

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Mar 14 2025

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2023-001601

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.

**BRIEF OF AMICUS CURIAE SOUTH CAROLINA DEPARTMENT OF CONSUMER
AFFAIRS**

**SOUTH CAROLINA DEPARTMENT OF
CONSUMER AFFAIRS**

Carolyn Grube Lybarker

Administrator/Consumer Advocate

Kelly H. Rainsford

Deputy Administrator/General Counsel

Post Office Box 5757

Columbia, SC 29250-5757

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issue on Appeal 1

Statement of the Case.....1

Interest of Amicus.....2

Standard of Review.....4

Argument5

THE COURT OF APPEALS CORRECTLY CONCLUDED THE RIGHT TO CURE STATUTES REQUIRED BY THE SOUTH CAROLINA CONSUMER PROTECTION CODE APPLY TO AN ASSIGNEE OF A LENDER CREDIT CARD DEBT, EVEN WHEN THE CREDIT CARD ISSUER IS A NATIONAL BANK.6

I. THE NATIONAL BANK ACT DOES NOT PREEMPT THE SCCPC’S RIGHT TO CURE STATUTES.7

II. THE RIGHT TO CURE STATUTES OF THE SCCPC APPLY TO ALL CREDITORS INCLUDING A THIRD-PARTY DEBT BUYER THAT TAKES ASSIGNMENT OF A CONSUMER CREDIT TRANSACTION DEBT.15

III. THE TIMING AND IMPACT OF THE ACCOUNT’S CHARGE OFF FULLY SUPPORT THE CONCLUSION THAT PRA, AS THE CREDITOR THAT DECIDED TO SUE ON THE DEBT, WAS OBLIGATED TO COMPLY WITH THE SCCPC’S RIGHT TO CURE STATUTES OR CONFIRM THAT THE ORIGINAL CREDITOR HAS DONE SO.16

IV. IF A CREDITOR SUES A CONSUMER FOR DEFAULT IN A CONSUMER CREDIT TRANSACTION, THE SCCPC’S RIGHT TO CURE STATUTES REQUIRE THE CREDITOR TO PROPERLY PLEAD AND PROVE THE PROSPECT OF SIGNIFICANT IMPAIRMENT.22

V. MONTHLY CREDIT CARD STATEMENTS DO NOT SATISFY THE PURPOSE OF THE SCCPC’S RIGHT TO CURE STATUTES.....27

Conclusion33

TABLE OF AUTHORITIES

Cases

Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)..... 7, 27

Aguayo v. U.S. Bank, 653 F.3d 912 (9th Cir. 2011)..... 13

Anderson Nat’l Bank v. Lockett, 321 U.S. 233 (1944)..... 10

Bahena v. Jefferson Capital Systems, L.L.C., 363 F. Supp. 3d 914 (W.D. Wis. 2019) ... 18, 32, 34, 35

Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996)..... passim

Boerner v. LVNV Funding, LLC, 358 F.Supp.3d 767 (E.D. Wis. 2019)..... passim

Brown v. Baby Girl Harper, 410 S.C. 446, 766 S.E.2d 375 (2014)..... 33

Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 377 S.E.2d 569 (1989)..... 6

Camp v. Springs Mortg. Corp., 310 S.C. 514, 426 S.E.2d 304 (1993)..... 6

Cantero v. Bank of America, N.A., 602 U.S. 205 (2024)..... 8, 9, 10, 34

Capital One Bank (USA) v. Denboer, 791 N.W.2d 264 (Iowa Ct. App. 2010) 13

Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000)..... 5

Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 484 S.E.2d 471 (1997)..... 6

Dixie Wood Preserving Co. v. Albert Gersten & Assoc., 244 S.C. 57, 135 S.E.2d 368 (1964) ... 20

Duckworth v. Cameron, 270 S.C. 647, 244 S.E.2d 217 (1978)..... 23

Epps v. Morgan Chase Bank, 675 F.3d 315 (4th Cir. 2012). 13

Faile v. S.C. Emp. Sec. Comm’n, 267 S.C. 536, 230 S.E.2d 219 (1967) 29

Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009)..... 5

First Nat’l Bank of San Jose v. California, 262 U.S. 366 (1923)..... 12

First Union Nat’l Bank v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998)..... 5

Foster v. Ford Motor Credit Co., 302 S.C. 450, 395 S.E.2d 440 (1990) 25

<u>Franklin Nat’l Bank v. New York</u> , 347 U.S. 373 (1954).....	12
<u>Hall v. Ford Motor Credit Co., LLC</u> , 254 P.3d, 526, 292 Kan. 176 (2011)	27
<u>Hinton v. S.C. Dep’t of Probation, Parole and Pardon Servs.</u> , 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004)	7, 27
<u>Hitachi Data Svs. Corp. v. Leatherman</u> , 309 S.C. 174, 420 S.E.2d 843 (1992)	6
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000)	6
<u>In re Eastep</u> , 562 B.R. 788 (Bankr. W.D. Okla. 2017).....	27
<u>In re Henderson</u> , 492 B.R. 537 (Bankr. D. Nev. 2013).....	27
<u>In re Rowe</u> , 342 B.R. 341 (Bankr. D. Kan. 2006).....	27
<u>In re Visnicky</u> , 401 B.R. 61 (Bankr. D. R.I. 2009).....	27
<u>Johnson County Auto Credit, Inc. v. Green</u> , 277 Kan. 148, 83 P. 3d 152 (2004).	26
<u>Johnson v. LVNV Funding, LLC</u> , 2016 U.S. Dist. LEXIS 19651 (E.D. Wis. 2016).....	21, 31
<u>Lako v. Portfolio Recovery Assocs.</u> , 2021 U.S. Dist. LEXIS 145776 (W.D. Wis. Aug. 4, 2021)13	
<u>Lexington Law Firm v. S.C. Dep’t of Consumer Affairs</u> , 382 S.C. 580, 677 S.E.2d 591 (2009) 29	
<u>Madden v. Midland Funding, LLC</u> , F.3d 246 (2d Cir. 2015), <u>cert. denied</u> , <u>Midland Funding, LLC v. Madden</u> , 579 U.S. 927 (2016).....	15, 16, 34
<u>Madison ex rel. Bryant v. Babcock Ctr., Inc.</u> , 371 S.C. 123, 638 S.E.2d 650 (2006)	5
<u>McClellan v. Chipman</u> , 164 U.S. 347 (1896)	11
<u>Meredith v. Pathfinders Detective & Recovery, Inc.</u> , 1983 U.S. Dist. LEXIS 20367 (D. S.C. 1983)	25
<u>National Bank v. Commonwealth</u> , 76 U.S. 353 (1870)	9, 10
<u>Orr v. Heiman</u> , 270 Kan. 109, 12 P.3d 387 (Kan. 2000).....	33
<u>Portfolio Recovery Assocs., LLC v. Campney</u> , 441 S.C. 36, 892 S.E.2d 321, (Ct. App. 2023)...	5, 33
<u>Quorum Fed. Credit Union v. Rumpf</u> , 2016 Wisc. App. LEXIS 860 (Wis. Ct. App. 2016)...	13, 17

<u>S.C. Dep’t of Consumer Affairs v. Cash Central of S.C., LLC</u> , 435 S.C 197, 865 S.E. 2d 789 (Ct. App. 2021)	6, 32, 34
<u>Satran v. LVNV Funding, LLC</u> , 2018 U.S. Dist. LEXIS 92479 (W.D. Wis. 2018)	13
<u>Tilley v. Pacesetter Corp.</u> , 333 S.C. 33, 508 S.E.2d 16 (1996).....	6
<u>Town of Summerville v. City of N. Charleston</u> , 378 S.C. 107, 662 S.E.2d 40 (2008).....	5
Statutes	
12 U.S.C. § 25b.....	8
26 U.S.C. § 166.....	19
26 U.S.C. § 61.....	19
Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. 111-203, 124 Stat. 1376 § 1044 (2010).....	8
S.C. Code Ann. § 37-1-101 (2015).....	2, 6, 33
S.C. Code Ann. § 37-1-102 (2015).....	passim
S.C. Code Ann. § 37-5-109 (2015).....	passim
S.C. Code Ann. § 37-5-110 (2015).....	passim
S.C. Code Ann. § 37-5-111 (2015)	passim
S.C. Code Ann. § 37-5-113 (2015)	23
S.C. Code Ann. § 37-5-114 (2015).....	passim
S.C. Code Ann. § 37-5-115 (2015)	24
S.C. Code Ann. § 37-6-104 (2015).....	2, 30
S.C. Code Ann. § 37-6-104 (2015).....	3
S.C. Code Ann. § 37-6-117 (2015).....	2
Other Authorities	
Black’s Law Dictionary (10th ed. 2014).....	11, 19

FDIC Credit Card Activities Manual	20
Kathleen Goodpasture Smith, <u>South Carolina Consumer Protection Code: Text with Comments</u> (4th ed. 2001)	19, 25
OCC Bulletin 2014-37, Consumer Debt Sales: Risk Management Guidance (Aug. 14, 2014) ..	16, 20
<i>S.C. Dep't of Consumer Affairs Administrative Interpretation No. 3.303-7617 (Dec. 3, 1976) ...</i>	30
Unif. Retail Credit Classification & Acct. Mgmt. Policy, 65 Fed. Reg. 36903, 36904 (June 12, 2000)	20
Rules	
Rule 201, SCRE	14
Rule 208, SCACR	2
Rule 9, SCRCP	24

STATEMENT OF ISSUE ON APPEAL

DID THE COURT OF APPEALS CORRECTLY CONCLUDE THE RIGHT TO CURE STATUTES REQUIRED BY THE SOUTH CAROLINA CONSUMER PROTECTION CODE APPLY TO AN ASSIGNEE OF A LENDER CREDIT CARD DEBT, EVEN WHERE THE CREDIT CARD ISSUER IS A NATIONAL BANK?

STATEMENT OF THE CASE

On January 4, 2017, Portfolio Recovery Associates, LLC, as Assignee of Synchrony Bank/HH Gregg (“PRA”) filed a Complaint against Jennifer Campney (“Campney”) seeking to recover \$4,236.78 owed on a credit card account. (App. pp. 88–106). On March 13, 2018, Campney filed her First Amended Answer and Counterclaims asserting the transaction is a consumer credit transaction governed by the South Carolina Consumer Protection Code. (App. pp. 111–112). On October 23, 2019, a one-day bench trial was held. (App. p. 119). On December 11, 2019, the trial court entered judgment against Campney as to PRA’s debt collection Complaint and as to Campney’s counterclaims. (App. pp. 14–24). After the trial court denied Campney’s post-trial motions, Campney timely filed a Notice of Appeal with the Court of Appeals on June 25, 2020.

The South Carolina Department of Consumer Affairs (“Department”) filed a Petition and Motion for Leave to Appear as Amicus Curiae on March 29, 2021, which the Court of Appeals granted on May 27, 2021. The Department filed its brief on June 24, 2021. (App. pp. 517–542). On August 25, 2021, PRA filed its Response to the Department’s brief, articulating two new arguments that had not been argued at the Dorchester County Court of Common Pleas or in any briefs filed with the Court of Appeals prior to PRA’s Response brief. (App. pp. 543–561). Specifically, PRA argued (1) the National Bank Act preempts the South Carolina Consumer

Protection Code, and (2) a lender and its subsequent assignee do not have a duty to send a notice of a right to cure when an account has been “charged off.” The Department filed a motion to offer expertise on the new arguments in a reply brief. Exhibit 1. The Court of Appeals denied the Department’s motion on October 18, 2021. Exhibit 2. The Court of Appeals heard oral arguments on May 1, 2023, during which the Court granted the Department’s request to submit supplemental citations pursuant to Rule 208(b)(7), SCACR. The Department submitted supplemental citations on May 5, 2023, and PRA submitted supplemental citations on May 12, 2023. (App. pp. 562–567).

On August 23, 2023, the Court of Appeals issued its opinion, holding in pertinent part: (1) consumer credit cards are consumer loans subject to the SCCPC including the right to cure notice requirement; and (2) PRA, as a creditor, was required to send a notice of right to cure before suing on the debt. PRA ultimately filed a Petition for Writ of Certiorari with this Court seeking review of the Court of Appeals’ decision. This Court granted PRA’s Petition. The parties completed briefing on December 20, 2024.

INTEREST OF AMICUS

The Department is the state’s consumer protection agency. In 1974, the General Assembly enacted the South Carolina Consumer Protection Code, S.C. Code Ann. Section 37-1-101 et seq., (“SCCPC”) and created the Department. For fifty years, the Department has regulated the consumer credit marketplace; helped to formulate and modify consumer laws, policies, and regulations; resolved complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promoted a healthy competitive business climate with mutual confidence between buyers and sellers. See S.C. Code Ann. §§ 37-1-102, 6-104, and 6-117 (2015). The Department is charged with administering and

enforcing the SCCPC to promote its underlying purposes, which include: (1) to further consumer understanding of the terms of credit transactions; (2) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of credit, having due regard for the interests of legitimate and scrupulous creditors; and (3) to permit and encourage the development of fair and economically sound credit practices. S.C. Code Ann. § 37-1-102(1) and (2)(c)–(e) (2015). Because the General Assembly adopted portions of the 1968 and 1974 Uniform Consumer Credit Code (“UCCC”), the Department is required to keep its regulations in harmony with those of other UCCC states.¹ S.C. Code Ann. § 37-6-104(3) (2015).

When this appeal was before the Court of Appeals, the Department requested and received permission to file an amicus brief to address widespread arguments concerning whether transactions associated with “lender credit cards” are “consumer credit transactions” subject to the SCCPC as well as whether the obligation of an original creditor to send a consumer a notice of right to cure transfers from the original creditor to an assignee upon assignment. At the Court of Appeals, Campney stated in her reply brief that the applicability of the SCCPC “may very well be the most important issue in this appeal, since if Respondent is correct that consumer credit cards are not regulated by the SCCPC, then there is a very large area of consumer lending that is unregulated in this state.” (App. p. 513). The Department agreed and appreciated the opportunity to participate in the briefing and arguments solely related to issues pertaining to the SCCPC.

Now, before this Court, *all* arguments PRA makes in its Brief of Petitioner and Reply Brief pertain to the SCCPC, in particular the right to cure statutes (S.C. Code Ann. §§ 37-5-109 to -111). In PRA’s Reply Brief, it states: “The overarching question presented to this Court is a simple but

¹ The other UCCC states are Utah, Idaho, Iowa, Kansas, Maine, Wisconsin, Colorado, Indiana, Wyoming, and Oklahoma.

significant one—whether the assignee of a national bank is required to send a Notice of Right to Cure when the account it purchased was charged off prior to assignment.” (PRA Reply Brief p. 1). This Court’s determination of whether the National Bank Act preempts the right to cure statutes of the SCCPC and whether an assignee must comply with those statutes will have far-reaching implications beyond this individual case.

This is the first opportunity the Department has had to provide information and policy arguments regarding federal preemption of the SCCPC and several other new arguments offered to this Court by PRA. These arguments are not new for the debt collection industry given that they have been argued in other states. Due to the very nature of debt collection cases, however, these arguments are being made to this Court for the first time. To the extent this Court intends to address de novo the arguments that were not made to the trial court but could significantly impact the application of the SCCPC to consumer credit card debt, the Department respectfully requests the opportunity to file an amicus brief for this Court’s consideration. This Court’s decision will impact consumer debt collection litigation across South Carolina. The Department offers insight to assist the Court in an effort to ensure creditors have a level playing field and consumers retain the protections established in the SCCPC. As such, the Department has a strong interest in the outcome of this appeal as an amicus curiae.

STANDARD OF REVIEW

All arguments PRA makes in its Brief of Petitioner and Reply Brief pertain to the South Carolina Consumer Protection Code (“SCCPC”), in particular the right to cure statutes (S.C. Code Ann. §§ 37-5-109 to -111). The issues on appeal concern the interpretation of state statutes and determination of novel questions of law by this Court. An appellate court may decide novel

questions of law with “no particular deference to the lower court.” Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 656 (2006); Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Moreover, the reasons presented by PRA of why it believes it is not required to comply with South Carolina’s right to cure statutes are matters of statutory interpretation. “Determining the proper interpretation of a statute is a question of law, and [the appellate court] reviews questions of law de novo.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008); see also Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009) (“This Court reviews all questions of law de novo.”). The issues before this Court, therefore, are subject to de novo review.

ARGUMENT

To the extent this Court intends to consider de novo certain arguments that were not made to the trial court but could significantly impact the application of the South Carolina Consumer Protection Code (“SCCPC”) to debt collection associated with consumer credit transactions, the Department seeks to offer research and policy arguments. Based on a review of the briefs filed with this Court, it appears no party is challenging the Court of Appeals’ holding that consumer debt pursuant to a lender credit card is a consumer credit transaction subject to the SCCPC. See Portfolio Recovery Assocs., LLC v. Campney, 441 S.C. 36, 51–52, 892 S.E.2d 321, 329 (Ct. App. 2023); see also First Union Nat’l Bank v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (“Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal”).² The Department, therefore, will address the other arguments made by PRA in its brief to this Court. Because these are novel issues to be considered and addressed by this Court,

² The Department’s arguments about lender credit card debt being subject to the SCCPC can be found in its Brief of Amicus Curiae filed with the Court of Appeals. (App. pp. 525–533).

there is little or no South Carolina case law to cite. The Department, therefore, has cited United States Supreme Court decisions for the guiding principles for National Bank Act preemption. It has also cited lower court cases from other jurisdictions, including some cases not officially reported, that the Department believes to be persuasive.

THE COURT OF APPEALS CORRECTLY CONCLUDED THE RIGHT TO CURE STATUTES REQUIRED BY THE SOUTH CAROLINA CONSUMER PROTECTION CODE APPLY TO AN ASSIGNEE OF A LENDER CREDIT CARD DEBT, EVEN WHEN THE CREDIT CARD ISSUER IS A NATIONAL BANK.

Statutory provisions of the South Carolina Consumer Protection Code, S.C. Code Ann. Section 37-1-101 et seq. (“SCCPC”) shall be liberally construed as well as applied to promote the Title’s underlying purposes and policies. S.C. Code Ann. § 37-1-102 (1) (2015); Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997). The primary purpose of the SCCPC is to protect consumers, as evidenced by its relief provisions. Tilley v. Pacesetter Corp., 333 S.C. 33, 40–41, n. 8, 508 S.E.2d 16, 20 n.8 (1996); Camp v. Springs Mortg. Corp., 310 S.C. 514, 516, 426 S.E.2d 304, 305 (1993); S.C. Dep’t of Consumer Affairs v. Cash Central of S.C., LLC, 435 S.C 197, 208, 865 S.E. 2d 789, 794 (Ct. App. 2021).

The cardinal rule of statutory construction is to ascertain and effectuate the legislature’s intent from the plain language of the statute. Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. Hitachi Data Svs. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). According to the plain meaning rule, it is not the Court’s place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “A law

must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly.” Hinton v. S.C. Dep’t of Probation, Parole and Pardon Servs., 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004) (citing Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956)).

It is the Department’s position that the SCCPC’s right to cure statutes, S.C. Code Ann. §§ 37-5-109 to -111, are not preempted by the National Bank Act (“NBA”) because they do not prevent or significantly interfere with the national bank’s exercise of its powers. Even if preemption of the SCCPC’s right to cure statutes was found to apply to national banks, preemption does not apply to a third-party debt buyer. When the third-party debt buyer is the creditor at the time the decision is made to accelerate the consumer’s debt or repossess the collateral securing the debt, the third-party debt buyer has the obligation to send the notice of right to cure or confirm the original creditor issued an effective notice during the applicable time frame. If a creditor sues a consumer for default in a consumer credit transaction and a notice of right to cure was not sent, the SCCPC’s right to cure statutes require the creditor to properly plead and prove the prospect of significant impairment. Finally, monthly credit card statements do not satisfy the purpose of the SCCPC’s right to cure statutes and, therefore, are not a substitute for the notice of right to cure.

I. THE NATIONAL BANK ACT DOES NOT PREEMPT THE SCCPC’S RIGHT TO CURE STATUTES.

In the SCCPC’s right to cure statutes, the South Carolina General Assembly established a process creditors must comply with before exercising their legal rights after a default in a consumer credit transaction, i.e., accelerating the maturity of the debt by filing suit or repossessing collateral. S.C. Code Ann. §§ 37-5-109 to -111 (2015). The right to cure statutes establish the two types of

default that are enforceable, how a consumer can cure the default, associated timing requirements, and notice content requirements. Id.; see also Exhibit 3.³

The right to cure statutes are not preempted by the National Bank Act (“NBA”) because they do not prevent or significantly interfere with the exercise by the national bank of its powers. 12 U.S.C. § 25b(b)(1)(B). The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) Pub. L. 111-203, 124 Stat. 1376 § 1044 (2010) established that the determination of NBA preemption is based on conflict preemption rather than field preemption. Cantero v. Bank of America, N.A., 602 U.S. 205, 213 (2024). The Dodd-Frank Act provides the NBA:

preempts a state law ‘only if’ the state law (i) discriminates against national banks as compared to state banks; or (ii) ‘prevents or significantly interferes with the exercise by the national bank of its powers,’ as determined ‘in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 . . . (1996).’ §§ 25b(b)(1)(A), (B).

Cantero, 602 U.S. at 213–214. Because the right to cure statutes apply equally to South Carolina state-chartered banks and national banks, the only preemption question applicable in the current appeal before this Court is whether the right to cure statutes prevent or significantly interfere with the exercise by the national bank of its powers. The Department asserts they do not.

The determination of whether the NBA preempts a state law “may be made by a court, . . . on a case-by-case basis, in accordance with applicable law.” 12 U.S.C. § 25b(b)(1)(B). In Cantero, the United States Supreme Court articulated the appropriate legal standard when evaluating NBA preemption:

³ Both charts have been posted on the Department’s website since November 2021 as an educational tool for creditors and their attorneys. <https://consumer.sc.gov/business-resourceslaws/business-education-tools> (last visited 2/21/2025).

A court applying that Barnett Bank standard must make a practical assessment of the nature and degree of the interference caused by a state law. If the state law prevents or significantly interferes with the national bank's exercise of its powers, the law is preempted. If the state law does not prevent or significantly interfere with the national bank's exercise of its powers, the law is not preempted. In assessing the significance of a state law's interference, courts may consider the interference caused by the state laws in Barnett Bank, Franklin, Anderson, and the other precedents on which Barnett Bank relied. If the state law's interference with national bank powers is more akin to the interference in cases like Franklin, Fidelity, First National Bank of San Jose, and Barnett Bank itself, then the state law is preempted. If the state law's interference with national bank powers is more akin to the interference in cases like Anderson, National Bank v. Commonwealth, and McClellan, then the state law is not preempted.

Cantero, 602 U.S. at 219–220. Accordingly, under Cantero, this Court must look at the old cases to determine whether the particular law would be preempted by the NBA.

Of the cases analyzed in the Barnett Bank case, the closest to the current appeal before this Court is National Bank v. Commonwealth, 76 U.S. 353 (1870). The United States Supreme Court issued this decision 155 years ago and less than a decade after the NBA was passed. In that case, the Court considered a state tax imposed on the shares owned or held by individuals in the banking corporation. The Court noted that the tax was imposed on the shareholders rather than on the cash or actual capital of the bank and that it was common practice at the time for states to require corporations to pay the tax levied on their shareholders. The Court acknowledged there were limitations on state interference with federal agencies but held “the agencies of the Federal government are only exempted from State legislation so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government.” National Bank, 76 U.S. at 362. The Court further stated:

[National banks] are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, *their right to collect their debts*, and their liability to be sued for debts, are all based on State law. *It is only when the State law incapacitates the banks from discharging their duties* to the government that it becomes unconstitutional.

Id. (emphasis added). The Court ultimately held that the state tax had “no greater interference with the functions of the bank than any other legal proceeding to which its business operations may subject it, and it in no manner hinders it from performing all the duties of financial agent of the government.” Id. at 362–363. The Cantero Court reiterated the National Bank Court’s analysis and holding. 602 U.S. at 219. Similar to that case, requiring a national bank to send a notice of right to cure before filing a lawsuit to collect a consumer debt is “no greater interference with the functions of the bank than any other legal proceeding to which its business operations may subject it, and it in no manner hinders it from performing all the duties of financial agent of the government.”

In another instructive case, the United State Supreme Court considered a Kentucky law that required actually abandoned or statutorily assumed abandoned deposits to be turned over to the state to administer. Anderson Nat’l Bank v. Lueckett, 321 U.S. 233, 236–39 (1944). Anderson National Bank argued the statute unconstitutionally interfered with it as an instrumentality of the federal government. Id. at 247. The Court stated:

Thus the mere fact that the depositor’s account is in a national bank does not render it immune to attachment by the creditors of the depositor, as authorized by state law. . . . As we have seen, a bank account is a chose in action of the depositor against the bank, which the latter is obligated to pay in accordance with the terms of the deposit. It is a part of the mass of property within the state whose transfer and devolution is subject to state control. . . . It has never been suggested that non-discriminatory laws of this type are so burdensome as to be inapplicable to the accounts of depositors in national banks.

Id. at 248. The Cantero Court confirmed the Anderson Court’s holding “the Kentucky law did not interfere with national banks’ federal power to collect deposits because that power includes the inseparable ‘obligation to pay’ deposits to those ‘entitled to demand payment.’” 602 U.S. at 207. The present case is similar to Anderson in that a creditor’s right to payment of a debt is also a “chose in action,” which is defined as “[t]he right to bring an action to recover a debt, money, or

thing.” Black’s Law Dictionary 294 (10th ed. 2014). As such, these choses in action would be “garden variety” state causes of action that would be governed by state laws regarding debt collection. Such non-discriminatory laws of this type are not so burdensome as to be inapplicable to national banks.

Another case in which the United States Supreme Court held a state law was not preempted involved a Massachusetts law that would void a transfer of real estate to a creditor within six months of the debtor becoming insolvent. McClellan v. Chipman, 164 U.S. 347, 347–48 (1896). The McClellan Court found that the Massachusetts law was not preempted in part because “No function of such banks is destroyed or hampered by allowing the banks to exercise the power to take real estate, provided only they do so under the same conditions and restrictions to which all the other citizens of the State are subjected, one of which limitations arises from the provisions of the state law which in case of insolvency seeks to forbid preferences between the creditors.” Id. at 358. The present case is similar to McClellan. National banks and their assignees are not prohibited from enforcing default on a debt arising from a consumer credit transaction. They, like every other consumer creditor in South Carolina, must send the notice of right to cure—and otherwise comply with the right to cure statutes—before filing the lawsuit to accelerate the debt or repossessing the collateral.

The current appeal before this Court is distinguishable from the other cases Cantero has instructed courts to use for comparison when assessing the nature and degree of interference caused by a state law. In a 1923 case, the United States Supreme Court considered a California law that required deposits that had been dormant (i.e., no additional funds were added or withdrawn) for a period of twenty years to be turned over to the state. First Nat’l Bank of San Jose v. California,

262 U.S. 366, 366–67 (1923). The Supreme Court found the California law was preempted in part because:

The depositors of a national bank often live in many different States and countries; and certainly it would be an immaterial thing if the deposits of all were subject to seizure by the State where the bank happened to be located. The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation.

Id. at 370. The present case is dissimilar to First Nat’l Bank of San Jose. The right to cure notice provisions would not make a consumer “hesitate” to apply for a credit card issued by a national bank. Instead, if a consumer knew that he had the protections of the right to cure notice, the consumer actually might be more willing to apply for a credit card issued by a national bank.

In Franklin Nat’l Bank v. New York, 347 U.S. 373 (1954), the United States Supreme Court considered a New York law that restricted the use of the word “savings” in bank advertising, unless it was chartered under New York law as either a savings bank or a savings and loan association. Id. at 374. The Court found the New York law was preempted because advertising is a powerful “weapon” for marketing the bank’s products and services. Upholding the law would place an unreasonable hindrance on the bank’s ability to let the public know about the products and services it offers. See Franklin Nat’l Bank, 347 U.S. at 377–78. The present case is dissimilar. National banks can still lawfully sue to collect upon outstanding debts in consumer credit transactions. They are simply required to take the procedural steps of sending the right to cure notice and waiting the applicable time before suing to collect on the outstanding debt or repossessing collateral.

Of course, Barnett Bank, N.A. v. Nelson, 517 U.S. 25 (1996), is itself the designated standard for preemption under the NBA as set forth in the Dodd-Frank Act. Barnett Bank concerned a federal statute that permitted national banks to sell insurance in small towns while a Florida statute forbade financial institutions from selling insurance. Barnett Bank, 517 U.S. at 27.

The Court determined the Florida statute was preempted because Congress specifically granted the power to sell insurance to national banks, which is not subject to local restrictions. Id. at 34–35. The present case is dissimilar to Barnett Bank in that the right to cure requirements do not prohibit any specifically enumerated power. Instead, the requirements include a few simple conditions that have to be met before the national bank can sue to collect a debt or repossess collateral.

PRA relies heavily on the case Lako v. Portfolio Recovery Assocs., 2021 U.S. Dist. LEXIS 145776 (W.D. Wis. Aug. 4, 2021). (Pet. Br. pp. 11–13). The Lako court held that the NBA preempted Wisconsin’s right to cure provision. Lako, 2021 U.S. Dist. LEXIS 145776, at *19. The Lako decision notably contradicts the overwhelming majority of federal and state cases, including Wisconsin cases, that have addressed the issue of NBA preemption of UCCC right to cure requirements. See Boerner v. LVNV Funding, LLC, 358 F.Supp.3d 767 (E.D. Wis. 2019); Satran v. LVNV Funding, LLC, 2018 U.S. Dist. LEXIS 92479 (W.D. Wis. 2018); Capital One Bank (USA) v. Denboer, 791 N.W.2d 264 (Iowa Ct. App. 2010); Quorum Fed. Credit Union v. Rumpf, 2016 Wisc. App. LEXIS 860 (Wis. Ct. App. 2016); Aguayo v. U.S. Bank, 653 F.3d 912 (9th Cir. 2011); Epps v. Morgan Chase Bank, 675 F.3d 315 (4th Cir. 2012). The Lako court also conflates the notion that the cure notice restricts a creditor’s ability to accelerate the debt with a significant impingement on the “powers” of national banks or their assignees to make loans, glossing over the safe harbor provision of 12 C.F.R. § 7.4008(e). The court even expressed hesitation about the impact of the ruling in a larger context, “especially given the lack of definitive case law.” Lako, 2021 U.S. Dist. LEXIS 145776, at *21.

PRA cites other cases in its briefs to support its argument that the NBA preempts the SCCPC’s right to cure statutes. Most of these cases predate the 2010 Dodd-Frank Act, which

codified Barnett Bank, N.A. v. Nelson, 517 U.S. 25 (1996) as the standard for conflict preemption analysis. Further, all of the cases cited by PRA, including Lako, precede the 2024 Cantero decision, which clearly instructs courts how to decide whether a state law prevents or significantly interferes with the exercise by the national bank of its powers. The Department asserts that when this Court performs the analysis in the current appeal, it should conclude that the SCCPC's right to cure statutes do not prevent or significantly interfere with a national bank's powers to exercise its rights to pursue collection of a consumer debt either by accelerating the debt or repossessing the collateral.

Finally, it is important to note that national banks themselves, including Synchrony Bank, often do not assert that the NBA preempts South Carolina's right to cure statutes. Indeed, many national banks comply with the right to cure statutes when suing for their own consumer debts in this state. A review of the Judicial Branch's Public Index for multiple counties uncovered numerous instances from the past decade in which national banks pled that a notice of right to cure required by S.C. Code Ann. Sections 37-5-110 and -111 *was sent to the consumer*. See Exhibit 4.⁴ Section 37-5-114 requires a creditor bringing an action against a consumer for debt arising from a consumer credit transaction to allege in the complaint, in pertinent part, either that the notice to cure required by Sections 37-5-110 and 37-5-111 has been given or is not required. S.C. Code Ann. § 37-5-114(1) (2015). The Department asks this Court to take judicial notice of the fact that national banks, including Synchrony Bank, have repeatedly pled compliance with the SCCPC's right to cure statutes. Rule 201(b), SCRE (courts can take judicial notice of facts that are "not subject to reasonable dispute"); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of

⁴ During the Department's review of the Judicial Branch's Public Index, it discovered there are indeed times when the plaintiff's complaint pleads this element differently or not at all. The Department addresses those in argument IV. of this Brief. Nonetheless, even in those pleadings, which were a minority of the sampling reviewed, the plaintiff did not plead that the NBA preempted the right to cure statutes.

the proceeding.”). Given the number of cases filed by national banks wherein the bank asserts compliance with the SCCPC’s right to cure statutes, it does not appear the banks themselves believe these statutes prevent or significantly interfere with their powers.

The SCCPC’s right to cure statutes do not prevent or significantly interfere with the national bank’s powers. As such, the right to cure statutes are not preempted by the NBA.

II. THE RIGHT TO CURE STATUTES OF THE SCCPC APPLY TO ALL CREDITORS INCLUDING A THIRD-PARTY DEBT BUYER THAT TAKES ASSIGNMENT OF A CONSUMER CREDIT TRANSACTION DEBT.

In the Department’s Brief of Amicus Curiae filed at the Court of Appeals, the Department fully briefed its argument that the General Assembly did not carve out assignees from the definition of creditor in the right to cure statutes. (App. pp. 534–540). Respondent’s Brief filed with this Court includes that argument on pages 8–14. As such, the Department will not repeat the argument here but asks this Court to affirm the Court of Appeals’ holding on this issue.

Regarding PRA’s argument that NBA preemption extends to PRA, the Department asserts preemption does not apply to a third-party debt buyer. (Pet. Br. p. 14). The case of Madden v. Midland Funding, LLC is instructive. 786 F.3d 246 (2d Cir. 2015), cert. denied, Midland Funding, LLC v. Madden, 579 U.S. 927 (2016). Madden involved a consumer credit card issued by a national bank. At some point, the national bank charged off the credit card debt and sold it to a third-party debt buyer. The third-party debt buyer continued to charge 27% APR, which would be considered usurious under New York law. Madden, 786 F.3d at 247–48. The Southern District of New York held that “assignees are entitled to the protection of the NBA if the originating bank was entitled to the protection of the NBA[.]” Id. at 248 (internal quotations omitted). The Second Circuit, however, disagreed, reasoning that NBA preemption could extend to non-national bank

entities such as subsidiaries of national banks or agents of national banks acting on behalf of the national banks, *but not to third-party debt buyers that act on their own behalf*. Id. at 250–51.

Much like the third-party debt buyer in Madden, PRA is a third-party debt buyer acting on its own behalf in suing Campney to enforce the debt. Synchrony Bank had charged off the debt as required by federal law and was no longer attempting to collect it from Campney. (Pet. Br. pp. 17–18). PRA is a debt buyer that purchased the debt from Synchrony Bank after the charge off. (Pet. Br. p. 15; App. p. 115, ¶ 42). PRA is not a debt collector, subsidiary, or agent suing for the debt on behalf of Synchrony Bank; it is a third-party debt buyer attempting to collect on the debt for itself.⁵ Even if preemption of the SCCPC’s right to cure statutes did apply to national banks, preemption would not extend to PRA. Thus, even if this Court holds that the NBA preempts the SCCPC’s right to cure statutes when the creditor is a national bank, the Department asks this Court to hold that such preemption does not apply to a third-party debt buyer.

III. THE TIMING AND IMPACT OF THE ACCOUNT’S CHARGE OFF FULLY SUPPORT THE CONCLUSION THAT PRA, AS THE CREDITOR THAT DECIDED TO SUE ON THE DEBT, WAS OBLIGATED TO COMPLY WITH THE SCCPC’S RIGHT TO CURE STATUTES OR CONFIRM THAT THE ORIGINAL CREDITOR HAS DONE SO.

Creditors, including assignees, have discretion whether or not to proceed with acceleration of a debt or repossession of collateral for debt incurred in a consumer credit transaction. Once the creditor decides to proceed, however, the creditor is required to comply with the SCCPC’s right to cure statutes. (Pet. Reply Br. pp. 3–5). What the original creditor and the subsequent

⁵ The Office of the Comptroller of the Currency (OCC), which regulates national banks, acknowledges the distinction between national banks collecting their own delinquent accounts versus selling the debt to a debt buyer. See <https://www.occ.treas.gov/news-issuances/bulletins/2014/bulletin-2014-37.html> (last visited 2/26/2025).

creditor/assignee do regarding accounting and ownership of the consumer debt does not deprive the consumer of his or her rights under the SCCPC's right to cure statutes.

The SCCPC's right to cure statutes establish the types of default that are enforceable in a consumer credit transaction, how a consumer can cure the default, associated timing requirements, and notice content requirements. S.C. Code Ann. §§ 37-5-109 to -111 (2015); see also Exhibit 3.⁶ The law provides, "after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor *may* give the consumer the notice described in this section." S.C. Code Ann. § 37-5-110 (1) (2015) (emphasis added). The use of "may" in this section does not imply that giving a right to cure notice is optional. Rather, the language indicates there is not an absolute requirement to send a notice of right to cure every time a consumer defaults on a consumer credit transaction. Instead, *if* the creditor decides to accelerate the debt⁷ or enforce a security interest, *then* the creditor has the obligation to send a notice of right to cure and comply with the remaining requirements contained in the right to cure statutes. See Boerner v. LVNV Funding, LLC, 358 F.Supp.3d 767 (E.D. Wis. 2019) (defendants did not have to accelerate the loan or commence an action but they chose to do so and, therefore, were required to issue the notice of right to cure and wait the prescribed number of days before taking action); see also Quorum Fed. Credit Union v. Rumpf, 2016 Wisc. App. LEXIS 860 (Wis. Ct. App. 2016) (rejecting argument that the use of "may" gave Quorum

⁶ Both charts have been posted on the Department's website since November 2021 as an educational tool for creditors and their attorneys. <https://consumer.sc.gov/business-resourceslaws/business-education-tools> (last visited 2/21/2025).

⁷ PRA incorrectly asserts, "a right to cure notice is not a statutory condition precedent to filing suit in South Carolina." (Pet. Reply Br. pp. 7). When read as a whole, the SCCPC's right to cure statutes clearly establish that the notice of right to cure is the *sine qua non* for any acceleration of the debt (including filing suit) or repossession of collateral. See S.C. Code Ann. §§ 37-5-110(1) and -111(1) (2015).

discretion whether or not to give notice of default because “may” applies to decision whether to accelerate the loan). The discretion for the creditor is whether or not to proceed with acceleration of the debt or repossession of the collateral. Once the creditor decides to proceed, the creditor is obligated to comply with the right to cure statutes.

The SCCPC defines creditor as “the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but the use of the term does not itself impose on an assignee any obligation of his assignor.” S.C. Code Ann. § 37-1-301(13) (2015).⁸ Here, PRA purchased Campney’s credit card debt from Synchrony Bank, becoming the assignee of the bank’s right to payment and, therefore, the creditor by definition. PRA thereafter made several contacts with Campney seeking payment of the debt. When those efforts were unsuccessful, PRA made the business decision to sue Campney for the full balance of the debt. PRA, as the creditor, made the decision to accelerate maturity of the unpaid balance of the obligation, which means the obligation to comply with the SCCPC’s right to cure statutes indeed arose *after* the assignment to PRA occurred. PRA’s obligations included, in pertinent part, the requirement to send the notice of right to cure or confirm Synchrony Bank had done so. See Bahena v. Jefferson Capital Systems, L.L.C., 363 F. Supp. 3d 914, 921 (W.D. Wis. 2019) (“A debtor’s right to notice under the [Wisconsin Consumer Act] is not contingent on the owner of the debt. If a debt buyer wishes to enforce the debt in court, it must provide notice of right to cure or confirm that the creditor has done so.”).

⁸ In the Amicus Brief filed at the Court of Appeals, the Department fully briefed its argument that the General Assembly did not carve out assignees from the definition of creditor in the right to cure statutes. (App. pp. 534–540). Respondent’s Brief filed with this Court includes that argument on pages 8–14. As such, the Department does not repeat it here.

PRA argues that because Synchrony Bank charged off the debt and closed the account, a notice of right to cure would serve no purpose. (Pet. Br. pp. 21). PRA’s reasoning is that there was no continuing contractual relationship between Campney and Synchrony Bank that a notice of right to cure could restore. (Pet. Br. pp. 20). PRA further reasoned that a notice of right to cure would be misleading to the consumer because PRA could not reinstate the account with Synchrony Bank and PRA cannot issue credit to the consumer. (Pet. Br. pp. 20–21). This argument is flawed and ignores the fact that the only relationship to be “repaired” was the one between PRA and Campney prior to PRA suing on the debt.⁹

A charge off is essentially an accounting function that allows an accrual-basis¹⁰ taxpayer to “write off” bad debt as a business expense on a tax return. See 26 U.S.C. § 166. The basic idea is that because the receipts were included in “gross income” under 26 U.S.C. § 61(a) when the receipts accrued, they should be allowed as a deduction from gross income in the year in which the debt becomes “worthless.” See 26 U.S.C. § 166(a). Federal law, provides, in pertinent part, that if a bank charges off a debt in whole or in part in accordance with specific orders or established policies of its Federal authorities, “then the debt shall, to the extent charged off during the taxable year, be conclusively presumed to have become worthless, or worthless only in part, as the case may be, during such taxable year.” 26 C.F.R. § 1.166-2(d).

Open-end retail loans should be designated as “charged off” if they become at most 180 days delinquent. See Unif. Retail Credit Classification & Acct. Mgmt. Policy, 65 Fed. Reg. 36903,

⁹ The concept of curing a relationship is derived from the policy reasons behind establishing the right to cure requirements and not from the use of the word “relationship” in the right to cure statutes. See Kathleen Goodpasture Smith, South Carolina Consumer Protection Code: Text with Comments p. 303 (comments 1–3) (4th ed. 2001).

¹⁰ “Accrual-basis” is an accounting term that means income and expenses are recorded when they accrue, regardless of when received or paid. Accrual accounting method, Black’s Law Dictionary 24 (10th ed. 2014). Conversely, “cash-basis” is an accounting term that means income and expenses are recorded when received or paid. Cash-basis accounting method, Black’s Law Dictionary 24 (10th ed. 2014).

36904 (June 12, 2000). Simply because an account is “charged off,” however, does not mean the consumer does not still owe the debt. See <https://www.occ.treas.gov/news-issuances/bulletins/2014/bulletin-2014-37.html> (last visited 2/26/2025) (“Although banks charge off severely delinquent accounts, the underlying debt obligations may remain legally valid and consumers can remain obligated to repay the debts.”). Thus, “[b]anks may pursue collection of delinquent accounts by (1) handling the collections internally, (2) using third parties as agents in collecting the debt, or (3) selling the debt to debt buyers for a fee.” See id.; see also FDIC Credit Card Activities Manual, Chapter IX (Portfolio Management), https://www.fdic.gov/regulations/examinations/credit_card/ch9.html (last visited 2/26/2025) (“Recoveries represent the money (collected payments) received on an account after it is charged-off and can consist of principal, interest, and fees.”; “Recovery efforts may be in-house or outsourced to collection agencies. In addition, charged-off accounts can be sold to third-party entities.”; “Banks are expected to properly report recoveries[.]”). Relevant to this appeal is the option for banks to sell charged off debt to third-party debt buyers.

As discussed in section II. of this Brief, when the debt buyer purchases the debt from a bank and takes assignment of the rights to collect the debt, the debt buyer becomes the creditor and seeks to collect the debt on its own behalf rather than on behalf of the bank. The assignee steps into the shoes of the original creditor but should not step into a better position than the original creditor. Dixie Wood Preserving Co. v. Albert Gersten & Assoc., 244 S.C. 57, 64–65, 135 S.E.2d 368, 371 (1964); see also Boerner v. LVNV Funding, LLC, 358 F.Supp.3d 767, 774 (E.D. Wis. 2019) (“a debt-collector cannot step into a better position than its assignor where the consumer’s rights are concerned.”). The accounting mandate and change in ownership of the debt does not change the obligations of the creditor under the SCCPC’s right to cure statutes and does not deprive

the consumer of his or her rights. In the Boerner case, the court rejected an argument similar to PRA's. In that case, Capital One sold the charged off credit card debt to LVNV Funding, LLC, a debt buyer. LVNV argued the consumer could not cure the relationship because (1) he never had a continuing open and revolving credit relationship with LVNV and (2) LVNV is not a creditor. LVNV, therefore, argued it should not be required to issue the notice of right to cure. The court quoted the analysis of another Wisconsin court on the same argument:

What [Capital One] and LVNV did regarding accounting and ownership of [Boerner's] Account after a default cannot change the nature of [Boerner's] credit relationship with [Capital One] and eliminate [his] rights under the WCA. Consumers should not lose their consumer rights based on a creditor's choice to sell or assign the debt.

Boerner, 358 F.Supp.3d at 774 quoting Johnson v. LVNV Funding, LLC, 2016 U.S. Dist. LEXIS 19651 at *5 (E.D. Wis. 2016). The same analysis applies here.

In this appeal, PRA purchased Campney's credit card debt from Synchrony Bank after the bank charged off the debt and closed the account. As argued in section I. of this brief, Synchrony Bank would have been obligated to issue the notice of right to cure had the bank decided to sue Campney for the debt instead of selling it. Campney then would have had a right to cure the default and repair the relationship with the bank. Synchrony Bank, however, chose to charge off the debt, close the account, and sell it to PRA.¹¹ As such, PRA became the assignee of the bank's right to payment and became the creditor by definition. When PRA decided to sue Campney for the debt, it was required to comply with the SCCPC's right to cure statutes including, in pertinent part, the requirement to send the notice of right to cure or confirm Synchrony Bank had done so. As

¹¹ Even assuming *arguendo* that the requirement for Synchrony Bank to issue a notice of right to cure was preempted, that preemption would not extend to PRA, the third-party debt buyer, as argued in section II. of this brief.

discussed in section V. of this brief, the notice would have given Campney a final opportunity to arrange a payment plan or otherwise satisfy the debt with PRA prior to PRA filing a lawsuit.

No one is arguing a notice of right to cure somehow would allow Campney to reinstate the relationship with Synchrony Bank after the bank had charged off the debt and closed the account. (Pet. Br. pp. 20–21). Had Synchrony Bank thought there was a chance of repairing the relationship with Campney, it could have kept her as a customer. Synchrony Bank, however, terminated its relationship with Campney by virtue of closing the account without even attempting to pursue debt collection itself. Similarly, no one is arguing a notice of right to cure somehow would require PRA to issue a credit card or loan to Campney. (Pet. Br. pp. 20–21). That is not the type of relationship PRA and Campney had. Instead, PRA is a debt buyer that was attempting to collect a consumer debt from Campney. That was the only relationship in existence and, therefore, the only one that could be “repaired” prior to suit. As such, PRA was required to issue the notice of right to cure to Campney or ensure Synchrony Bank had done so prior to initiating the lawsuit.

The obligation to send a notice of right to cure to Campney did not arise until PRA decided to accelerate the debt, i.e., sue her to collect the debt. Because PRA was the creditor at the time it decided to sue Campney, the obligation to send the notice belonged to PRA and not to Synchrony Bank. Because PRA purchased the debt from Synchrony Bank, it took assignment of the bank’s right to payment, which was collectible even after charge off. Campney should not lose any rights under the SCCPC based on Synchrony Bank’s choice to sell the debt to PRA. The Department asks this Court to hold that when the third-party debt buyer is the creditor at the time the decision is made to sue the consumer for the debt, the third-party debt buyer has the obligation to send the notice of right to cure or confirm the original creditor has done so.

IV. IF A CREDITOR SUES A CONSUMER FOR DEFAULT IN A CONSUMER CREDIT TRANSACTION, THE SCCPC'S RIGHT TO CURE STATUTES REQUIRE THE CREDITOR TO PROPERLY PLEAD AND PROVE THE PROSPECT OF SIGNIFICANT IMPAIRMENT.

The plain language of the SCCPC's right to cure statutes demonstrate the General Assembly's intent to require a creditor to provide notice and an opportunity to cure for consumers who have defaulted in a consumer credit transaction prior to the creditor filing suit or repossessing collateral. Duckworth v. Cameron, 270 S.C. 647, 649, 244 S.E.2d 217, 218 (1978) ("As a general rule, when a statute is plain and unambiguous, it should be applied literally because the legislative design is unmistakable.").

South Carolina law contemplates only two types of default upon which a creditor can sue a consumer or repossess collateral related to a consumer credit transaction: (1) the consumer's failure to make a payment as required; or (2) the consumer's prospect of payment, performance, or realization of the collateral is significantly impaired. S.C. Code Ann. § 37-5-109 (2015). The type of default is significant because it is determinative of whether the creditor must send a notice of right to cure. If the default consists only of the consumer's failure to make a required payment, a creditor may not accelerate maturity of the unpaid balance of the obligation or repossess the collateral without having first sent a notice of right to cure. S.C. Code Ann. § 37-5-111(1) (2015).¹² On the other hand, if the default is due to the prospect of significant impairment of payment, performance, or realization of collateral, a notice of right to cure is not required. See id.

Immediately following the right to cure statutes, the General Assembly provided a mechanism for creditors to bring actions against consumers for default on consumer credit transactions. See S.C. Code Ann. §§ 37-5-113 (2015) (venue where an action can be brought

¹² In a secured transaction where the loan or credit sale is secured by collateral, the creditor likely will seek to take possession of the collateral. For a lender credit card account, which is usually unsecured, the creditor will seek to accelerate the maturity of the entire unpaid balance of the debt typically by filing a lawsuit.

against a consumer); 37-5-114 (2015) (requirements to be pled in a complaint and restrictions on default judgment); 37-5-115 (2015) (stay of enforcement or relief from a default judgment). Relevant to this appeal, Section 37-5-114 requires a creditor to include certain specific allegations in the complaint when bringing an action against a consumer for default arising from a consumer credit transaction:

- (1) “the facts of the consumer’s default,”
- (2) “the amount to which the creditor is entitled,”
- (3) “an indication of how that amount was determined,” and
- (4) “*either* that the notice to cure required by Sections 37-5-110 and 37-5-111 has been given *or* is not required.”

S.C. Code Ann. § 37-5-114(1) (2015) (emphasis added). The statute requires the complaint to include a statement that the notice of right to cure has been sent or that the notice of right to cure is not required to be sent. See also S.C. Code Ann. § 37-5-111(6) (2015) (“the creditor shall affirmatively plead and prove either that the notice to cure is not required or that the creditor has given the required notice, but the failure to so plead does not invalidate any action taken by the creditor that is otherwise lawful”).¹³ The Rules of Civil Procedure do not contemplate that a plaintiff can allege both simultaneously. See Rule 9(c), SCRPC (“In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent

¹³ The language contained in § 37-5-114(1) as well as § 37-5-111(6) (as amended by Section 9 of Act 355 of 1984) clearly reflects the General Assembly’s dual purposes of (a) applying right to cure requirements to unsecured consumer credit transactions and (b) requiring creditors to affirmatively plead and prove this compliance. The requirement to plead this allegation means, hypothetically, a creditor that rightfully repossessed a vehicle would be able to survive a 12(b)(6) motion to dismiss and amend its complaint as long as the creditor could prove that either the notice of right to cure was sent or there was significant impairment. Nevertheless, the presence of this pleading requirement in two different statutes surely means this hypothetical is an exception to a mandatory requirement rather than a standard practice for debt collection attorneys to use.

have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.”). This allegation not only puts the defendant and the court on notice of the facts the creditor intends to prove but also the burden the creditor intends to meet in the case.

At trial, the creditor would be required to present evidence to support the pleading, to wit, that a notice of right to cure actually was sent or that a notice of right to cure was not required under the particular circumstances of the case. If the case is based solely on the failure to make a required payment, the creditor only has the burden to prove it issued an effective notice of right to cure. See Foster v. Ford Motor Credit Co., 302 S.C. 450, 395 S.E.2d 440 (1990) (summary judgment was improperly granted because consumers denied receiving the notice of right to cure, which created a question of fact to be decided by the court). However, if the case is based on significant impairment, “the burden of establishing the prospect of significant impairment is on the creditor.” S.C. Code Ann. § 37-5-109(2) (2015). This is a higher burden than simply proving the notice was sent to and received by the consumer. This type of default “relates to behavior of the consumer which endangers the prospect of a continuing relationship” and necessitates that circumstances were present that significantly impaired that relationship. Kathleen Goodpasture Smith, South Carolina Consumer Protection Code: Text with Comments p. 303 (comment 2) (4th ed. 2001). Circumstances may include insolvency, illegal activity, or an impending destruction or removal of assets from the jurisdiction. Id. Regardless, “[t]he burden of proof is on the creditor to justify his action on a claim of default of this type.” Id. As such, excusal for not sending a notice of right to cure due to the “prospect of payment ... [being] significantly impaired” is not automatic. Instead, it is an evidentiary matter that must be decided on a case-by-case basis. See Meredith v. Pathfinders Detective & Recovery, Inc., 1983 U.S. Dist. LEXIS 20367 at *9–10 (D. S.C. 1983)

(when no right to cure notice had been issued, court concluded that subsequent events—conversations that occurred after acceleration of the debt and post-repossession realization that vehicle was uninsured—did not establish a significant impairment of collateral).

As was noted by the Supreme Court of Kansas, a UCCC state, the UCCC changed the prior standard for evaluation of impairment under the Uniform Commercial Code. Not only did the UCCC mandate the cure notice opportunity for defaults limited to the failure of a payment or payments, but it also restricted the Uniform Commercial Code practice of allowing the secured party to deem the collateral or prospect of payment to be “impaired” by either articulating an arguable good faith belief of impairment, or to define default broadly in the security agreement so as to justify the arguable good faith belief. It also laid the burden of proof of the “impairment” prong of default squarely on the creditor. Johnson County Auto Credit, Inc. v. Green, 277 Kan. 148, 154–156, 83 P. 3d 152, 157–159 (2004). In the Johnson County case, the primary clear impairment was the lapse in insurance, a threat to the creditor’s collateral that is not present in this case, which the Court suggested could be an element either alone or in combination with other factors but was insufficient in Johnson County.

In the present case, PRA pled “On information and belief, the Notice of Consumer’s Right to Cure, as contemplated under the S.C. Code of Laws Ann. Sections 37-5-110 and 37-5-111, was sent to the Defendant or is not required.” (App p. 89).¹⁴ The Department asserts that this ambiguous statement is insufficient to satisfy Section 37-5-114(1) as it does not specifically indicate whether a notice of right to cure was sent. Moreover, it provides no indication of which type of default the creditor is intending to prove. Section 37-5-114 requires very specific information to be alleged in the first three items of the list: the facts of the default, the amount owed to the creditor (typically

¹⁴ The Department’s review of a sample of cases filed in the public index revealed this language is routinely used by some law firms in their debt collection complaints.

identified to the penny), and an indication of how the amount was determined. It is clear the General Assembly, who established the only two types of default that are enforceable in consumer credit transactions, intended for the creditor to specifically identify and allege the type of default upon which the action is based. “A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly.” Hinton v. S.C. Dep’t of Probation, Parole and Pardon Servs., 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004) (citing Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956)).

PRA also has asked this Court to hold that a charged off account automatically results in a significant impairment to the prospect of payment, instead of requiring PRA to meet its evidentiary burden as required by S.C. Code Ann. § 37-5-109(2) (2015). (Pet. Br. pp. 21–24). The Department asks this Court to consider that courts in sister states (including fellow UCCC states) have routinely held that the filing of bankruptcy by itself is not a “significant impairment.” See In re Henderson, 492 B.R. 537, 543 (Bankr. D. Nev. 2013); In re Visnicky, 401 B.R. 61, 66–67 (Bankr. D. R.I. 2009); In re Rowe, 342 B.R. 341, 351 (Bankr. D. Kan. 2006); Hall v. Ford Motor Credit Co., LLC, 254 P.3d, 526, 533, 292 Kan. 176, 185–86 (2011); In re Eastep, 562 B.R. 783, 788 n.3 (Bankr. W.D. Okla. 2017). If the filing of bankruptcy, which seems to be a more drastic measure than a charge off, is insufficient in itself to establish “significant impairment,” then why should a charge off alone be sufficient to establish “significant impairment?”

If the Court decides to consider this new argument, the Department asks this Court to conclude that if a creditor sues a consumer for default in a consumer credit transaction, the SCCPC’s right to cure statutes require the creditor to properly plead and prove the prospect of significant impairment. The Department further requests clarification on whether the allegation

related to the notice of right to cure as pled in this case (App. p. 89) satisfies the requirements of S.C. Code Ann. § 37-5-114(1).

V. MONTHLY CREDIT CARD STATEMENTS DO NOT SATISFY THE PURPOSE OF THE SCCPC’S RIGHT TO CURE STATUTES.

The SCCPC’s right to cure statutes establish certain language that must be included in the notice of right to cure though there is some flexibility that allows a creditor to alter certain language when circumstances require. A critical element of the notice language is to provide the consumer notice of the final due date before the creditor intends to exercise its legal rights, i.e., accelerating the maturity of the debt by filing suit or repossessing collateral. Standard monthly billing statements do not contain this type of information. Moreover, this important information should not be buried in a standard monthly billing statement because it is likely to be overlooked by a typical consumer. As such, monthly statements cannot satisfy the purpose of the SCCPC’s right to cure statutes. (Pet. Br. pp. 24–25). To conclude otherwise would render the SCCPC’s right to cure statutes meaningless.

The General Assembly prescribed in detail what a creditor must include in a notice of right to cure:

The notice shall be in writing and conspicuously state: the name, address and telephone number of the creditor to whom payment is to be made, a brief identification of the credit transaction, the consumer’s right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

“(name, address and telephone number of creditor) (account number, if any) (brief identification of credit transaction)

_____ (date[]) is the LAST DAY FOR PAYMENT,
_____ (amount) is the AMOUNT NOW DUE.

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question. If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.”

S.C. Code Ann. § 37-5-110(2) (2015).¹⁵ Though the statute provides specific language that should be included in the notice of right to cure, the reference to “substantially the following form” also allows for the creditor to alter certain language when circumstances require.

The Department’s historical position on the content of a notice of right to cure recognizes this flexibility. The courts of this State have long recognized a state agency’s ability to interpret the laws it enforces and administers and has granted deference to such opinions and interpretations. Lexington Law Firm v. S.C. Dep’t of Consumer Affairs, 382 S.C. 580, 586, 677 S.E.2d 591, 594 (2009) (“[T]his Court should defer to the Department’s findings where there is no compelling reason to reject it.”) (citing Faile v. S.C. Emp. Sec. Comm’n, 267 S.C. 536, 540, 230 S.E.2d 219, 221–22 (1976) (“The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.”)). In 1985, the Department issued an administrative interpretation recognizing that circumstances of a particular situation may require an alteration of the statutory language of the right to cure notice. The question posed to the Department pertained to the circumstance when the creditor was enjoined from commencing an action against the debtor due to discharge of personal liability for the debt in bankruptcy but sought to repossess the collateral because the debtor failed to make

¹⁵ In subsection (4) of this same statute, there is similar language that is modified for purposes of consumer rental-purchase agreements.

payments post-bankruptcy. The language proposed in that situation included, “You have been discharged from personal liability on this obligation in recent bankruptcy proceedings and we cannot enforce payment if you fail to respond to this Notice. However, bankruptcy law authorizes us to repossess the collateral if you fail to make payment as set forth herein.” S.C. Dep’t of Consumer Affairs Administrative Interpretation No. 5.110-8501, at 1 (Dec. 2, 1985) (attached as Exhibit 5)¹⁶. The Department found the language sufficient to comply with the SCCPC, explaining:

Our belief that this notice is sufficient is based upon the circumstances of its intended use, it[s] conspicuousness, the absence of any misstatement of law or fact or any language which would tend to mislead the consumer with regard to his or her rights or obligations, as well as the clarity and accuracy of any language added to the Section 37-5-110 notice and its presentation in a manner which will not detract the consumer’s attention from the required language.

Id. at 2. Thus, creditors can modify the statutory language when circumstances require but such modifications must be clear, accurate, conspicuous, and not misleading to the consumer. Moreover, anyone, including creditors, debt collectors, and debt buyers, can request an Administrative Interpretation from the Department regarding proposed language to be used for other scenarios such as the one relevant to this appeal. S.C. Code Ann. Regs. 28-26 (2011).

Although our state courts have not had the opportunity to construe the novel issue of whether a monthly billing statement satisfies the right to cure requirements, there is persuasive authority from a fellow UCCC state. See S.C. Code Ann. § 37-1-102(g) (2015) (underlying purpose and policy of Title 37 is “to make uniform the law, including administrative rules, among the various jurisdictions”); § 37-6-104(3) (2015) (requiring the Administrator to keep Department

¹⁶ Also available on the Department’s website by visiting consumer.sc.gov (either search for “Administrative Interpretations,” or go to Business Resources/Laws, Administrative Interpretations, Title 37) or by clicking on: <https://consumer.sc.gov/sites/consumer/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%205/5.110-8501.pdf>

regulations in harmony with those of other UCCC States). Courts in Wisconsin have analyzed various arguments made regarding the right to cure requirements applicable to consumer credit transaction debt. Those courts have rejected the argument that a monthly billing statement can satisfy the requirement to send a notice of right to cure. One court explained:

[T]reating a monthly billing statement as both that and a notice of right to cure goes against the purposes of the [Wisconsin Consumer Act]. Allowing the required information for a notice of right to cure to be buried in information that is already given on a monthly basis in a billing statement can be considered unfair and deceptive. An unsophisticated consumer would reasonably not know or understand the difference. Implicit in the concept of a notice of a right to cure is that the document, even if no specific words or title is required, provide notice. A document identical to or that would reasonably be mistaken for simply a monthly billing statement does not satisfy the requirement.

Johnson v. LVNV Funding, LLC, 2016 U.S. Dist. LEXIS 19651 at *17 (E.D. Wis. 2016). Another court agreed with this analysis but also noted that a finding that monthly billing statements satisfy the right to cure statutes would render those statutes superfluous. Boerner v. LVNV Funding, LLC, 358 F.Supp.3d 767, 776 (E.D. Wis. 2019).

In this case, Synchrony Bank's monthly statements included some of the language required by Section 37-5-110 but is missing crucial language that is required in a notice of right to cure. (App. pp. 327–375). The final monthly statement sent by Synchrony Bank to Campney does not include language even comparable to: “If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. ***If you do not pay by that date, we may exercise our rights under the law.***” S.C. Code Ann. § 37-5-110(2) (2015) (emphasis added). Nowhere on the final monthly statement, front or back, is there a declaration or even a suggestion that Synchrony was planning to proceed with legal action of any kind if Campney failed to pay at least \$1,042.00 by May 16, 2015. (App. pp. 327–328). On the contrary, the final monthly statement issued prior to charge off included what appears to be

standard language stating, “Late Payment Warning: If we do not receive your Total Minimum Payment Due by the Payment Due Date listed above, you may have to pay a late fee up to \$38.00.” (App. p. 327). The monthly statements, therefore, lack what is arguably the most critical element of a right to cure notice that lets the consumer know he or she is about to be sued for the debt (or in the case of collateral, it is about to be repossessed). Without this element, the document cannot satisfy the purpose of a notice of right to cure. See also Bahena v. Jefferson Capital Sys., LLC, 363 F.Supp.3d 914, 924 (W.D. Wis. 2019) (if a merchant could provide notice of right to cure in routine billing statements, regardless of the status of the account, it would undermine the purpose of providing a clear notice and opportunity to cure). Further, a finding that the monthly statements do satisfy the requirements for notice of right to cure would render the right to cure statutes meaningless.¹⁷

A notice of right to cure gives the consumer a final opportunity to avoid a lawsuit or a repossession. Perhaps the consumer’s financial position has changed since the default, enabling the consumer to pay the debt. What is to say the consumer does not get a better paying job, inherit money upon the death of a loved one, receive a gift from a friend or family member, receive a tax refund, or receive benevolence from a church? This critical element of the notice of right to cure gives the consumer one last opportunity to pay a specified amount to avoid an imminent lawsuit or repossession. Absent this language, the monthly statements cannot satisfy the purpose of the SCCPC’s right to cure statutes. See S.C. Dep’t of Consumer Affs. v. Cash Cent. of S.C. LLC, 435 S.C. 192, 206–207, 865 S.E.2d 789, 796–797 (Ct. App. 2021) (where the SCCPC statutory provisions of filing and posting a maximum rate schedule have a regulatory purpose, a lender cannot substantially comply with the statutory provisions when the lender’s actions do not

¹⁷ Additional analysis can be made about how the timing of the monthly billing statements do not meet the timing requirements of the SCCPC’s right to cure statutes.

accomplish the purpose); see also Brown v. Baby Girl Harper, 410 S.C. 446, 453 n.6, 766 S.E.2d 375, 379 n.6 (2014) (quoting Orr v. Heiman, 270 Kan. 109, 12 P.3d 387, 389 (Kan. 2000)) (“Substantial compliance has been defined as ‘compliance in respect to the essential matters necessary to assure every reasonable objective of the statute.’”).

CONCLUSION

The South Carolina Consumer Protection Code, S.C. Code Ann. Section 37-1-101 et seq. (“SCCPC”) is required to be liberally construed to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1) (2015); Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997). Reading the SCCPC as a whole, consumers are entitled to notice and a right to cure a default before a creditor, which includes an assignee, accelerates the maturity of a debt arising from a consumer credit transaction.

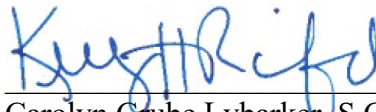
A consumer debt created pursuant to a lender credit card clearly falls within the definition of a loan and, therefore, the definition of a consumer loan. S.C. Code Ann. §§ 37-3-104 and -106(3) (2015). As such, lender credit card accounts are consumer credit transactions subject to and governed by the SCCPC. Further, the notice and right to cure requirements are important consumer protections provided in the SCCPC. The General Assembly clearly provided that the notice and right to cure requirements apply to any creditor and did not carve out assignees in the right to cure statutes as it had done in other statutes. As such, this Court should affirm the Court of Appeals’ decision that (1) consumer debt incurred using a lender credit card is a consumer loan and, therefore, a consumer credit transaction subject to the SCCPC and (2) an assignee is required to send a notice of right to cure prior to accelerating the debt. See Portfolio Recovery Assocs., LLC v. Campney, 441 S.C. 36, 51–52, 892 S.E.2d 321, 329 (Ct. App. 2023).

In addition, and as this Court deems appropriate, the Department asks this Court to hold:

- The SCCPC’s right to cure statutes are not preempted by the National Bank Act (“NBA”) because the right to cure statutes do not prevent or significantly interfere with the exercise by the national bank of its powers. Cantero v. Bank of America, N.A., 602 U.S. 205 (2024); Barnett Bank, N.A. v. Nelson, 517 U.S. 25 (1996).
 - Related to this holding, take judicial notice of the fact that national banks, including Synchrony Bank, have repeatedly pled compliance with the SCCPC’s right to cure statutes.
- Even if NBA preemption of the SCCPC’s right to cure statutes does apply to national banks, preemption does not apply to a third-party debt buyer. See Madden v. Midland Funding, LLC, 786 F.3d 246 (2d Cir. 2015), cert. denied, Midland Funding, LLC v. Madden, 579 U.S. 927 (2016).
- When the third-party debt buyer is the creditor at the time the decision is made to accelerate the consumer’s debt or repossess the collateral securing the debt, the third-party debt buyer has the obligation to send the notice of right to cure or at least confirm the original creditor has done so. See Bahena v. Jefferson Capital Systems, L.L.C., 363 F. Supp. 3d 914 (W.D. Wis. 2019).
- If a creditor sues a consumer for default in a consumer credit transaction, the SCCPC’s right to cure statutes require the creditor to properly plead and prove the prospect of significant impairment. S.C. Code Ann. § 37-5-114(1) (2015).
- Monthly credit card statements do not satisfy the purpose of the SCCPC’s right to cure statutes. See S.C. Dep’t of Consumer Affs. v. Cash Cent. of S.C. LLC, 435 S.C. 192, 206–207, 865 S.E.2d 789, 796–797 (Ct. App. 2021); Boerner v. LVNV

Funding, LLC, 358 F.Supp.3d 767, 776 (E.D. Wis. 2019); Bahena v. Jefferson Capital Sys., LLC, 363 F.Supp.3d 914, 924 (W.D. Wis. 2019).

Respectfully submitted,



Carolyn Grube Lybarker, S.C. Bar No. 73744

Administrator/Consumer Advocate

Kelly H. Rainsford, S.C. Bar No. 15907

Deputy Administrator/General Counsel

Post Office Box 5757

Columbia, South Carolina 29250-5757

(803) 734-4236

CLybarker@scconsumer.gov

KRainsford@scconsumer.gov

March 14, 2025
Columbia, South Carolina

**Attorneys for South Carolina Department
of Consumer Affairs**