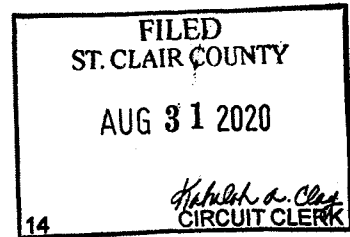


**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**



PORTFOLIO RECOVERY ASSOCIATES, LLC,)) Plaintiff/Counter-Defendant,) vs.)) SHIRLEY DARNELL and LATOYA LEE,)) Defendants/Counter-Plaintiffs.)	No. 16-SC-468 Consolidated with No. 16-SC-2745 No. 16-SC-1201
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**ORDER GRANTING UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Counter-Plaintiffs, Latoya Lee and Shirley Darnell (“Counter-Plaintiffs” OR “Class Representatives”) have moved the Court for preliminary Approval of a proposed class action settlement with Plaintiff/Counter-Defendant Portfolio Recovery Associates, LLC, the terms and conditions of which are set forth in the Settlement Agreement filed with the Court as Exhibit A to the Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION.

The subject litigation arises out of three collection actions¹ filed by Counter-Defendant PRA against Counter-Plaintiffs to collect outstanding balances on three credit card accounts opened by the Counter-Plaintiffs with creditors Citibank and Comenity (not parties to this litigation). PRA set forth in its collection actions that it purchased the subject accounts from Citibank and Comenity.

In response to each of PRA’s collection actions, the Counter-Plaintiffs filed counterclaims against PRA, alleging the following causes of action: (1) violations of the Illinois Collection Agency Act (225 ILCS 425/1, *et seq.*); (2) violations of the Illinois Consumer Fraud and Deceptive

¹ The three collection actions are PRA v. Latoya A. Lee (16-SC-468) (hereafter, the “Lee” action); PRA v. Shirley A. Darnell (16-SC-1201) (hereafter, the “Darnell I” action); and PRA v. Shirley A. Darnell (16-SC-2745) (hereafter, the “Darnell II” action). Collectively, these matters are referred to herein as the Consolidated Actions.

Business Practices Act (815 ILCS 505/1, *et seq.*); (3) violations of the Federal Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et seq.*). In their counterclaims, the Counter-Plaintiffs alleged that PRA did not have the requisite documentation to prove that they purchased any rights to the Counter-Plaintiffs' accounts, and the Counter-Plaintiffs alleged that PRA did not attach the relevant documentation to its collection complaints to establish that PRA had the right to collect on the Counter-Plaintiffs' accounts. The Counter-Plaintiffs' alleged that these actions violated various provisions of the above statutes. The Counter-Plaintiffs' counterclaims in *Lee* and *Darnell I* were filed on behalf of the Debtors individually, as well as a purported class of similar persons. PRA steadfastly denies the material allegations of the Counter-Plaintiffs' counterclaims.

Following years of contested litigation, and arms-length settlement negotiations recognizing the risks of even further protracted litigation, the Parties have negotiated a settlement, in which the Parties agree to resolve all matters between them, including the allegations contained in the Consolidated Actions and as set forth herein. Through the settlement, PRA will make available to class members benefits totaling approximately \$3,131,950 as detailed herein.

II. CASE HISTORY.

On February 16, 2016 (in *Lee*), May 4, 2016 (in *Darnell I*), and November 18, 2016 (in *Darnell II*), PRA filed the subject consolidated collection actions against the Counter-Plaintiffs in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County.

On March 11, 2016 (in *Lee*), June 3, 2016 (in *Darnell I*), and February 7, 2017 (in *Darnell II*), the Counter-Plaintiffs filed the above-referenced counterclaims against PRA.

On May 23, 2016 (in *Lee*), August 5, 2016 (in *Darnell I*), and May 11, 2017 (in *Darnell II*), PRA moved to compel arbitration of the Counter-Plaintiffs' counterclaims. The parties conducted written discovery and deposition discovery related to PRA's motions to compel arbitration, which included multiple contested discovery motions and multiple court hearings regarding same.

On January 31, 2019, the Trial Court entered an order striking PRA's motions to compel arbitration pursuant to Illinois Supreme Court Rule 137.

PRA appealed that order to the Appellate Court of Illinois for the Fifth Judicial District (Cons. Appellate No.: 5-19-0057). On December 9, 2019, the Appellate Court affirmed the Trial Court's January 31, 2019 order.

While the above-referenced appeal was pending, the parties continued to conduct discovery, which included contested discovery motions, and which resulted in the production of more than 17,500 pages of documents by PRA.

On May 20, 2019, PRA moved to dismiss the Counter-Plaintiffs' counterclaims in their entirety for failure to state a claim. On May 29, 2019, PRA filed amended collection actions in each of the Consolidated Actions, attaching an affidavit pursuant to recently enacted Illinois Supreme Court Rule 280.2. On July 22, 2019, the Counter-Plaintiffs filed amended counterclaims in each of the Consolidated Actions. On September 5, 2019, PRA moved to dismiss the Counter-Plaintiffs' amended counterclaims in their entirety for failure to state a claim.

On October 31, 2019, recognizing the risks of protracted litigation, the parties participated in a formal, full-day mediation session with Hon. Judge Lloyd Cueto (Ret.) in Belleville, Illinois. Prior to the mediation, Counter-Plaintiffs and Counter-Defendants submitted detailed mediation briefs to Judge Cueto setting forth their respective views on the strengths of their cases. Following the mediation, the parties continued to engage in arms-length negotiations, which included the production of additional documents and information for the Proposed Class Counsel to evaluate the claims, damages, assess any proposed settlement offers, and make appropriate demands. The negotiations eventually culminated in a settlement.

III. SUMMARY OF SETTLEMENT.

A. Settlement Benefits.

Through the Settlement, PRA will make available to class members benefits totaling approximately \$3,131,950 which includes the following: (1) \$75 Credit against the outstanding balance of all Settlement Class Members' accounts whose accounts are collectible and have an outstanding balance of more than \$75 (the High-Balance Settlement Subclass); and (2) a \$100,000 Settlement Fund to make *pro rata* payments to all other class members whose accounts are either uncollectible or have an outstanding balance of \$75 or less (the Low-Balance Settlement Subclass). The settlement is also structured to cover and include notice and administrative costs, attorneys' fees and expenses, and service awards to the named Class Representatives, which is separate from the Settlement Fund. *See* Ex. A, ¶ 52.

The Settlement Class includes:

All persons against whom PRA filed a collection lawsuit in Illinois between March 11, 2013 and September 30, 2018, subject to the Exclusions detailed below. *See* Ex. A, ¶ 44.

Excluded from the Settlement Class are: (1) all Settlement Class members who paid or settled their accounts in full without PRA obtaining a judgment as of the date of Preliminary Approval; (2) all Settlement Class members whose accounts have been discharged in bankruptcy as of the date of Preliminary Approval; (3) all Settlement Class members who are deceased as of the date of Preliminary Approval; (4) all persons who elect to exclude themselves from the Settlement Class; and (5) the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family (collectively, the "Exclusions").

In exchange for the Settlement Benefits, Class Members will release all claims, whether known or unknown, against PRA and the other Releasees defined in the Settlement Agreement

relating to, arising out of, or concerning in any way PRA's debt collection activity that were or could have been asserted in this action against PRA or the Releasees.

B. Notice.

Class Counsel has worked to ensure that notice is the best practicable, and reasonably calculated to apprise interested parties of the action so that they may make a claim (if a member of the Low-Balance Settlement Subclass), state their objection, or exclude themselves from the settlement. Notice will be issued by Heffler Claims Group, a nationally-recognized notice expert, and is designed to meet constitutional and due process requirements, and will be provided via a combination of a postcard mailing and maintenance of a Settlement Website. The postcard notice will provide a link to the Settlement Website, where Settlement Class Members can access a Long Form Notice describing the case and settlement, the Settlement Agreement, and other important documents and court filings including the Complaint, Preliminary Approval Order, and, when filed, the Final Approval Order. The Settlement Website will also allow the members of the Low-Balance Settlement Subclass to download the Claim Form as well as access contact information for Class Counsel. In addition to the Settlement Website, the Administrator will also maintain a toll-free number through which individuals can ask questions and request the Long Form Notice be sent to them.

C. Credits for High-Balance Settlement Subclass.

Members of the High-Balance Settlement Subclass who do not object or exclude themselves from the settlement will receive the Credit without the need to submit any claims.

D. Claims for Low-Balance Settlement Subclass.

Members of the Low-Balance Settlement Subclass shall be permitted to make a Claim for a *pro rata* payment from the Settlement Fund by timely filing a written and fully and accurately completed Claim Form online at the www.PRASettlement.com or some similar web address, on a

date no later than the Claim Deadline. The Claim Period, during which time a Settlement Class Member may submit a Claim form to be eligible to receive payment, shall be set by the Court's preliminary approval order. Any Settlement Class Member who does not file online an accurate and fully completed Claim Form by the Claim Deadline shall be deemed to have waived any Claim and any such Claim will be rejected.

E. Exclusions.

If a Class Member wishes to opt-out of the Settlement, the Class Member must complete a Request for Exclusion and submit it to the Settlement Administrator so that it is post-marked by the Exclusion Deadline, which is approximately forty-five days after the Preliminary Approval Order. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature.

F. Objections.

If a Class Member wishes to object to the Settlement, the Class Member must notify the Parties of their intention to do so by the Objection Deadline. Any Class Member who intends to object must include in any such objection: (a) his/her full name, address, and current telephone number; (b) the case names and numbers of these Consolidated Actions; (c) the date range during which he/she was sued by Counter-Defendant; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the objector's signature. *See* Ex. A, ¶¶ 69-70.

G. Service Award, Costs, and Fees.

As part of the Settlement Agreement, PRA agreed not to oppose a Service Award to each of the Class Representatives in the amount of \$5,000. PRA also agreed not to oppose an award of attorney fees not to exceed 33% of the Benefit to the Class, or \$1,047,316.67, whichever is less, and costs not to exceed \$20,000. The Counter-Plaintiffs will seek approval of attorney fees and costs, as well as the Service Award to Counter-Plaintiffs, in separate papers, to be filed no more than seven days before the Final Approval Hearing.

IV. FINDINGS AND HOLDINGS.

Having considered all matters submitted to it at the hearing on the Motion for Preliminary Approval of Class Action Settlement and otherwise, including the complete record of this action, and good cause appearing therefore, the Court hereby finds that the Settlement is fair, adequate and reasonable, grants the Motion for Preliminary Approval of Class Action Settlement, and hereby finds and concludes as follows:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as otherwise expressly provided.

2. The Court preliminarily approves the Settlement Agreement as within the range of possible final approval and as meriting submission to the Settlement Class for its consideration. The Settlement was reached as a result of extensive arm's length negotiations between the parties and their counsel and involved a well-respected and experienced mediator. Extensive discovery was conducted in this case prior to Settlement. Plaintiffs and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

3. For purposes of the Settlement only, the Court provisionally certifies the Settlement Class, as defined herein above.

4. The Court preliminarily finds and concludes, solely for purposes of considering this settlement, that the requirements of 735 ILCS 5/2-801 and 735 ILCS 5/2-807(b) are conditionally satisfied for certification of the Settlement Class for the reasons set forth in the Unopposed Motion for Preliminary Approval of Class Action Settlement, as well as for the reasons that follow. The Court finds that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. The Settlement represents a fair and reasonable resolution of this dispute and is worthy of notice to and consideration by the Settlement Class Members. The Settlement will provide financial relief to participating Settlement Class Members as compensation for the Released Claims. The Settlement in this case provides substantial material benefits to the Settlement Class. The amount of the Credits and the Settlement Fund and the benefits to the Settlement Class Members are particularly significant in light of the inherent risks of ongoing litigation. If PRA were to succeed on any of its defenses to liability against the Counter-Plaintiffs' individual claims, Settlement Class Members would receive nothing. In addition to needing to defeat any defenses on the merits PRA would raise, Counter-Plaintiffs would also be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed. In the absence of settlement, it is certain that the expense, duration, and complexity of the resulting litigation would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits could even be contemplated, but evidence and witnesses from across the country would have to be assembled as witnesses during any trial. Further, given the complexity of the issues and the amount in

controversy, the defeated party would likely appeal both any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification. As such, the immediate and considerable relief provided to the Class under the Settlement Agreement weighs heavily in favor of approval compared to the inherent risk and delay of a long and drawn out litigation, trial, and appellate process.

6. This Court finds that the proposed Agreement is in the best interests of Settlement Class Members because, between the Credits and the claims for payments from the Settlement Fund, Settlement Class Members are provided with an opportunity for immediate benefit instead of having to wait for the litigation and any related appeals to run their course. Further, due to the defenses PRA has indicated it would raise should the case proceed through litigation—and the resources that PRA could commit to defend and litigate this matter through appeal—it is possible that the Settlement Class would receive no benefit whatsoever in the absence of this Settlement. Counter-Plaintiffs' counsel has extensive experience litigating similar class action cases in federal and state courts, including other consumer protection cases, a fact which gives further force to their support of the Settlement Agreement, and weighs in favor of granting preliminary approval.

7. The Court hereby approves the Proposed Class Notice as set forth in the Motion for Preliminary Approval of Class Settlement. The proposed notices in this case satisfy both the requirements of Illinois Code of Civil Procedure Section 2-803 and due process. The Settlement Agreement contemplates a direct-notice plan designed to reach as many potential Settlement Class Members as possible. Notices will be mailed directly to every class member. Additionally, the Settlement Administrator will establish a website containing the relevant court documents, the Claim Form, and the Long Form Notice, including information regarding how Settlement Class Members can exclude themselves from the Settlement Agreement, and which will allow Class Members to easily submit their claims electronically. The proposed Postcard Notice, Long-Form

Notice, and Claim Form are attached to the Settlement Agreement, and are hereby approved by the Court.

8. The Court hereby designates and approves Heffler Claims Group to serve as the Settlement administrator.

9. The Court conditionally designates the law firms of Cates Mahoney, LLC, and Donovan Rose Nester, P.C. as Class Counsel, and Shirley Darnell and Latoya Lee as Class Representatives for Purposes of Settlement. The Court preliminarily finds that the Class Representatives and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members.

10. The Court hereby approves the following schedule leading to the hearing on final approval of the settlement:

- a) **Notice Issuance Date:** Within 35 days of entry of the Preliminary Approval Order, the Settlement Administrator shall mail notice to the Settlement Class Members (the "Notice Date").
- b) **Objection/Exclusion Deadline:** Each Settlement Class Member shall have 45 days from the Notice Date to submit their Objection, or Request for Exclusion.
- c) **Claims Deadline:** Each Low-Balance Settlement Subclass Member shall have 45 days from the Notice Date to submit their Claims.
- d) **Submission of Papers in Support of Attorneys' Fees and Expenses:** Must be filed no later than 7 days prior to the date of the Final Approval Hearing.
- e) **Submission of Papers in Support of Final Approval of Settlement:** Must be filed no later than 14 days prior to the date of the Final Approval Hearing.
- f) **Final Approval Hearing:** Will occur approximately 90 days after entry of the Preliminary Approval Order, or such other date as ordered by the Court.

11. Pending the Court's issuance of a Final Approval Order, the Court hereby stays all proceedings in this case, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.

12. The Court approves, as to form and content, the Claim Form and Notices that are substantially similar to the forms attached to the Settlement Agreement in Exhibit 1 to the Motion for Preliminary Approval of Class Action Settlement. The Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and Notices before mailing to Settlement Class Members. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as described in the Settlement Agreement.

13. The Court finds that the Notice plan is reasonably calculated to provide notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the requirements of due process, 735 ILCS 5/2-803, and any other applicable law. The Parties and the Settlement Administrator shall comply with the notice plan as set forth in the Settlement Agreement.

14. No later than five (5) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to the Parties a list of the names of the Persons who, pursuant to the Class Notice, described herein, have excluded themselves from the Settlement Class in a valid and timely manner. Counsel for the Class shall file that list with the Court. The Court retains jurisdiction to resolve any disputed exclusion requests.

15. Any member of the Settlement Class who elects to be excluded shall not receive any benefits of the Settlement, shall not be bound by the terms of the Settlement Agreement, and shall

have no standing to object to the Settlement or intervene in the Action. If the Settlement is granted Final Approval, all Settlement Class Members who do not timely submit a valid request for exclusion will be bound by the Final Approval Order and final judgment and enjoined from bringing or prosecuting any action related to the Released Claims as defined in the Settlement Agreement.

16. Any Settlement Class Member who does not submit a valid and timely request for exclusion may submit an objection to the Settlement Agreement. The written objection must satisfy the requirement described in the Settlement Notice. An objection must be electronically filed or postmarked no later than thirty (45) days from the Notice Date or it will be rejected.

17. Any Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. However, if the Settlement Class Member wishes to object to the Settlement at the Final Approval Hearing, the Settlement Class Member must submit a written objection as set forth herein.

18. Defendant/Counter-Plaintiffs shall file their motion for final approval and class representative payments no later than fourteen (14) days prior to the Final Approval Hearing and their motion for an award of attorney's fees, costs, and expenses no later than fourteen days prior to the Final Approval Hearing. Those motions and all supporting documentation shall simultaneously be posted to the Settlement Website.

19. This Order shall not be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission by Plaintiff/Counter-Defendants of the truth of any allegations or of any liability or fault of any kind.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from

time to time and without further notice to the Settlement Class Members, be continued by Order of the Court.

IT IS SO ORDERED, THIS 31st DAY OF AUGUST, 2020.

Kevin T. Hoerner

Hon. Kevin T. Hoerner

