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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021- 001134

Circuit Court Case No. 2021-CP-23-00225

Portfolio Recovery Associates, LLC

Respondent,

v.

Tiah P. Gibbs

Appellant.

AGREED DISMISSAL OF APPEAL

Respondent Portfolio Recovery Associates, LLC and Appellant Tiah P. Gibbs jointly request that this Court enter an order dismissing this appeal and request that the Court take the following action, as agreed to by the parties: Remand this matter to the lower court with instructions to vacate the judgment enrolled in Civil Action 2021-CP-23-00225 and thereafter dismiss the case with prejudice.

WE SO MOVE AND CONSENT:

SCOTT & ASSOCIATES, P.C.

/s/ Michael Brittain Travis
Michael Brittain Travis
Attorney for Respondent
1744 Sam Rittenberg Drive, Suite D
Charleston, SC 29416-0416
843-573-4350
britt@scott-pc.com

January 31, 2021
Charleston, South Carolina

SOUTH CAROLINA LEGAL SERVICES

/s/ Susan Ingles
Susan Ingles, Esq. SC Bar #004577
Attorney for Appellant
701 South Main Street
Greenville, SC 29601
864-679-3244
susaningles@sclegal.org

November 10, 2021
Greenville, South Carolina

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this "Agreement,") is made and entered into as of 10/22/2021, by and between PORTFOLIO RECOVERY ASSOCIATES, LLC, (hereinafter referred to as "PRA,") and Tiah P. Gibbs (hereinafter referred to as "GIBBS,").

WHEREAS, PRA filed a lawsuit against GIBBS in Greenville, SC Court of Common Pleas Case No. 2021CP2300225 (herein the "Lawsuit,") alleging that GIBBS owes a debt to PRA as the assignee of a credit card account issued by Capital One Bank USA, N.A and assigned account number xxxxxxxx6058 (referred to herein as the "Account,).

WHEREAS, GIBBS denies any liability to PRA.

WHEREAS, the parties wish to amicably, fully and forever resolve any and all claims that now or may exist between them.

Now, THEREFORE, for and in consideration of the promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Consideration.** In exchange for the mutual promises and agreements herein, neither party will pay the other party any sums as a part of this Agreement.
2. **Dismissal with Prejudice.** Upon the full execution of this Agreement by both PRA and GIBBS, PRA shall file a dismissal with prejudice of the above mentioned Lawsuit. Each party shall bear their own costs and attorney fees, except as provided in this agreement. All parties shall sign and execute any pleadings related to the dismissal no later than 30 days of the signature on this Agreement.
3. **Mutual Release.** In consideration of the promises, warranties, and covenants contained in this Agreement, it is further agreed that PRA and GIBBS hereby agree to fully release and forever discharge and covenant not to sue the other and their respective heirs, executors, administrators, principals, partners, officers, directors, shareholders, subsidiaries, associated companies, employees, agents, attorneys, assignors, and successors and assigns thereof ("Released Parties,") and agree not to hold the Released Parties liable from any and all claims, demands, or causes of action which either party has against them arising out of the Account including, but not limited to, any claims arising out of, based upon, or relating in any way to any alleged act, omission, or dispute asserted in the claim or that could have been asserted in the claim and/or any other claim made under federal or statutory or common law. This shall include any claims arising out of, or related to the Lawsuit and the Account, including alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§1692. This release includes, but is not limited to, claims for damages of any and all types, including compensatory damages, emotional distress, punitive damages, costs, interest, attorneys' fees, and any other damages, whether known or unknown, anticipated or unanticipated, foreseen or unforeseen.

It is the express intent of the undersigned to waive any and all claims that they have against the persons and entities herein released, including any claims which are presently

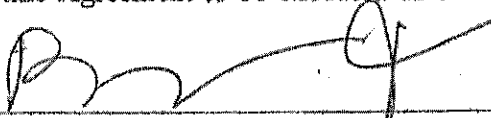
unknown, unsuspected, unanticipated, or undisclosed.

4. **Collections and Credit Reporting.** Within thirty (30) days after the Agreement is fully executed, PRA shall notify the credit reporting agencies to which they typically report and request that such reporting agencies delete PRA's trade line for GIBBS's Account. GIBBS understands that it may take forty-five (45) days for those reporting agencies to update his credit records. If at any time following sixty (60) days after the execution of this Agreement, GIBBS determines that any of the credit reporting agencies has not complied with PRA's request as set out in this paragraph, then GIBBS agrees to provide notice to PRA along with copies of any credit reports for which GIBBS contends the trade line was not deleted. In that event, PRA will have thirty (30) business days following receipt of such written notice to re-contact the credit reporting agencies and again request that its trade line for GIBBS's Account be deleted. GIBBS acknowledges PRA's responsibilities, as set forth in this paragraph, shall constitute the full and complete requirements imposed on PRA under this Agreement with respect to credit agencies reporting on the Account. By signing this Agreement, GIBBS *acknowledges that the Account was assigned, transferred, or sold to PRA by Capital One Bank USA N.A. (the "Original Creditor") and that PRA has no control over any trade lines(s) on GIBBS's credit report which may have been reported or will be reported by the Original Creditor.*
5. **No Admission of Liability.** Nothing in this Agreement, nor any act (including, but not limited to, the execution of this Agreement) of PRA or GIBBS, nor any transaction occurring between PRA and GIBBS prior to the date hereof or shall be treated, construed or deemed as an admission by any party hereto or to any person, so as to any allegation or claim, or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied. It is understood and agreed by the parties that this Agreement reflects settlement of disputed legal claims and does not represent a discharge of indebtedness for the purposes of 26 U.S.C. §61(a)(12).
6. **Confidentiality.** The parties agree to keep the terms and amount of this Agreement confidential and will not publicly disclose any such information, provided however, that either party may make such disclosures as are required by this Agreement, by law or legal proceeding, and as necessary for any, legal counsel, or enforcement of this Agreement. The parties may state publicly that the lawsuit has been settled satisfactorily by the Parties and dismissed accordingly without further comment.
7. **Amendment.** This Agreement may not be amended unless such amendment is in writing and signed by the parties hereto.
8. **No Waiver.** Any breach or violation of any provision of this Agreement may only be waived in writing by the party entitled to the benefit thereof; provided however, that such waiver shall not operate or be construed to be a waiver of any subsequent breach or violation hereof.
9. **Construction.** This Agreement represents the wording selected by the Parties to define their Agreement and no rule of strict construction shall apply against either party.

10. **Benefit.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements among the parties hereto with respect to the subject matter hereof and with respect to the transactions set forth in this Agreement and constitutes the sole and entire Agreement of the parties with respect hereto. Any representation, inducement, promise or agreement, whether oral or written, among the parties hereto with respect to the transactions described herein that is not embodied herein and shall be of no force and effect.
12. **Severability.** If any provision of this Agreement shall be found by a court to be void, voidable, invalid or unenforceable, the remaining portions shall remain in full force and effect.
13. **Counterparts.** This Agreement may be executed by counterparts and by facsimile or e-mail transmission of said counterparts, and each counterpart, whether transmitted by facsimile or otherwise, shall have the same force and effect as an original, and shall constitute an effective, binding agreement on the part of the undersigned. All facsimile or scanned signatures sent by e-mail shall have the same force and effect, and may be used in lieu of, original signatures herein.
14. **Cure.** If any term or provision of this Release is not satisfied by a Party, each Party agrees to provide reasonable notice in writing to the other Party informing of the deficiency and allowing reasonable time and opportunity to cure. For PRA, reasonable notice shall be written notice to its office at 120 Corporate Boulevard, Norfolk, VA 23502.
15. **Governing Law.** The parties agree that this Agreement shall be governed by the laws of the State of South Carolina
16. **Venue.** The parties agree that should any dispute arise between them regarding this Agreement or the subjects addressed herein, any legal action between them shall be brought and litigated only in the South Carolina


IN WITNESS WHEREOF, the parties cause this Agreement to be executed as of the date first written above

Dated: 1-31-22

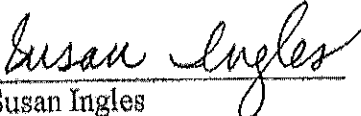

Portfolio Recovery Associates, LLC

By

Dated: 11/02/2021

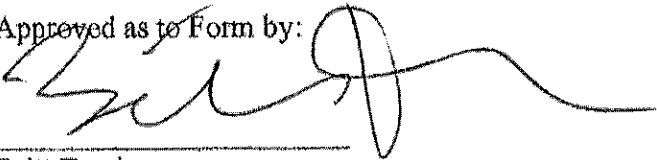

Tiah P. Gibbs.

Approved as to Form by:



Susan Ingles
Attorney for Tiah Gibbs

Approved as to Form by:



Britt Travis
Attorney for Portfolio Recovery Associates,
LLC