

STATE OF MICHIGAN
IN THE 14A/14B/15TH JUDICIAL DISTRICT

PORTFOLIO RECOVERY ASSOCIATES, LLC

Plaintiff,

v.

JANE AND JOHN SMITH,

Defendants.

NOTICE OF RELATED COURT
PROCEEDING

Case No. 123456

The Hon. Judge

Attorney (PXXXXX)
LAW FIRM
Attorney for Plaintiff
Address 1
City, State Zip
Phone
email@lawfirm.com

Jane and John Smith
Defendants
Address
City, State Zip

Eli Savit (P76528)
Todd Ryan (P81848)
WASHTENAW COUNTY PROSECUTOR'S OFFICE
Attorneys for Prosecuting Attorney for Wash. Cnty.
P.O. Box 8645
Ann Arbor, MI 48107
(734) 622-9049
ryant@washtenaw.org

NOTICE OF RELATED COURT PROCEEDING

Pursuant to his authority to protect the welfare of the people of Washtenaw County generally, and his specific civil authority to protect consumers, the Prosecuting Attorney for Washtenaw County files this Notice to inform the Court of a related court proceeding involving Portfolio Recovery Associates, LLC ("Portfolio Recovery"). See, e.g., MCL 49.153 (Prosecutor authorized to appear in any action whether civil or criminal in which the state or

county may be interested); MCL 445.915 (Prosecutor authorized to enforce Michigan Consumer Protection Act).

In that related proceeding, a federal court has barred Portfolio Recovery from collecting any debt purchased from September 9, 2015 through June 12, 2023, without providing documentation and warranties as to the validity of that debt (among other prohibitions). Given the filing date of the above-captioned case, the debt at issue in this matter appears to fall within the scope of that federal injunction. In addition, the federal court ordered Portfolio Recovery to pay at least \$12.18 million to consumers harmed by its illegal debt-collection practices.

Accordingly, Prosecutor files this Notice to make the Court, the parties, and their attorneys aware of: (1) the federal order, (2) the potential invalidity of Portfolio Recovery's collection efforts, and (3) the potential that the Defendant in this matter may be owed money by Portfolio Recovery.

I. Documents from Related Court Proceeding

Court files and records are subject to judicial notice. MRE 201. A true copy of the following relevant court documents is enclosed:

- *Complaint for Permanent Injunction and Other Relief*, Case No. 2:23-cv-110, (E.D. Va. Mar. 23, 2023) ("Complaint") (Exhibit A); and
- *Stipulated Final Judgment and Order*, Case No. 2:23-cv-110, (E.D. Va. Apr. 13, 2023) ("Order") (Exhibit B).

II. Background on Related Court Proceeding

A. Federal Government Lawsuit Against Portfolio Recovery

On March 23, 2023, the Consumer Financial Protection Bureau (“CFPB”), a federal agency, filed a lawsuit in the United States District Court for the Eastern District of Virginia against Portfolio Recovery Associates, LLC, alleging that Portfolio Recovery:

- Made at least tens of thousands of representations about unsubstantiated, disputed debts;
- Threatened legal action through millions of collection letters and began thousands of legal actions without proper documentation of the debt;
- Misrepresented that it would provide timely documentation of debt to consumers;
- Collected on time-barred debt without making required disclosures; and
- Sued on time-barred debt.

See generally, Complaint, Ex. A.

B. Order and Injunction Against Portfolio Recovery

On April 12, 2023, the U.S. District Court for the Eastern District of Virginia ordered Portfolio Recovery to:

- Pay at least \$12.18 million to consumers harmed by its illegal collection practices;
- Pay an additional \$12 million in penalties to the CFPB;
- Have a reasonable basis to believe it is collecting debts that consumers actually owe; and
- Respond to consumer disputes in a timely manner.

See generally, Order, Ex. B.

The Court also enjoined Portfolio Recovery from collecting on any debt purchased through an agreement executed between September 9, 2015 and June 12, 2023 (60 days from entry of Order on April 13, 2023), without:

- representations and warranties as to the accuracy or validity of the Debt; and
- a commitment to provide [Original Account-Level Documentation] OALD during the time period in which Defendant is collecting the Debt, unless defendant possesses

within 90 days of the Effective Date [July 12, 2023] OALD reflecting the Consumer's name.

Order, Ex. B, at 10-11. The Court's injunction also orders that:

- Portfolio Recovery and its attorney(s) are prohibited from collecting on any time-barred debt. *Id.* at 13.
- Portfolio Recovery and its attorney(s) are prohibited from suing under a breach of contract claim unless Portfolio Recovery possesses the contractual terms and conditions. *Id.* at 15.
- Portfolio Recovery and its attorney(s) must provide documentation to Defendant/consumer upon request, within thirty (30) days of the request and at no cost to the Defendant/consumer (unless already provided in the previous year). *Id.* at 16.

III. Relevance to This Proceeding

The federal Order involves factual and legal issues that include, but are not limited to, matters that are before the Court in this proceeding. Those include:

- (1) Whether Defendant/consumer is owed money by Portfolio Recovery, pursuant to \$12.18 million in monetary relief for illegal debt collection practices provided in the federal court Order;
- (2) Whether the alleged debt owed by Defendant/consumer is time-barred; and
- (3) Whether Portfolio Recovery has complied with the terms of injunctive relief provided in this federal court Order for this Defendant/consumer.

IV. Actual Notice

The terms of the federal injunctive relief apply to Portfolio Recovery and all of its agents, employees, and attorneys who receive actual notice of the Order. This Notice of Related Court Proceeding therefore provides actual notice of this Order to all Portfolio Recovery personnel involved with this case, including but not limited to, the attorney(s) representing Portfolio Recovery.

V. Potential Relief

To be clear, Prosecutor is not a party in the above-captioned matter, but is providing this Notice of Related Court Proceeding as a “friend of the court” so that the Court may take any action it deems appropriate and so the parties may proceed with equal access to this information.

The Court of course has extensive explicit authority, see, e.g., MCL 600.8315 (“the district court has jurisdiction and power to make any order proper to fully effectuate the district court's jurisdiction and judgments”), and inherent authority to act in the interests of justice in this matter “based on a court's fundamental interest in protecting its integrity and that of the judicial system.” *Brenner v Kolk*, 226 Mich App 149, 160; 573 NW2d 65 (1997).

The Court may therefore consider any of the following actions:

- (1) Order a stay to allow Portfolio Recovery to comply with the federal Order “so as to ensure the orderly operation of justice,” *Maldonado v Ford Motor Co*, 476 Mich 372, 375; 719 NW2d 809 (2006);
- (2) Order Portfolio Recovery to brief its compliance with the federal Order to advise the Court on applicable factual developments and legal bases, *People v Jackson*, 178 Mich App 62, 70; 443 NW2d 423 (1989) (a court has the inherent power to direct a party to file a brief because “[o]ur responsibility to the public goes beyond that and requires us to make certain that we are well informed and well briefed on a case before reaching a decision.”);
- (3) Order Portfolio Recovery to provide, as required in the federal Order, all necessary documentation to the Defendant/consumer, including “representations and warranties as to the accuracy or validity of the Debt” and “Original Account-

- Level Documentation.” Order, Ex. B, at 10-11; see also MCR 2.301(A)(2) (allowing district court discovery for good cause); MCR 2.302(A) (general rule for mandatory initial disclosures);
- (4) Dismiss of the above-captioned case if Portfolio Recovery fails to demonstrate compliance with the federal Order and any applicable order of this Court within a reasonable time period. See, e.g., *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006) (“the trial court possessed the inherent authority to dismiss the action”); and
- (5) Grant such other relief as is just and equitable.

Respectfully submitted,

PROSECUTING ATTORNEY FOR WASHTENAW COUNTY

Dated: May 8, 2023

/s/ Todd Ryan
Todd Ryan (P81848)

Eli Savit (P76528)
Todd Ryan (P81848)
WASHTENAW COUNTY PROSECUTOR’S OFFICE
Attorneys for Prosecuting Attorney for Wash. Cnty.
P.O. Box 8645
Ann Arbor, MI 48107
(734) 222-6620
ryant@washtenaw.org