

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS & PROTECTION

In the Matter of the

Assurance No. 14-108

Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of New York, of

PORTFOLIO RECOVERY ASSOCIATES, LLC

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) has conducted an investigation (the “Investigation”), pursuant to Executive Law § 63(12) and General Business Law Article 22-A, of the debt collection practices of Portfolio Recovery Associates, LLC (“PRA”).

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG and the relief agreed to by the OAG and PRA (collectively, “the parties”).

I. DEFINITIONS

1. For purposes of this Assurance, the following terms have the following meanings:
 - a. “PRA” shall mean Portfolio Recovery Associates, LLC and any of its subsidiaries or corporate affiliates engaged in debt collection activities, including debt collection litigation, within New York State.
 - b. “Communication” shall mean any conversation, discussion, letter, email or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means in connection with an attempt to collect a debt.
 - c. “Debt Collection Action” shall mean a judicial action or arbitration to collect on a debt assertedly owed by a consumer residing in New York State.

d. “Original Creditor” shall mean the company or entity that originally provided the credit or loan to the consumer or otherwise owned the debt at the time of default.

e. “Third-Party Debt Collector” shall mean any third party engaged in debt collection activities in New York State on behalf of PRA, including any attorneys who bring Debt Collection Actions on behalf of PRA.

f. “Time-Barred Action” shall mean a lawsuit to collect on a debt assertedly owed by a consumer residing in New York State that was determined by the OAG to be commenced outside of the applicable statute of limitations for the causes of action asserted therein.

g. “Time-Barred Debt” shall mean a debt assertedly owed by a consumer residing in New York State that is outside of the applicable statute of limitations for a creditor to sue to collect on the debt.

II. FINDINGS OF THE ATTORNEY GENERAL

Parties and Background

2. PRA is a Delaware limited liability company with its principal executive offices at 120 Corporate Boulevard, Norfolk, Virginia 23502.

3. PRA is engaged in the business of purchasing portfolios of delinquent or charged-off debts from other entities, such as the Original Creditor on the debt or another debt buyer, and then seeking to collect on the debt from consumers. The majority of the debt purchased by PRA is in the form of defaulted credit card debt. PRA does not re-sell to other entities any of the debt that it has purchased.

4. PRA is one of the largest buyers of consumer debt in the nation. According to a recent SEC filing by its parent, Portfolio Recovery Associates, Inc., from its inception in 1996

through December 31, 2012, the company paid approximately \$2.7 billion to purchase more than 31 million consumer debts with a total face value of \$70.8 billion.¹

5. PRA is a “debt collector” under 15 U.S.C. § 1692a(6) of the federal Fair Debt Collection Practices Act and a “principal creditor” under Article 29-H of New York’s General Business Law. PRA is licensed as a “debt collection agency” by the New York City Department of Consumer Affairs.

PRA’s Non-Judicial Debt Collection Activities

6. After purchasing a portfolio of debt, PRA first attempts to collect on the debt through non-judicial methods, such as through collection calls and letters.

7. PRA attempts to collect through non-judicial means both on debt that is within the applicable statute of limitations and on Time-Barred Debt. There is no prohibition in New York State against collecting on Time-Barred Debt, but, in such instances, a debt collector must not lead the consumer to believe that the debt collector will sue on the debt should the consumer fail to pay.

8. Consumers who receive a collection call or letter from a debt collector regarding a Time-Barred Debt without having been informed by the collector of the debt’s legal status may not realize that the debt is outside of the applicable statute of limitations and may believe that they will be sued if they fail to pay the debt. It is possible that if consumers understood that they would not be sued on a Time-Barred Debt, at least some of these consumers would choose not to make a payment on the debt in response to the debt collector’s collection attempts.

¹ See Portfolio Recovery Associates, Inc., Annual Report (Form 10-K), at 6 (filed Feb. 28, 2013).

9. Since April 2010, the New York City Department of Consumer Affairs (“DCA”) has required debt collectors to make the following disclosure in all communications with consumers in New York City about a Time-Barred Debt:

WE ARE REQUIRED BY LAW TO GIVE YOU THE FOLLOWING INFORMATION ABOUT THIS DEBT. The legal time limit (statute of limitations) for suing you to collect this debt has expired. However, if somebody sues you anyway to try to make you pay this debt, court rules REQUIRE YOU to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment. Even though the statute of limitations has expired, you may CHOOSE to make payments. However, BE AWARE: if you make a payment, the creditor’s right to sue you to make you pay the entire debt may START AGAIN.

(the “DCA Disclosure”).²

10. Following DCA’s implementation of this rule, PRA has made the DCA Disclosure with respect to any communications with New York City residents about a Time-Barred Debt. Additionally, since 2012, PRA has disclosed when it communicates in writing with consumers in New York State about a Time-Barred Debt that, due to the age of the debt, PRA will not sue to collect on the debt. PRA has also disclosed since that time that it will not report the debt to a credit reporting agency when the debt is beyond the date for inclusion in consumer reports provided for in Section 605(a) of the Fair Credit Reporting Act.

PRA’s Debt Collection Actions

11. In some instances, when PRA’s non-judicial debt collection measures prove unsuccessful, the company may commence a lawsuit against the consumer for the amount of the debt.

² See Rules of the City of New York, tit. 6, ch. 2 § 2-191.

12. Each year, PRA brings thousands of debt collection lawsuits against consumers throughout New York State. According to a search of the electronic “eCourts” database of the New York State Unified Court System, PRA filed more than 66,000 debt collection actions in New York courts between 2007 and 2012.³

13. Typically, PRA initiates these debt collection actions through standard form summons and complaints prepared and filed by their counsel. The complaints usually assert causes of action for breach of contract and/or account stated.

14. Although court rules do not expressly require that complaints contain specific information relating to the timeliness of a claim (such as the date of last payment or of delinquency on the alleged debt, the jurisdiction in which the cause(s) of action accrued, or the statute of limitations of that jurisdiction), consumers who are sued by PRA may be unable to determine whether the claims are timely because the complaints may not always provide sufficient information to allow a reasonable consumer to determine whether PRA’s claims are within the applicable statute of limitations.

15. The majority of these debt collection lawsuits brought by PRA are not answered or otherwise responded to by consumers and result in default judgments against the consumers, in which a judgment is entered in favor of the company for the full value of the debt claimed to be owed.⁴ PRA typically submits an affidavit from a PRA employee in support of its application for a default judgment.

³ This total derives from aggregating the results of searches for the term “Portfolio Recovery Associates” within the “WebCivil Local” and “WebCivil Supreme” databases of the eCourts system.

⁴ Although estimates vary, well more than half of all debt collection lawsuits in New York State, and perhaps as much as 90% of such lawsuits, result in default judgments in favor of the plaintiff. *See, e.g.*, Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), at 7, available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf> (noting that panelists in FTC roundtable “estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent”); New York

16. On May 13, 2009, the Chief Clerk for the Civil Court of the City of New York issued directive CCM-186 that required that all requests for default judgments entered by the Clerk must be accompanied by an affidavit from the plaintiff attesting that, after reasonable inquiry, the plaintiff (or its attorney) has reason to believe that the applicable statute of limitations on plaintiff's claim had not expired at the time the action was commenced. On June 1, 2010, the directive was amended to require that the affidavit also identify the jurisdiction in which the plaintiff's cause of action accrued and the statute of limitations of that jurisdiction, if other than New York.

17. PRA has complied with the directive and, since May 2009, PRA, through its counsel, has filed an affidavit attesting that its cause(s) of action was filed within the applicable statute of limitations when it applies for a default judgment in New York City civil court. Elsewhere in the state, outside of New York City, even where such an affidavit is not required, PRA has filed an affidavit addressing the statute of limitations for approximately the last year.

PRA's Filing of Time-Barred Actions

18. The applicable statute of limitations in debt collection actions filed in New York is governed by New York's "borrowing statute," § 202 of the Civil Practice Law and Rules ("CPLR"). This statute is designed to prevent plaintiffs from forum shopping for a favorable statute of limitations.⁵ It requires that a cause of action against a defendant that accrued outside

City Bar Association, *Out of Service: A Call to Fix the Broken Process Service Industry* (April 2010), at 4, available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf> (finding 79% of consumer credit cases filed in New York City Civil Court in 2008 resulted in default judgments against the defendant); The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (October 2007), at 17-18, available at http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf (finding that 80% of cases within randomly selected sample of New York City Civil Court debt collection actions resulted in a final default judgment against the defendant).

⁵ See *Global Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 528 (1999).

of New York State be timely filed under both New York’s statute of limitations and the statute of limitations of the jurisdiction in which the cause of action accrued:

An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

CPLR § 202. The statute is of general applicability, governing any New York action that accrued outside of the state, and is “substantially unchanged since 1902.”⁶

19. In New York, the statute of limitations for a cause of action to collect on a debt owed to a creditor is generally six years. *See* CPLR § 213(2) (six-year statute of limitations for “an action upon a contractual obligation or liability, express or implied”). Many states outside of New York have shorter statutes of limitations that govern debt collection claims accruing in those jurisdictions. For example, many creditors are incorporated or have their principal place of business in Delaware, which has a three-year statute of limitations. *See* Del. Code Ann. Tit. 10, § 8106.⁷

20. In April 2010, the New York Court of Appeals issued its decision in *Portfolio Recovery Assocs., LLC v. King*, 14 N.Y.3d 410, 416 (2010), a case involving Portfolio, holding that in order for an economic cause of action to be timely it must be commenced within the statutes of limitations of both New York and the jurisdiction where the cause of action accrued.⁸

⁶ *Triarc*, 93 N.Y.2d at 528.

⁷ Several other states have statutes of limitations of three or four years. *See, e.g.*, Cal Code Civ. Proc. § 337 (four-year statute of limitations for breach of written contract and account stated causes of action in California); Kan. Stat. Ann. § 60-512 (three-year statute of limitations in Kansas); Md. Code Ann. Cts. & Jud. Proc. § 5-101 (three-year statute of limitations for breach of contract and account stated causes of action in Maryland); N.C. Civ. Proc. § 1-52.1 (three-year statute of limitations in North Carolina); N.H. Rev. Stat. Ann. § 508.4 (three-year statute of limitations in New Hampshire); 42 Pa. Cons. Stat. § 5525 (four-year statute of limitations in Pennsylvania); Tex. Civ. Prac. & Rem. Code Ann. § 16.004 (four-year statute of limitations in Texas).

⁸ *See Triarc*, 93 N.Y.2d at 529.

Courts in subsequent cases have held that the Court of Appeals' decision in *King* did not change the law governing what is required by CPLR § 202 to bring a timely action in New York.⁹

21. Prior to the Court of Appeals' decision in *King*, PRA, like many other plaintiffs in consumer credit actions, used New York's six-year statute of limitations when filing Debt Collection Actions in New York courts, regardless of where the underlying cause of action accrued. Prior to *King*, many litigants, and even some courts, failed to apply CPLR § 202, and instead focused solely on the jurisdiction where the consumer resides, when determining the applicable statutes of limitations in Debt Collection Actions.¹⁰ Consequently, in thousands of Time-Barred Actions, including, but not limited to those in which consumers defaulted and thus did not raise a statute of limitations defense, PRA obtained judgments where the jurisdictions in which the causes of action accrued had statutes of limitations shorter than six years.

22. Based on data produced by PRA, the OAG has determined that PRA obtained judgments in more than two thousand Time-Barred Actions between December 1, 2008 and April 2012 and, in some instances, continues to collect on those judgments.

23. Following the Court's decision in *King*, it has been the policy of PRA to only file a Debt Collection Action in New York if the action is within both New York's statute of limitations and the statute of limitations in which the cause of action accrued.

⁹ See *Windsearch, Inc. v. Delafrange*, 90 A.D.3d 1223, 1224 (3d Dep't 2011) ("We do not agree with plaintiff that the holding in *Portfolio* represents a new rule of law that must be applied prospectively."); *Diaz v. Portfolio Recovery Assocs., LLC*, No. 10 CV 3920 (MKB) (CLP), 2012 U.S. Dist. LEXIS 72724, at *9 (E.D.N.Y. May 24, 2012) ("The analysis in *King* is straightforward, relying on existing New York precedent, and does not note any contrary prior decisions by any New York court.").

¹⁰ See, e.g., *Portfolio Recovery Assocs., LLC v. King*, 55 A.D.3d 1074 (3d Dept. 2008) ("Even though the credit card agreement between Discover and defendant contained a Delaware choice of law provision, Delaware's shorter statute of limitations does not apply. Under New York choice of law principles, contractual choice of law provisions only apply to substantive issues; New York follows its own procedural rules.") (citing *Martin v Dierck Equip. Co.*, 43 N.Y.2d 583, 588 [1978]; *Education Resources Inst., Inc. v Piazza*, 17 A.D.3d 513 [2005]; *Ground to Air Catering v. Dobbs Intl. Servs.*, 285 A.D.2d 931, 932 [2001]); *Tanges v Heidelberg N. Am.*, 93 N.Y.2d 48, 54-55 [1999]).

24. By reason of the foregoing, the OAG believes that PRA has engaged in conduct violative of New York Executive Law § 63(12), New York General Business Law (“GBL”) §§ 349 and 601, and the federal Fair Debt Collection Practices Act (“FDCPA”).

25. Executive Law § 63(12) authorizes the OAG to bring an enforcement action when a person or business entity engages in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

26. GBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this State.

27. GBL § 601 prohibits a principal creditor or its agent from claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist. The statute defines a principal creditor to include any person, firm, corporation or organization to which a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of such person, firm, corporation, or organization.

28. The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of a debt, including falsely representing the character, amount, or legal status of a debt, threatening to take any action that cannot legally be taken, or using any false representation or deceptive means to collect or to attempt to collect a debt. (15 U.S.C. § 1692e.) In addition, the FDCPA prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect a debt. (15 U.S.C. § 1692f.)

III. PROSPECTIVE RELIEF

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation of PRA subject to the terms of this Assurance;

WHEREAS, without admitting or denying any of the above allegations, PRA is entering into this Assurance in order to settle and resolve the OAG's investigation; and

WHEREAS, the parties each believe that this Assurance is a prudent and appropriate way to resolve this dispute;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

1. PRA shall fully comply with New York Executive Law § 63(12), GBL §§ 349 and 601, and the FDCPA.

Prohibited Practices

2. PRA will not represent, directly or indirectly, that it has the right to sue on Time-Barred Debt.

3. PRA will not commence or cause to be commenced any lawsuits to collect on any Time-Barred Debt.

4. PRA will not commence or cause to be commenced a Debt Collection Action unless, after a reasonable inquiry, PRA or its counsel has reason to believe that the causes of action asserted therein are within the applicable statute(s) of limitations of both New York and the jurisdiction in which the cause of action accrued, if other than New York.

5. PRA will continue to not bring suit in instances where PRA's right to sue on a formerly Time-Barred Debt is reactivated due to a consumer making a partial payment on his or her debt.

Collection Calls and Letters

6. PRA will include the following information in any written Communication seeking to collect on a debt allegedly owed by a consumer residing in New York State:

- (a) The name of the Original Creditor of the debt;
- (b) The last four numbers of the Original Creditor account number or other Original Creditor account identifier; and
- (c) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default.

7. PRA will continue to disclose in all written Communications seeking to collect on a Time-Barred Debt, and will henceforth disclose in all oral Communications seeking to collect on a Time-Barred Debt, that because of the age of the debt, PRA will not sue the consumer to collect on the Time-Barred Debt.

8. For any debt that is beyond the date for exclusion from consumer reports provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c, PRA will continue to disclose in all written Communications about the debt with a consumer residing in New York State, and will henceforth disclose in all oral Communications about the debt with a consumer residing in New York State, that because of the age of the debt, PRA will not report the debt to any credit reporting agency.

9. PRA shall make the disclosures required by Paragraphs 7 and 8 above in all of its oral Communications within thirty (30) days of the Effective Date of this Assurance. PRA shall promptly begin modifying its written Communications to incorporate the disclosures required by Paragraphs 7 and 8 and shall include the disclosures in all of its written Communications within sixty (60) days of the Effective Date of this Assurance. For written Communications, the

disclosures required in Paragraphs 7 and 8 shall be in at least 12 point type that is prominent, and shall be placed adjacent to the information in the Communication about the amount claimed to be due or owed on the debt.

10. PRA shall not make any representation or statement, or take any other action that interferes with, contradicts, or otherwise undermines the disclosures required in Paragraphs 7 and 8 above.

Pleadings in Debt Collection Actions

11. PRA will include the following information in any complaint it files in a Debt Collection Action:

- (a) The name of the Original Creditor of the debt;
- (b) Identification of the complete chain of title of the debt;¹¹
- (c) The last four numbers of the Original Creditor account number or other Original Creditor account identifier;
- (d) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default; and
- (e) An allegation that the causes of action asserted therein are not outside of the applicable statute of limitations for enforcing the debt.

Applications for Default Judgment

12. PRA will submit an affidavit with any application for a default judgment in a Debt Collection Action attesting that the action was commenced within the applicable statute(s) of limitations. The affidavit, which may be from PRA's attorney, shall include the following information:

¹¹ In connection with debt purchased after September 1, 2009, PRA shall comply with DRP-182 of the Directives

- (a) The name of the Original Creditor of the debt;
- (b) The jurisdiction where the cause of action accrued;
- (c) The statute of limitations for the jurisdiction where the cause of action accrued;
- (d) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default; and
- (e) A statement that after reasonable inquiry, PRA or its counsel has reason to believe that the applicable statute(s) of limitations has/have not expired.

Training and Certification Requirements

13. Within fifteen (15) days of the Effective Date of this Assurance, PRA shall provide a copy of this Assurance to all individuals at PRA who manage collection activities in New York.

14. PRA shall draft training materials summarizing the requirements of this Assurance within thirty (30) days of the Effective Date of this Assurance. PRA shall provide a copy of the final version of these training materials to the OAG upon their completion.

15. Within sixty (60) days of the Effective Date of this Assurance, PRA shall provide training on the requirements of this Assurance to all of its employees with responsibility for debt collection activities within New York State. In addition, PRA shall provide training on the requirements of this Assurance to all newly-hired employees with responsibility for debt collection activities within New York State within thirty (30) days of their hiring date.

16. Within fifteen (15) days of the Effective Date of this Assurance, PRA shall provide a copy of this Assurance or a summary thereof to all of its Third-Party Debt Collectors.

PRA shall require that each such Third-Party Debt Collector return a written certification (“Certification”) within thirty (30) days of the Effective Date of this Assurance, certifying that the Third-Party Debt Collector has reviewed and will abide by the terms of this Assurance.

17. If the Third-Party Debt Collector declines to return a completed Certification to PRA, PRA will cease employing such Third-Party Debt Collector for any future debt collection activities within New York State. PRA shall provide a copy of all completed Certifications to the OAG upon the OAG’s request.

IV. RELIEF TO CONSUMERS

18. The OAG has provided to PRA a list of cases filed by PRA between December 1, 2008 and the Effective Date of the Assurance for which the OAG believes PRA obtained a default judgment against a consumer in a Time-Barred Action. Each case on this list shall be designated a “PRA Time-Barred Action” for the purpose of this Assurance.

19. PRA has agreed to cease its collection activities with respect to the judgments it obtained in connection with the PRA Time-Barred Actions. Within thirty (30) days of the Effective Date of this Assurance, PRA will direct that any pending garnishments, levies, liens, restraining notices, or attachments relating to such judgments be released, and seek to vacate the judgments with the court. Thereafter, PRA will not attempt to collect on the debt underlying the judgments, and will not report the debt to credit reporting agencies.

20. Any New York consumer who is or was a defendant in an action brought by PRA that is not so designated as a PRA Time-Barred Action may notify the OAG in writing within sixty (60) days of the Effective Date of this Assurance that PRA obtained a default judgment against such consumer in a Time-Barred Action. The consumer shall provide any documentation to the OAG that he or she possesses in support of this claim. The OAG shall then make an initial

determination as to whether the subject judgment was predicated on a Time-Barred Action and will promptly notify PRA of such determination. PRA shall then have thirty (30) days to review and, if applicable, dispute the OAG's initial determination. If PRA disputes the OAG's initial determination, PRA shall provide the OAG with a written summary of its reasons therefore, including any supporting documentation. The OAG shall then make, and provide to PRA, the OAG's final determination as to whether any such judgments were predicated on a Time-Barred Action. If it is so determined, within thirty (30) days of PRA's receipt of the OAG's final determination, PRA shall afford such judgments the same relief as is provided to PRA Time-Barred Actions, as set forth in paragraph 19 of this Agreement.

21. Nothing in this Assurance shall deprive a consumer from asserting any legal or equitable right he or she may have, including, but not limited to, any right to seek relief on the grounds that the debt owed by the consumer is a Time-Barred Debt or the lawsuit brought by PRA was a Time-Barred Action.

V. PAYMENT TO THE STATE

22. In consideration of the making and execution of this Assurance, and within three (3) business days of the Effective Date of this Assurance, PRA shall pay by wire transfer, certified or bank check payable to the State of New York three hundred thousand dollars (\$300,000) as costs, penalties, and fees. If payment is made by check, it shall be payable to the State of New York and delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: Brian N. Lasky, Assistant Attorney General, 120 Broadway, 3rd Floor, New York, New York, 10271.

VI. COMPLIANCE

23. PRA shall monitor compliance by all Third-Party Debt Collectors and take appropriate corrective action against non-compliant Third-Party Debt Collectors, including terminating PRA's relationship with such entities, when the Third-Party Debt Collector engages in conduct in violation of the terms of this Assurance.

24. PRA shall promptly and thoroughly investigate consumer complaints and designate a person or entity to act as a direct contact for the Attorney General for resolution of consumer complaints. Within thirty (30) days of the Effective Date of this Assurance, PRA shall provide the OAG with the name and address of the direct contact designated to handle consumer complaints filed with the OAG.

25. Within one hundred and eighty (180) days of the Effective Date of this Assurance, PRA shall file with the Attorney General a report, in writing, setting forth in detail the manner and form in which it has complied with this Assurance.

26. PRA shall, as requested by the Attorney General, provide the Attorney General with copies of the records and documents sufficient to demonstrate PRA's compliance with the requirements of this Assurance.

VII. MISCELLANEOUS

27. The OAG has agreed to the terms of this Assurance based on the OAG's own Investigation as set forth in the Findings in Part II above and the representations that PRA has made to the OAG. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

28. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by PRA in agreeing to this Assurance.

29. This Assurance resolves and releases all claims relating to the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the OAG's review of acts, practices, or courses of conduct that occur after the Effective Date of this Assurance.

30. PRA represents and warrants, through the signatures below, that the terms and conditions of Sections III through VI of this Assurance are duly approved, and execution of this Assurance is duly authorized. PRA shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis, but shall be permitted to state that they do not admit or deny the findings set forth in this Assurance. Nothing in this paragraph affects PRA's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceeding to which the OAG is not a party.

31. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of wrongdoing or liability by PRA or any of its affiliates. The parties agree that nothing in this Assurance shall create any private rights, causes of action, third party rights or remedies of any other individual or entity against PRA or any of its affiliates.

32. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

33. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except to a successor in interest.

34. It is understood and agreed that this Assurance shall apply to PRA, whether acting through its respective directors, officers, employees, representatives, agents, assigns, successors, affiliates, subsidiaries or other business persons or business entities whose acts, practices, policies are directed, formulated or controlled by PRA.

35. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

36. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and PRA shall make no representation to the contrary.

37. Pursuant to Executive Law § 63(15), any violation of the terms of this Assurance shall constitute *prima facie* proof of violation of General Business Law §§ 349 and 601 and/or Executive Law § 63(12) in any civil action or proceeding thereafter commenced by the OAG against PRA.

38. If a court of competent jurisdiction determines that PRA has breached this Assurance, PRA shall pay to the OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation reasonable legal fees, expenses, and court costs.

39. Nothing contained herein shall be construed to deprive any person of any private right under the law.

40. This Assurance constitutes the entire agreement between the OAG and PRA and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

41. Any notices, reports or other written documents required by this Assurance shall be provided by first-class mail and/or email to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the People of the State of New York, to

Brian N. Lasky
Assistant Attorney General
Office of the New York State Attorney General
Bureau of Consumer Frauds and Protection
120 Broadway, 3rd Floor
New York, New York 10271
Tel. (212) 416-8915
Fax. (212) 416-6003
brian.lasky@ag.ny.gov

For PRA:

Robert Abrams
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Tel. (212) 806-5546
Fax (212) 806-2546
rabrams@stroock.com

Christopher D. Lagow
Deputy General Counsel
Portfolio Recovery Associates, Inc.
140 Corporate Blvd.
Norfolk, Virginia 23502
clagow@portfoliorecovery.com

Such notices, statements and documents shall be deemed to have been given upon mailing.

42. PRA shall provide written notice to the OAG of any change in address within ten days of such change.

43. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

44. Notwithstanding anything else in this Assurance, if compliance with any provision of this Assurance would render compliance with any existing or future provision of New York or federal laws or regulations relating the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with the relevant provision of the Assurance. PRA shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Assurance is rendered impossible by state or federal law or regulation.


45. This Assurance may be executed in multiple counterparts.

46. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

WHEREFORE, THE SIGNATURES EVIDENCING ASSENT TO THIS Assurance have been affixed hereto on the dates set forth below.

Dated: May 1, 2014
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
By:




JANE M. AZIA
Bureau Chief
Bureau of Consumer Frauds and Protection

Dated: May 1, 2014
Norfolk, Virginia

**PORTFOLIO RECOVERY
ASSOCIATES, LLC**

By: 

CHRISTOPHER D. LAGOW
DEPUTY GENERAL COUNSEL


BRIAN N. LASKY
Assistant Attorney General
