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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

Appellate Case No. 2023-001601

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane Goodstein, Circuit Court Judge

Case No. 2018-CP-18-00729
Appellate Case No. 2020-000935

Portfolio Recovery Associates, LLC Assignee of
Synchrony Bank/HH Gregg, Petitioner,

v.

Jennifer Campney, Respondent

and

Jennifer Campney, Third-party Plaintiff,

v.

Cooling & Winter, LLC, Third-party Defendant,

Of whom Jennifer Campney is the Respondent.

**MOTION OF AMICUS CURIAE ACA INTERNATIONAL FOR LEAVE TO
FILE BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT
OF CERTIORARI**

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Amicus curiae ACA International (ACA) respectfully moves the Court, pursuant to South Carolina Rule of Appellate Procedure 213, for leave to file a brief in support of Petitioner Portfolio Recovery Asset LLC’s Petition for Writ of Certiorari. A copy of ACA’s proposed brief is attached hereto as **Exhibit 1**. In further support of this motion, ACA states as follows:

STATEMENT OF AMICUS CURIAE’S INTEREST

Founded in 1939 as the American Collections Association, ACA, a 501(c)(6) nonprofit corporation, has long been the ARM industry’s largest trade association.¹ ACA has members in every state and more than 30 countries and today represents more than 1,700 member organizations—including third-party collection agencies, asset buyers, attorneys, creditors, and vendor affiliates—and their more than 133,000 employees. ACA International, *Advocacy Booklet* (Nov. 21, 2022), available at bit.ly/3UKuh5m.

ACA’s members include sole proprietorships, partnerships, small businesses, and large corporations. Many members operate within a single state or a few states, and some maintain national or international operations. Nearly 90%

¹ Historically known as the “debt-collection industry,” the “collections” industry’s modern business paradigms have precipitated a shift to the label “Accounts Receivable Management” (ARM), a change that reflects the role that ACA’s members have come to play not only in post-delinquency collections but also in business-processing outsourcing (i.e., outsourced accounts management services for creditors that lack the infrastructure to manage those non-delinquent accounts on their own); for pre-default, post-delinquency receivables management (i.e., in servicing “pre-collection” accounts); in consumer debt settlement; and in post charge-off debt sales, which keep costs of credit down by helping credit grantors mitigate losses on significantly delinquent accounts.

of ACA's members are small businesses with limited resources. *Id.* Many of their customers are small businesses as well.

ACA's members are vital to protecting both consumers and creditors in the modern economy. ACA members work with consumers to resolve consumer debt, which saves every American household, on average, more than \$700 each year. Kaulkin Ginsberg, *2020 State of the Industry Report*, ACA Internatioanl (2020), available at bit.ly/3uxMcBC.

At the same time, ACA's members help to keep America's credit-based economy functioning by enabling creditors to continue to provide low-cost access to credit. For example, in 2018 the ARM industry returned more than \$90 billion to creditors for goods and services they had provided to their customers. *Id.* The collection of these delinquent receivables reduces the losses that credit grantors, like providers of consumer goods and services, incur and thus helps those credit grantors and goods-and-services providers maintain lower overall costs for consumers—a benefit that has particular importance at a time when rising prices have been hurting consumers throughout the country.

Additionally, by helping creditors mitigate the losses that often follow from consumer credit delinquencies, the ARM industry helps credit grantors maintain access to credit for American's most vulnerable consumers, including those with a poor credit history who want to rebuild their creditworthiness and those with little or no credit history.

In short, ACA International's members return billions of dollars to American businesses for reinvestment in the economy each year; ease consumer access to credit; and help control the ever-inflating costs of goods and services, which benefits consumers and providers of goods and services, including small businesses.

For its part, ACA provides its members with essential information, education, and guidance on compliance with industry-relevant laws and regulations so that legitimate collection agencies can continue pursuing compliance in the frequently changing modern regulatory landscape. Separately, ACA articulates the value of the ARM industry to businesses, consumers, policymakers, and courts in an effort to help them understand the critical role that ACA members play in the modern economy and how overregulation can, in fact, harm consumers. In keeping with this part of this mission, ACA regularly files amicus briefs in cases of importance to its membership, cases that implicate the critical role that ACA members play in the modern economy. *See, e.g., Nelson v. P.S.C., Inc.*, 535 P.3d 418, 420 (Wash. 2023); *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021); *Glasser v. Hilton Grand Vacations, Co., LLC*, 948 F.3d 1301 (11th Cir. 2020); *ACA Int'l v. FCC*, 855 F.3d 687 (D.C. Cir. 2018).

REASONS WHY THE AMICUS CURIEA BRIEF IS DESIRABLE

ACA urges the Court to grant the Petition for Writ of Certiorari that PRA² has sought in an effort to rectify several errors in the Court of Appeals' opinion of August 23, 2023. Left unaddressed, the oversights and incomplete analysis in that opinion risk throwing South Carolina's ARM industry into chaos, a result that will ultimately harm South Carolina consumers, creditors, and businesses alike.

First, the Court of Appeals did not consider the argument that the National Bank Act preempts the South Carolina Consumer Protection Code ("SCCPC") where, as here, the assignor is a federally registered bank. Second, even if the National Bank Act does not completely preempt the SCCPC, the Court of Appeals' opinion creates an impossible situation wherein a debt buyer like PRA, which purchases charged off debts, must either comply with the SCCPC notice of right to cure requirement or open itself to liability under the Fair Debt Collection Practices Act by offering a statutory remedy that it cannot provide.

If this Court declines to reverse or narrow the Court of Appeals' opinion with respect to the application of the SCCPC to debt buyers, the debt market in South Carolina will contract significantly and will ultimately diminish South Carolina consumers' access to credit by causing lawful creditors to incur hundreds of millions of dollars in unnecessary losses, which would both drive up the overall

² Importantly, Petitioner Portfolio Recovery Associates LLC is the assignee of Synchrony Bank/HH Gregg with respect to the consumer credit-card debt at issue in this action and the underlying state court collection action; PRA had no role in granting Ms. Campney the open-ended line of credit she obtained for use with HH Gregg.

cost of consumer goods and services in South Carolina and also trigger a spike in demand for consumer credit among those most likely to default on a new line of credit.

CONCLUSION

For the reasons stated above, ACA International urges the Court to grant it leave to file the amicus brief (Exhibit 1) in support of Petitioner's Petition for the Writ of Certiorari.

Respectfully submitted on this the 14th day of November, 2023.

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