a long period of time before a victim becomes aware that a crime has taken place. Often the victim discovers the fraud only when the adverse results of the identity theft are discovered, such as when the victim is denied rental housing, an application for a loan is turned down due to a lien on their house or when they are denied a job because of a poor credit history. There are numerous negative ancillary effects on the consumer such as the subsequent difficulty in obtaining employment, loans, and other related challenges.

Identity theft is widely considered to be one of the fastest growing crimes in the United States. The rapid growth of identity theft is due to the multiple ways in which we process and share information. The Federal Trade Commission (FTC) estimates that in 1 year, as many as 10 million people – or 4.6 percent of the U.S. adult population – discover that they are victims of some form of identity theft.¹ Furthermore, according to the FTC, more than 50 billion dollars in identity fraud is committed each year.² Currently New York has the eighth highest rate of identity theft incidents per capita according to the FTC's Consumer Sentinel. In 2009, there were 18,906 complaints to the FTC.³ An example of this endemic problem is the identity theft ring

¹ United States Government Accountability Office, Testimony Before the Subcommittee on Information Policy, Census and National Archives, Committee on Oversight and Government Reform. House of Representatives, Identity Theft: Governments Have Acted to Protect Personally Identifiable Information, but Vulnerabilities Remain, Statement of Daniel Bertoni, Director Education, Workforce and Income Security Issues, GAO-09-759T June 17, 2009, available at <http://www.gao.gov/new.items/d09759t.pdf>

² GAO-09-759T, June 17, 2009. p. 3.

³ Mulrean, Jennifer. The Worst States for Identity Theft, MSN Money Central. 2010. <http://moneycentral.msn.com/content/banking/financialprivacy/p125094.asp>;

that the New York Police Department broke up last year in which over 6,000 victims had their credit destroyed and over 15 million dollars of fraud were committed.⁴

There are numerous methods by which personal information is obtained and used. For example, “phishing” is a high-tech scam that frequently uses unsolicited messages to deceive people into disclosing their financial and/or personal identity information. Once the information is obtained, false medical claims are filed, mortgages are applied for, and the victim finds that previously open lines of credit are suddenly closed. Ending a credit line that has been attacked may be relatively simple when discovered, but trying to recover one’s credit standing is extremely difficult and time consuming. This is especially so for lower income individuals and families who do not have extensive financial resources.

The more common forms of identity theft relate to credit card fraud. Unfortunately, the credit card industry’s measures to protect against identity theft are inadequate. Credit card companies do have elaborate and well-designed information sharing systems that quickly notify customers when there are charges to an account out of the ordinary, such as for an unusually large amount for the client. Yet, these in-built security measures have proven woefully inadequate in combating credit card fraud. The credit card industry is especially unable, or unwilling, to assist individuals after the fraud has been committed.

A recent client of the Society, Mrs. K, an immigrant and resident of Elmhurst, Queens, was the victim of identity theft. Mrs. K had multiple credit cards opened in her name and was facing multiple lawsuits even though she had never used any of the credit cards. Mrs. K faced serious adverse results because of the identity theft, including inability to obtain a bank account

⁴ Gendar, Alison. NYPD breaks up identity theft ring in which 6,000 victims' credit wrecked, banks bilked out of \$15M. NY Daily News. May 15, 2009. http://www.nydailynews.com/news/ny_crime/2009/05/15/2009-05-15_nypd_breaks_up_identity_theft_ring_in_which_6000_victims_credit_wrecked_banks_bi.html

or credit card, and lack of access to cable television because of the requirement of a credit card. Though The Legal Aid Society was able to assist Mrs. K in obtaining dismissal of the cases against her, it was a much more difficult experience for her in attempting to obtain credit again. The Society spent more than 80 hours assisting Mrs. K in her case, primarily in non-litigation efforts to repair her credit history, and obtain basic services denied to her as a result of the identity theft.

Like the many other victims of identity theft who we at Legal Aid attempt to assist, Mrs. K faced numerous hardships as a result of the theft of her identity, even access to basic necessities that require some line of credit. Though Mrs. K is currently in the process of rehabilitating her credit, she still faces a long wait to return to her prior credit status.

There are numerous other clients of ours who share a similar story and background to Mrs. K. In representing Mrs. K and other victims of identity theft, I can attest to the severe difficulty and challenges that victims face in attempting to clear the false claims on their credit reports. The process is time-consuming and intensive, as it requires multiple notifications to the credit reporting agencies, affidavits, police reports, documentation, and the difficult task of repeatedly contacting the credit reporting agencies regarding failure to clear the claims.

Most of our clients experience the same bewilderment, confusion, and stress as they review their credit reports and try to get their lives back in order. The common element among my clients who were victims of identity theft has been their lack of knowledge about how credit works and their rights as consumers, and their lack of access to legal and credit counseling resources once they are victimized. The same questions are raised by victims of identity theft in our office. Where do you go? How do you begin to clear your name? How do you convince creditors around the country that you never made those transactions? Do you contact your local

police precinct? What can the local police do about it? We believe that some solutions to the problem of identity theft faced by New Yorkers lie in the following recommendations:

- Provide Education and Outreach. Making resources easily accessible to New Yorkers who are often the target of such fraud, such as immigrants and low income consumers, is essential in reducing the number of identity theft cases. There is consumer protective legislation and action has been taken on the federal, state and local levels to combat identity theft, but there is limited assistance or outreach to victims of identity theft after the fraud has been committed. According to the FTC it receives roughly 15,000 to 20,000 contacts per week on the hotline via its website, or through the mail from victims and consumers who want to avoid becoming victims. The New York Attorney General's office has taken prosecutorial action in recent years against perpetrators of identity theft, and has been active in outreach to consumers after they have become victims and in providing them resources.⁶ Yet, there are numerous other clients that we see at the Society, who are in a bind because they do not have the information on what actions to take. For many of New York's middle class and low income victims of identity theft, empowerment through education is crucial for them to prevent and recover from identity theft. Often victims are unaware of what immediate steps to take upon discovering that their identity is stolen, and later face immense difficulty trying to correct their credit report and history. Outreach by the City to those most likely to have limited access to financial and legal resources, such as immigrant and low income communities, would have an immediate impact in lowering the number of identity theft cases in New York City.

⁵ GAO-09-759T, June 17, 2009. p.5.

⁶ NY Attorney General Consumer Fraud Bureau.
http://www.ag.ny.gov/bureaus/consumer_frauds/identity_theft.html

- Increase resources for victims of identity theft. We represent clients in all five boroughs on a variety of consumer related matters. In prioritizing cases we often represent identity theft victims in litigation with their creditors, but due to limited resources we are unable to provide the additional assistance that victims require in attempting to repair the damage. It is essential that resources are available so that the numerous clients for whom we are able to provide direct representation for, receive assistance with the equally, if not more, important phase of attempting to repair their credit.
- Coordinate with federal agencies. Strong federal protections exist, such as the Identity Theft Assumption and Deterrence Act (“the Act”)⁷ and the identity theft provisions of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”)⁸, which provide the FTC with a special role in combating identity theft. Other federal initiatives such as the President’s Identity Theft Task Force (“Task Force”), comprised of 17 federal agencies were established to develop a comprehensive national strategy to combat identity theft.⁹ Federal legislation such as the Federal Information Security Management Act of 2002 (FISMA) requires agencies to develop, document, and implement agency-wide programs to provide security for their information and information systems (which include personally identifiable information and the systems on which it resides).¹⁰
- Increase state law enforcement. New York State currently has numerous criminal and civil statutes and regulations aimed at protecting consumers from identity theft.¹¹ Such legislation is crucial and covers a range of restrictions and regulations on the use of

⁷ 18 U.S.C. § 1028.

⁸ Public Law 108-159 (2003).

⁹ Exec. Order No. 13,402, 71 Fed. Reg. 27,945 (May 15, 2006).

¹⁰ GAO-09-759T, June 17, 2009. p. 4, 5.

¹¹ NY Penal Code § 190.78-190.85; § 190.77; § 20.40(1); § 165.17, 165.45; General Business Law (GBL) § 390-B (Phishing); GBL § 399-DD; GBL § 399-H (Disposal of Customer Records); GBL § 380-t ((Security Freeze); NY Public Officers Law § 96-A; N.Y. Exc. Law § 646 (Mandatory Police Report); NY Penal Code § 60.27 (Restitution).

confidential information by private and public entities, including the use of Social Security Numbers. New York and 46 other states have enacted “security freeze” laws, which allow consumers to block unauthorized third parties from obtaining their credit report or score.¹² Legislation such as this passed in the last decade has been crucial in tempering the tide of identity theft cases, which are growing in numbers. Yet, additional steps can be taken at the state and local level to combat this increasing number of identity theft cases.

- Treat identity theft seriously. Every identity theft client of mine who has contacted law enforcement has been given the opportunity to file a police report and given a police report number as mandated by law.¹³ Yet, for every one of them the filing of the report has been the end of the investigation. Despite repeated inquiries by these victims there does not appear to be additional investigation regarding these cases by law enforcement. Law enforcement should make it a priority to follow through on investigations pertaining to claims of identity theft.

Currently, NY Executive Law § 646 requires that any victim of identity theft, whose “...personal identifying information was used fraudulently; who has suffered a financial loss as a direct result of identity theft crimes; or has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, may make a complaint to the local law enforcement agency...” and “the law enforcement agency must make a police report of the matter and provide the complainant with a copy of the report at no charge.”¹⁴ Legislation such as this which requires police

¹² See Consumers Union Web Site, http://www.consumersunion.org/campaigns//learn_more/003484indiv.html (accessed May 14, 2009).

¹³ N.Y. Exc. Law § 646

¹⁴ N.Y. Exc. Law § 646.

and sheriff's departments to provide a police report or original incident report at the request of any consumer claiming to be a victim of identity theft is necessary. It is essential that victims have access to such reports when they wish to claim identity theft with a creditor or credit reporting agencies.

Conclusion

The economic and non-economic injuries to New York consumers caused by identity theft are significant. Yet, we believe that the recommendations submitted will supplement the efforts of law enforcement and other agencies involved in preventing identity theft, and limiting its adverse impact on victims. Thank you again for the opportunity to testify on this important issue affecting New Yorkers and consumers across the United States.