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List of Supporting Documents for the Webinar:

“Credit History and Housing Access for Domestic Violence Survivors” (October 23, 2014)

- **PowerPoint: Consumer Reports and Access to Housing for Domestic Violence Survivors**
- **Sample letters (provided by Bay Area Legal Aid)**
 1. Cease and Desist letter to send to debt collectors for persons on federal benefits
 2. Cease and Desist letter to send to debt collectors for survivors on welfare
 3. Attorney letter for survivor housing application, describing link between a survivor’s poor credit and domestic violence
 4. Advocate letter for survivor housing application, describing link between a survivor’s poor credit and domestic violence
 5. Letter requesting extended fraud alert due to identity theft
 6. Letter to creditor disputing entry on credit report due to identity theft

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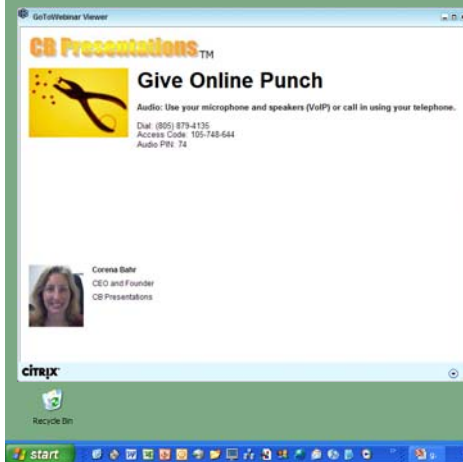
Consumer Reports and Access to Housing for Domestic Violence Survivors



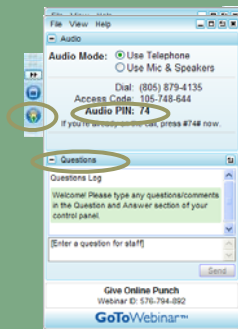
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GoToWebinar Interface

1. Viewer Window



2. Control Panel



Housekeeping

- ❑ Materials were emailed to registrants and will be emailed again after the webinar, along with evaluations.
- ❑ Materials and recording will be posted at www.nhlp.org/OVWgrantees.
- ❑ MCLE certificates will be emailed to California attorneys.

Goals of Today's Presentation

- ❑ Understand the role of consumer reports in accessing rental housing
- ❑ Help survivors to obtain and understand credit and tenant screening reports
- ❑ Learn about laws that protect consumers
 - FCRA and ICRAA
- ❑ Obtain tools to dispute errors on credit reports
- ❑ Understand the basics of credit scores
- ❑ Help survivors prioritize debt
- ❑ Learn about special protections for survivors of DV

Poll Question?

- Does your organization include questions about financial abuse during the screening/intake process?
 - Yes
 - No
 - Sometimes / to a limited extent

Screening for Financial Abuse

- Incorporate questions about credit/banking/debt into DV intake interviews
 - Prior economic harms
- Ask about control over and knowledge about financial resources in the home
 - Future economic security
- Important for divorces – access to property to which survivor is entitled
 - Ask for kickout order/rental payments in restraining/protective order
- Best source for information – client's credit report

Debt and Domestic Violence

- Debt collectors can further traumatize survivors
 - Abusive debt collection methods
 - Debt collection lawsuits
- Old debts haunt survivors when they try to obtain housing/loans/credit cards
 - Consumer reports (credit reports)
 - Debt/bankruptcy/foreclosure
 - High cost credit
- Specific vulnerability of DV clients
 - ID theft
 - Inability to budget due to crisis
 - Lack of control over financial resources/decisions
 - Limited English proficiency or limited education

Marital Debt: Joint Bank Accounts

- Joint bank accounts
 - Either accountholder can take all of the funds
 - Neither accountholder can close the account unilaterally or remove the other person from the account
 - If parties are married, may be required to return 50% of the funds
 - Advise client to open a new account – can remove funds she reasonably believes to be hers and place them in a new, individual account
 - Bank accounts are important for applying for housing
 - If abuser overdraws the joint account, survivor may be unable to open a new account, so it is important to act proactively

Marital Debt: Shared Credit Cards

- Authorized user and joint credit cards
 - Creditor cannot collect from or sue authorized user, but account history is reported on **both** credit reports
 - Remove abuser as authorized user on survivor's credit cards and remove survivor as authorized user
 - Joint credit cards
 - Under CA community property laws, can allocate charges to each spouse after date of separation
 - Creditor may still attempt to collect from either joint accountholder, but can use to offset in property/debt allocation in divorce

Marital Debt: Individual Account

- Individual credit cards with charges incurred during marriage
 - Community debt – can be allocated 50/50 to each party
 - Charges after date of separation belong to each individual
 - Creditor will only sue the person whose name is on the card
 - In community property states, a family law attorney can help survivor to obtain property to which she is entitled by allocating 50% of debt to the abuser, even if the card was in the survivor's name
 - Check your local laws for non-community property states

Second-Chance Banking Products

- The problem: Chexsystems
 - Overdraft → can remedy by paying balance
 - “Suspected Fraud Activity” → if no fraud on part of survivor, dispute through FCRA and request reinvestigation and verification of alleged fraud
 - If applicable, assert ID theft in dispute letter
- Bank on California program – check for local participation in your city
 - <http://www.bankoncalifornia.ca.gov/>
 - Bad credit
 - No social security number needed
- Wells Fargo Opportunity Checking
 - Direct deposit or \$8/month fee
- Local credit unions are often more accommodating
 - Call manager of branch in advance and/or accompany survivor to the bank to apply for account

Consumer Reports

- Consumer reports include any information about an individual consumer's "character, general reputation, personal characteristics, or mode of living" when made by a consumer reporting agency
 - Can include credit, criminal record, and civil judgment information

What Is a Tenant Screening Report?

- A consumer report compiled by a “specialty consumer reporting agency”
 - Will likely be compiled from multiple sources
 - Credit data from TransUnion, Equifax, or Experian
 - Criminal record data from public record data collected by private vendors
 - Civil judgment (including unlawful detainer - eviction - information) from public record data collected by private vendors

Who Is Allowed to Request a Report?

- A user of a report must have a permissible purpose to request a consumer report
- When a consumer applies for housing, they give consent for a consumer report to be obtained by the landlord
- Other permissible purposes:
 - To collect a debt
 - For certain kinds of employment
 - To make a decision on extending or offering credit

Obtaining Consumer (Credit) Reports

- Before DV survivor applies for housing, know what is on her credit report
- Look for unknown accounts – flag as ID theft and place a security freeze with credit bureaus
- www.annualcreditreport.com
 - Obtain all three – Experian, Equifax and TransUnion
 - Print a hardcopy of each report
 - Keep a **SAFE ADDRESS CONFIDENTIAL** – do not report it to the credit bureaus - use an old address instead
 - If client has insufficient knowledge for online request, order by mail
- Dispute inaccurate information
 - Send certified letter from consumer, not from your agency
 - Keep a copy of all communication
 - Provide as much information about dispute as you have
- Mitigate harm of debts for which she is legally responsible by providing letter of explanation

Obtaining Tenant Screening Reports

- No central database of reports like www.annualcreditreport.com
- Upon adverse action (denial of housing), landlord is required to provide a notice with a tollfree number that consumers can call **within 30 days** to obtain a copy of the report
- Dispute mechanisms still apply to public record data

Obtaining ChexSystems Reports

- Upon notice of an adverse action (denial of a new bank account), consumer may call 1-800 number and request a copy of report
- Dispute processes apply to ChexSystems, tenant screening, and credit reports

Fair Credit Reporting Act

- Protects consumers against reporting of inaccurate or outdated information
 - 100% accurate reporting
 - Adverse information may only be reported for 7 years
 - Public record information must be complete
 - Right to dispute inaccuracies
 - Right to reinvestigation within 30 days

Disputing an Inaccuracy

- Send a certified letter, return receipt requested
 - Do not use the online dispute process
 - Lose rights to litigate a case in court
 - Harder to track the progress of the issue
 - Dispute triggers a reinvestigation of the issue with the furnisher of information within 30 days (if adverse notice) or 40 days (if you find the error on your own)
- Include a copy of the credit report and circle the error
- If no response in 45 days, send a follow up letter insisting that the inaccurate information be deleted
- Dispute addresses can be found on the websites for each of the credit reporting agencies

Identity Theft and Credit Reports

- The FCRA and CA law protect victims of identity theft
 - Upon notice that an item is a result of ID theft, the consumer reporting agency must remove the information within five days
 - Including supporting documentation, like a police report and an FTC Affidavit of Identity Theft
- Place a 90-day freeze on the consumer's account by calling the numbers here:
 - <https://www.annualcreditreport.com/cra/helpfaq#fraudalert>
- Place a seven-year freeze on the consumer's account by sending a request by mail with a police report

Identity Theft and Eviction Records

- UD (eviction) records are public records
 - If the survivor actually lived there, she may have to explain the eviction to future landlords
 - Dispute process will not remove an eviction if the tenant was actually on the lease and a UD was filed
 - UDs remain on a tenant report for seven years
- If someone illegally uses another person's identity to rent an apartment, the consumer should file a dispute with the tenant screening company with **proof** that she lived somewhere else during that time

Is There Any Way to Clear UDs?

- Unfortunately, there is no way to remove an eviction from a consumer's tenant report if the court entered a judgment for the landlord
 - The information will time out in seven years
- If a case was filed but the tenant moved out, the case may have been dismissed
 - The record should reflect that, i.e., no "judgment for plaintiff" should be reported if the tenant and landlord worked out an agreement and the case was dismissed
 - If the tenant did not show up to the UD court date, a judgment may have properly been entered against her
 - If the information is inaccurate, consumer may file a dispute under FCRA to have the information updated to be 100% accurate
- A landlord may voluntarily agree to set aside a judgment
 - Example: Tenant moved out and is on good terms with LL

California Law: ICRAA

- More protective of consumers than the FCRA
 - Important for criminal records
 - May only be reported for 7 years
 - Arrest-only records may not be reported
- Courts have held does not apply to UDAs
 - Unlawful detainers may be reported if filed and dismissed
 - But under FCRA cannot inaccurately state “judgment for plaintiff” unless that occurred

Estimated Effects on FICO Score

Activities:

- **Maxed-out card**
- **30-day late payment**
- **Debt settlement**
- **Foreclosure**
- **Bankruptcy**

	Effect on 680 score	Effect on 780 score
□ Maxed-out card	-10 to -30	-25 to -45
□ 30-day late payment	-60 to -80	-90 to -110
□ Debt settlement	-45 to -65	-105 to -125
□ Foreclosure	-85 to -105	-140 to -160
□ Bankruptcy	-130 to -150	-220 to -240

Source: FICO via <http://money.msn.com> Sept. 17, 2010

Poll

- What is the best way to improve a credit score?
 - Hire a debt settlement company
 - Try to make the abuser pay the debts
 - Consolidate debt onto a credit card
 - Build good credit and wait for old debt to time out

“Credit Repair” Is Frequently a Scam

- There is no such thing as a quick-fix for “credit repair”
 - In general, debt settlement and credit repair companies are a scam
 - They take consumers’ money and file frivolous disputes (the entries remove briefly and then reappear)
 - Or, they take consumers’ money for fees and never settle debts

How to Improve Credit Scores

- The consumer's best friend is time
 - Wait out the seven years
 - Try to not incur additional negative entries
- Build credit with secured credit cards
- Use asset-building techniques like peer-lending circles
- Use credit cards carefully – pay the balance down and keep less than 50% debt-to-credit ratio **on each card**

Answer to Poll

- Debt settlement companies are a scam!
- The abuser can only be forced to pay reimbursement
 - If married, through family law property/debt distribution order
 - If not married, through a small claims case
 - Survivor is still liable to creditor
- Credit cards have high interest rates – consolidating onto a card can be very expensive
- The best option is to wait and attempt to explain bad credit to landlords

Prioritizing Debt

- Two kinds of debt
 - Secured debt
 - Car, mortgage
 - Unsecured debt
 - Credit cards, student loans, medical bills, personal loans
- Pay family necessities first
- Pay housing costs second – rent/mortgage/utilities
- Risk of losing property if secured loans go unpaid – debtor should pay her car loan and insurance if the car is a necessity

Prioritizing Debt: Unsecured Debt

- Little immediate risk for not paying unsecured debt
 - Do not pay if there is a good legal defense to repayment
 - Do not enter into a repayment agreement for a small payments on an old debt
- Court judgments are scary, but for low-income debtors, they are very hard for creditors to collect
 - Claim of exemption for wage garnishment for low-income wage earners
 - TANF/CalWORKs and federal benefits (Social Security, SSDI, SSI) are exempt

Should the Consumer Settle Old Debt?

- Do not make small payments on a debt
 - Debts accumulate interest at rate set by statute – in CA, 10%.
 - Many small payments do not even pay the monthly accrual of interest
 - To settle, a consumer should save the money and make a lump-sum offer
 - “Settled for less than the full amount” is still a negative entry on a credit report
- A decision should be made whether to pay off or to wait out the 7 years
 - If many debts, it may be easier simply to wait
 - If old debts, it is almost always better to wait
 - Many consumers simply cannot afford to settle enough debt to make a difference

The Right to Sue is Limited by Law

- The right to sue is limited by the statute of limitations – look for the SOL for “contracts”
 - In California, four years from the date of the last payment
 - Check your own state law for the local SOL
 - Each payment resets this time limit so it is better to settle in one lump sum than to make small payments
- Old debt should be allowed to time out from a credit report
 - **Never make payments on a debt that is beyond the statute of limitations unless a lender or landlord specifically requires the settlement of that debt as a condition of providing housing**
 - Some states do not permit the “reawakening” of a debt that is a “dead debt” - beyond the SOL – but some, like CA, do.
 - Don’t create **A ZOMBIE DEBT** by making payments on a dead debt

Asking Debt Collector to “Cease and Desist” Collection Calls and Letters

- ❑ Every debtor has a right to ask collector to cease and desist all calls and letters
- ❑ Doing so leaves debt collectors only one option to collect → file a lawsuit in court
- ❑ For clients whose income is exempt from collection (disabled or elderly), collectors are unlikely to sue once they are aware of this information
- ❑ Other clients may end up facing a collection lawsuit
- ❑ Okay to send a letter explaining DV and temporary inability to pay – ask for no calls, just letters

The Life Cycle of a Debt



Explaining Mitigating Circumstances to Landlords

- Survivors may wish to bring a letter to a landlord that explains bad credit or evictions were a result of DV
 - Letter from social worker, shelter, attorney or other advocate
 - Some survivors do not wish to talk about DV
 - However, a landlord may be more likely to rent to a survivor if he knows her story and that she is now starting over without the abuser

Housing Protections for Survivors

- Violence Against Women Reauthorization Act of 2013 (VAWA 2013), <http://nhlp.org/ovwgrantees>
- NHLP, State and Local Law Compendium: Housing Rights of Domestic Violence Survivors, <http://nhlp.org/node/1436>

Conclusion

- Screen for issues at initial intake → minimize harm and maximize opportunities for clients
- Request credit reports
 - Open individual accounts now & stop using joint accounts
 - Analyze report for identity theft & mitigate harm
- Send dispute letters to challenge inaccurate information
- Build good credit and wait for old debt to time out
- Don't spend scarce resources to settle old debts
- Send clients with letters to explain poor credit and prior evictions to prospective landlords and help prepare client to explain

Additional Resources

- Claire Johnson Raba – consumer law/DV attorney
 - cjohnson@baylegal.org
 - 415-982-1300
- National Consumer Law Center
 - Guide to Consumer Rights for Domestic Violence Survivors – available at www.nclc.org for \$15
- Center for Survivor Agency and Justice
 - Consumer rights for DV survivors initiative - search Economic Justice in the resource library at www.csaj.org
- NOLO self-help resources for dealing with debt
 - <http://www.nolo.com/legal-encyclopedia/collection-agencies/>



Thank you!

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[Name]
[Address]
[City, State Zip]

[Date]

[Name of Creditor/debt collector]
[Address of Creditor/debt collector]

Re: Name
Account number

Dear Creditor:

I am writing to request that you cease all contact with me pursuant to California Civil Code § 1788.17 and the Fair Debt Collections Practices Act, 15 USC § 1692c(c) which require that you honor this request.

(If appropriate): I dispute the validity of this debt.

Please cease all collection activities you have taken or are considering taking. I own no real property and I do not own anything of value. If you sue me and obtain a judgment, you could not collect any of my property to satisfy the judgment.

SSI/SSDI: I have been diagnosed with a disabling illness that prevents me from working. All of my income consists of federal SSI and/or SSDI benefits. Federal Social Security and Supplemental Security payments are exempt from garnishment under 42 USC § 407(a) and California Code of Civil Procedure § 704.080(b); § 704.130. Any threat to garnish such benefits is actionable under the Fair Debt Collections Practices Act, 15 USC § 1692e(5). All of the funds in my bank account are from this (**or these**) exempt source(s). I respectfully ask that you take note of this information and do not attempt to levy my bank account.

SS: I am a retired person and the majority of (**or all of**) my income consists of Social Security. Social Security retirement payments are exempt from garnishment under 42 USC § 407(a) and California Code of Civil Procedure § 704.080(b). Any threat to garnish such benefits is actionable under the Fair Debt Collections Practices Act, 15 USC § 1692e(5). (**If applicable**): The only other income I have is from a retirement benefits plan. This income is exempt from garnishment pursuant to California Code of Civil Procedure §§ 704.110, 704.115. All of the funds in my bank account are from this (**or these**) exempt source(s). I respectfully ask that you take note of this information and do not attempt to levy my bank account.

Please consider this letter notice pursuant to *Czap v. Credit Bureau of Santa Clara Valley*, 7 Cal. App. 3d 1 (1970). Any attempt to levy or garnish assets with knowledge

that the assets are exempt from garnishment constitutes abuse of process for which you may be held liable.

I recognize that you may choose to refer this account to another collections agency or back to the original creditor. Should you choose to do so YOU MUST INCLUDE A COPY OF THIS LETTER IN MY FILE AND THE ACCOUNT MUST INCLUDE A NOTATION THAT I DO NOT WISH TO BE CONTACTED IN AN ATTEMPT TO COLLECT A DEBT. If you fail to comply with this request, I will consider it an intentional attempt to circumvent the requirements of the federal and state Fair Debt Collection Practices acts.

(If applicable): In addition, since I dispute the existence of this debt, you are directed not to report any negative credit information regarding this account to any credit reporting agency without also reporting that the account is disputed as required by California Civil Code § 1785.25.

Thank you for your assistance and your understanding.

Sincerely,

[Consumer Name]

[Name]
[Address]
[City, State Zip]

[Date]

[Name of Creditor/debt collector]
[Address of Creditor/debt collector]

Re: Name
Account number

Dear Creditor:

I am writing to inform you that I am a victim of domestic violence. My financial situation has recently worsened dramatically as my children and I have left the abusive relationship. My children and I are currently living in [shelter/with friends/unable to pay rent]. I am in the process of seeking a [divorce/have obtained a restraining order]. At this time, all of my income is from CalWORKs welfare payments.

Right now I am unable to make payments on this account. I hope to be able to make payments in the future as soon as I have obtained employment and my financial situation has improved. I will contact you as soon as that has happened. In the meantime, please do not contact me in an attempt to collect this debt.

All of my income is from welfare. This money is exempt from garnishment under Cal. Code Civ. Proc § 704.170 and Welfare & Institutions Code § 17409. Any threat to garnish such benefits is actionable under the Fair Debt Collections Practices Act, 15 USC § 1692e(5).

I recognize that you may choose to refer this account to another collections agency. Should you choose to do so YOU MUST INCLUDE A COPY OF THIS LETTER IN MY FILE AND THE ACCOUNT MUST INCLUDE A NOTATION THAT AT THIS TIME, I DO NOT WISH TO BE CONTACTED IN AN ATTEMPT TO COLLECT A DEBT. Thank you for your assistance and your understanding.

Sincerely,

[Consumer Name]

Date

To whom it may concern:

I am an attorney with Bay Area Legal Aid and I represent Ms. Jane Doe in credit and consumer law matters. This letter is to inform you that negative credit entries associated with charged-off credit cards on Ms. Doe's credit report are the result of community property debt incurred during an abusive long-term marriage. An overall credit score which includes such entries are not a true reflection of Ms. Doe's creditworthiness.

For many years, Ms. Doe was a victim of domestic violence which included control over and misuse of financial resources by her abusive husband. During the marriage, Ms. Doe's husband was responsible for making credit card payments. When he ceased to make payments, Ms. Doe had no resources with which to make payments on these marital debts. Mr. Doe has since filed for bankruptcy, but Ms. Doe has chosen not to do because of the further damage a bankruptcy would do to her credit score. Please take these facts into consideration when evaluating Ms. Doe's application for housing or credit.

Ms. Doe is a survivor of domestic violence and needs to obtain rental housing for herself now that she has filed for divorce from her abuser. We appreciate your consideration of the fact that the delinquencies on Ms. Doe's credit report are not the fault of the applicant for rental housing. Should you need further information about this matter, please contact me at (510) XXX-XXXX with any questions.

Sincerely,

Attorney, Esq.

Date

To whom it may concern:

I am an advocate with [Shelter] and I am assisting Ms. Jane Doe as she and her children seek to reestablish their lives after leaving an abusive relationship. This letter is to inform you that negative credit entries associated with charged-off credit cards on Ms. Doe's credit report are the result of debt incurred during an abusive relationship when Ms. Doe had no control over the finances in the home due to financial and economic abuse. An overall credit score which includes such entries are not a true reflection of Ms. Doe's creditworthiness.

For many years, Ms. Doe was a victim of domestic violence which included control over and misuse of financial resources by her abusive husband. Ms. Doe also has an eviction on her record from the time that she was in this abusive relationship. Ms. Doe was unable to make payments on the rent due to the abuse in the relationship and her abuser insisted that they move out without arranging a consensual moveout with the landlord.

Ms. Doe has now obtained a restraining order against her abuser and filed for divorce, effective [Date] and [Date], and she is dedicated to building a new life for herself and her children. As you can see from her credit report, all of the negative entries pre-date the restraining order and filing of the petition for dissolution of marriage (divorce). Please take these facts into consideration when evaluating Ms. Doe's application for housing or credit.

Ms. Doe is a survivor of domestic violence and needs to obtain rental housing for herself now that she has filed for divorce from her abuser. We appreciate your consideration of the fact that the delinquencies on Ms. Doe's credit report are not the fault of the applicant for rental housing and your willingness to give Ms. Doe and her children the opportunity to have a home of their own. Should you need further information about this matter, please contact me at (510) XXX-XXXX with any questions.

Sincerely,

[Shelter Advocate]

[Date]

[Consumer Name]

[Consumer Address]

[CRA name and address]

Re: [Name] SSN : Report #: DOB:

Dear Sir or Madam;

I am writing to request that you place an extended fraud alert on my credit with your company because I have been a victim of identity theft. I reported this theft to the [City] Police Department on [Date]. I make this request pursuant to the Fair Credit Reporting Act and the California Consumer Reporting Agencies Act, Cal. Civ. Code §§ 1785.11.2-1785.11.6.

I enclose copies of the following:

- (1) A copy of a [City] Police Department report of the specific incident of identity theft.
- (2) A copy of my driver's license.
- (3) A copy of the FTC affidavit of identity theft.
- (4) A copy of my social security card.

I hereby request that you assign to me a Personal Identification Number that I can use to temporarily lift the security freeze if I want a potential employer to conduct a background check or wish to open a new credit account.

Sincerely,

[Consumer]

[Date]
[Consumer Name]
[Consumer Address]

[Creditor name and address]

Re: [Name] SSN Account #: DOB:

Dear Sir or Madam;

I am writing to inform you that a debt you have associated with my name and social security number is a result of identity theft. I hereby request an investigation of the account referenced above and request copies of applications, checks, account statements, and records of transactions initiated by the thief who opened this account in my name.

I have enclosed a copy of my credit report dated [Date], with the disputed items circled to identify those particular items as information resulting from the identity theft that I suffered. I have also enclosed a copy of my dispute letter, dated [Date] to [CRA Name].

Pursuant to California Penal Code § 530.8, a creditor is required to cooperate with a consumer who has been the victim of identity theft. This letter hereby asserts my right to seek an injunction restraining [Creditor] from collecting or attempting to collect on this debt or from enforcing or executing on any judgment against her related to this account. California Civil Code § 1798.93(c)(3).

I also enclose copies of the following:

- (1) A copy of my California [Driver's License or Identification Card];
- (2) A copy of my Federal Trade Commission identity theft affidavit dated [Date];
- (3) A copy of a [City] Police Department report of the specific incident of identity theft.

Please diligently and promptly investigate this notification that the account referenced above was opened fraudulently as a result of identity theft and send me the identified information I have requested.

Sincerely,

[Consumer]