

SUPREME COURT OF NORTH CAROLINA

PIA TOWNES,)

Plaintiff,)

v.)

From Mecklenburg County

PORTFOLIO RECOVERY)

ASSOCIATES)

Defendant)

***AMICI CURIAE* BRIEF OF CENTER FOR RESPONSIBLE
LENDING, CHARLOTTE CENTER FOR LEGAL ADVOCACY,
FINANCIAL PROTECTION LAW CENTER, LEGAL AID OF NORTH
CAROLINA, INC., NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES, AND PISGAH LEGAL SERVICES**

INDEX

TABLE OF AUTHORITIES iii

INTRODUCTION 2

ARGUMENT 4

I. UNSCRUPULOUS DEBT BUYERS DESTABILIZE THE ECONOMIC HEALTH OF NORTH CAROLINA FAMILIES. 4

 A. Debt Buyers Push People Deeper Into Cycles Of Debt By Inflating The Amounts Allegedly Owed 5

 B. The Financial Health Of Vulnerable North Carolinians Is At Great Risk From Debt Buyers. 7

II. DEBT BUYERS ARE SOPHISTICATED, POWERFUL LITIGANTS WITH ENORMOUS RESOURCES..... 10

 A. Debt Buyers Buy Debts Without Sufficient Documentation To Comply With The Consumer Economic Protection Act10

 B. Unlike The Consumers Whose Debt Is Purchased, PRA Is A Large, Well-Resourced Corporation.13

III. THE ASSEMBLY LINE OF DEBT COLLECTION CASES PREVENTS NORTH CAROLINA COURTS FROM FULFILLING THEIR CONSTITUTIONAL DUTY TO ADMINISTER JUSTICE 14

A.	By Obtaining Default Judgments, Debt Buyers Avoid CEPA's Documentation Requirements.....	16
B.	Debt Collection Cases Undermine Our Adversarial System When Consumers Do Not Appear To Defend Lawsuits Or Do Not Have Counsel.....	18
	CONCLUSION	20
	CERTIFICATE OF COMPLIANCE	23
	CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

Statutes

N.C.G.S §§ 58-70-90 *et seq* 4
N.C.G.S. § 58-70-115..... 5
N.C.G.S. § 58-70-155 5, 12, 17

Constitutional Provisions

N.C. Const. art. I, § 18 20

Other Authorities

Abbye Atkinson, *Borrowing Equality*,
120 Colum. L. Rev. 1415 (2020) 6, 9

Appleseed & Jones Day, *Due Process and Consumer
Debt: Eliminating Barriers to Justice in Consumer
Credit Cases* (2010)..... 7

Robin Bleiweis, *Quick Facts About the Gender Wage
Gap*,
Ctr. for Am. Progress (Mar. 24, 2020) 8–9

Breno Braga, *Local Conditions and Debt in Collections*,
53 J. of Consumer Aff. 4 (2019) 8

Ctr. for Hous. and Comty. Stud. at Univ. of N.C.
Greensboro, *In Pursuit of Justice: An Assessment of
Civil Legal Needs in North Carolina* (2021) 18

Chapter 2: Active Duty Members,
Military On Source 9

Complaint, *FTC v. Green Tree Servicing LLC*,
No. 15-cv-02064 (D. Minn. Apr. 21, 2015) 5

Consumer Fin. Prot. Bureau, <i>A Snapshot of Debt Collection Complaints Submitted by Older Consumers</i> (2014)	9
Consumer Fin. Prot. Bureau, <i>Complaints Received from Servicemembers, Veterans, and Their Families</i> (2014)	9
Consumer Fin. Prot. Bureau, <i>Market Snapshot: Online Debt Sales</i> (Jan. 2017)	10
Rachel Deitch, <i>An Argument for Regulating Debt Buyers Under the Fair Debt Collection Practices Act</i> , 25 Geo. J. on Poverty L. & Pol’y 407 (2018)	11
Fed. Trade Comm’n, <i>Collecting Consumer Debts: The Challenges of Change</i> (Feb. 2009)	15
Fed. Trade Comm’n, <i>Repairing a Broken System: Protecting Consumers in Litigation and Arbitration</i> (2010)	17–18
Fed. Trade Comm’n, <i>Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003</i> (Dec. 2012)	6
Fed. Trade Comm’n, <i>The Structure and Practices of the Debt Buying Industry</i> (Jan. 2013)	12
Tom Feltner, Julia Barnard, & Lisa Stifler, <i>Debt by Default: Debt Collection Practices in Washington 2012–2016</i> , Ctr. for Responsible Lending (2019)	6
Pamela Foohey & Sara S. Greene, <i>Credit Scoring Duality</i> , 85 L. & Contemp. Probs. (forthcoming 2022)	6–7

Peter A. Holland, <i>Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers</i> , 26 Loy. Consumer L. Rev. 179 (2014).....	16, 17
Dalié Jiménez, <i>Dirty Debts Sold Dirt Cheap</i> , 52 Harv. J. on Legis. 41 (2015)	10–11
Barbara Kiviat, <i>The Art of Deciding with Data: Evidence from How Employers Translate Credit Reports into Hiring Decisions</i> , 17 Socio-Econ. Rev. 283 (2019)	7
Rakesh Kochhar & Richard Fry, <i>Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession</i> , Pew Rsch. Ctr. (Dec. 12, 2014)	7
Legal Servs. Corp., <i>The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans</i> (2017)	16
Geng Li, <i>Gender Related Differences in Credit Use and Credit Scores</i> , Bd. Governors Fed. Res. Sys.: FEDS Notes (June 22, 2018).....	8
Nat’l Ctr. of State Cts., <i>CALL TO ACTION: Achieving Civil Justice for All</i> (2016).....	15–16, 18, 19
Nat’l Consumer L. Ctr., <i>Fair Debt Collection</i> § 1.3.4.3 (10th ed. 2022)	11
N.C. Comm’n on Admin. L. and Just., <i>Final Report: Recommendations for Strengthening the Unified Court System of North Carolina</i> (March 2017)	20

N.C. Jud. Branch, <i>Civil Issue Filings/Order Results</i>	14,15
Devah Pager & Hana Shepherd, <i>The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets</i> , 34 Ann. Rev. Soc. 181 (2008)	7–8
Pew Charitable Trusts, <i>How Debt Collectors Are Transforming the Business of State Courts</i> , (May 6, 2020)	3, 6, 8, 17, 19
<i>Portfolio Recovery Assoc.</i> , CFPB No. 2015-CFPB-0023, (Sept. 8, 2015)	3, 12
PRA Group, Inc., Annual Report (Form 10-K) (Dec. 31, 2020).....	13
Press Release Consumer Fin. Prot. Bureau, <i>Encore and Portfolio Recovery Associates Must Refund Millions of Dollars and Overhaul Debt Collection and Litigation Practices</i> (Sept. 9, 2015)	13
Press Release, Ill. Att’y Gen. Madigan Announces \$6 Million Settlement With Encore Capital To Reform Debt Buying & Collection Practices (Dec 4, 2018)	3–4, 12
Press Release, PRA Grp., Inc., <i>PRA Group Reports Fourth Quarter 2020 Results</i> (Feb. 25, 2021)	14
Mary Spector, <i>Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts</i> , 6 Va. L. & Bus. Rev. 257 (2011).....	3

Lisa Stifler, <i>Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions</i> , 11 Harv. L. & Pol’y Rev. 91 (2017)	17
Lisa Stifler & Leslie Parrish, <i>Debt Collection And Debt Buying: The State Of Lending In America And Its Impact On U.S. Households</i> , Ctr. For Responsible Lending (2014)	2, 3, 12
U.S. Census Bureau, <i>Quick Facts</i>	10
Wendy Wang, Kim Parker & Paul Taylor, <i>Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted About the Growing Trend</i> , Pew Rsch. Ctr. (2013)	8
Wilf-Townsend, Daniel, <i>Assembly-Line Plaintiffs</i> , 135 Harv. L. Rev., (forthcoming 2022)	14, 15
Claudia Wilner & Nasoan Seftel-Gomes, <i>Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers</i> (2010)	5, 10, 16

SUPREME COURT OF NORTH CAROLINA

PIA TOWNES,)	
Plaintiff,)	
)	
v.)	<u>From Mecklenburg County</u>
)	
PORTFOLIO RECOVERY)	
ASSOCIATES)	
Defendant.)	

***AMICI CURIAE* BRIEF OF CENTER FOR RESPONSIBLE
LENDING, CHARLOTTE CENTER FOR LEGAL ADVOCACY,
FINANCIAL PROTECTION LAW CENTER, LEGAL AID OF NORTH
CAROLINA, INC., NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES, AND PISGAH LEGAL SERVICES**

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, Center for Responsible Lending, Charlotte Center for Legal Advocacy, Financial Protection Law Center, Legal Aid of North Carolina, Inc., National Association of Consumer Advocates, and Pisgah Legal Services, as amici,¹ through their counsel and their accompanying Motion

¹ No person or entity other than *amici curiae* or their counsel directly or indirectly, authored this brief in whole or in part or made a monetary contribution to the preparation or submission of this brief. Amici acknowledge the assistance of law students, Enzo A. Codella R. at the

for Leave to File Brief of Amici Curiae, hereby submit this brief in support of Plaintiff Pia Townes (Ms. Townes).

INTRODUCTION

This case presents an all-too-common scenario in which a debt buyer, such as Defendant Portfolio Recovery Associates (PRA), seeks to recover a debt with only partial information to substantiate its claims. Here, PRA initially obtained a default judgment against Ms. Townes. Once Ms. Townes secured legal counsel and challenged the ruling, the court vacated the default judgment, finding that PRA lacked sufficient evidence to substantiate the debt. Then, PRA dismissed its complaint.

PRA is a major debt buyer doing business in North Carolina and throughout the country. Debt buyers purchase charged-off debt “as is” from various creditors, such as credit card companies and medical institutions, or from other debt buyers, for substantially less than the amount claimed to be owed. Debt buyers then attempt to collect on the debt for profit. *See* Lisa Stifler & Leslie Parrish, *Debt Collection and Debt Buying: The State of Lending in America and Its Impact on U.S.*

Civil Legal Assistance Clinic at UNC School of Law and Yoo Jung Hah at Duke Law School.

Households, Ctr. for Responsible Lending, 8 (2014). [hereinafter Stifler & Parrish, *Debt Collection and Debt Buying*]. Debt buyers, including PRA, pursue these debts by suing the consumer and securing a judgment against them. Because consumers do not appear in most of these cases, debt buyers easily obtain default judgments without any substantive court review of the evidence or claims. *See* Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*, (May 6, 2020), <https://bit.ly/3tpHAN5> [hereinafter Pew Charitable Trusts, *Debt Collectors*]. As with Ms. Townes, debt buyers tend to dismiss their cases when defendants, especially those with counsel, appear. *Id.*; *see also* Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257, 298 (2011) (debt buyers dismiss 70% of their cases when a consumer appears with a lawyer).

Federal regulators and state attorneys general have initiated multiple investigations and numerous enforcement actions against debt buyers, including PRA, for unfair and deceptive practices and for various procedural and substantive failings that plague debt buyer litigation. *See e.g.*, Stifler & Parrish, *Debt Collection and Debt Buying; Portfolio*

Recovery Assoc., CFPB No. 2015-CFPB-0023, (Sept. 8, 2015), <https://bit.ly/35v9BKQ>; Press Release, *Ill. Att’y Gen. Madigan Announces \$6 Million Settlement With Encore Capital To Reform Debt Buying & Collection Practices* (Dec 4, 2018), <https://bit.ly/3HhcNqA>.

In 2009, North Carolina enacted the Consumer Economic Protection Act (CEPA) to address predatory debt buyer abuses. *See* N.C. G.S. §§ 58-70-90 *et seq.* The specific abuses sought to be curbed, such as inaccurate information and default judgments, continue today. Thus, CEPA’s commonsense requirements on debt buyers to produce accurate and reliable evidence of the debt when suing consumers in our state is still needed.

Amici will address the impact on vulnerable North Carolinians and the integrity of our courts should PRA and other debt buyers fail to produce proper documentation of consumer debt. We simply ask this Court to enforce CEPA’s stated documentation requirements. To do otherwise is contrary to our state law, unfair to our state’s consumers, and prejudicial to our court system.

ARGUMENT

I. UNSCRUPULOUS DEBT BUYERS DESTABILIZE THE ECONOMIC HEALTH OF NORTH CAROLINA FAMILIES.

Debt buyer abuses are inflicted disproportionately upon the most vulnerable and marginalized North Carolinians—people of color, women, servicemembers, and seniors. Notably, one study found that more than a third of lawsuits by debt buyers are “clearly meritless,” with 66% of those being waged against Black and Latino consumers. See Claudia Wilner & Nasoan Seftel-Gomes, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* 2 (2010), <https://tinyurl.com/3zu9rnfk> [hereinafter Wilner & Seftel-Gomes, *Debt Deception*]. Because our legislature enacted CEPA protections to ensure that only meritorious cases proceed, debt buyers should not be allowed to circumvent the statutory requirements for an itemized accounting and relevant documentation. N.C.G.S. §§ 58-70-115, 58-70-155.

A. Debt Buyers Push People Deeper Into Cycles Of Debt By Inflating The Amounts Allegedly Owed.

Debt buyers and debt collectors regularly tack on added fees and charges without authorization or through deception and exploit default judgments by adding costs not authorized by the underlying loan

contracts to inflate the amounts owed on such judgments. Complaint, *FTC v. Green Tree Servicing LLC*, No. 15-cv-02064 (D. Minn. Apr. 21, 2015), <https://bit.ly/3t8IUU6>; Wilner & Seftel-Gomes, *Debt Deception* at 8. Not only do debt buyers add unwarranted charges, but they also claim inaccurate amounts and pursue the wrong person. Tom Feltner, Julia Barnard, & Lisa Stifler, *Debt by Default: Debt Collection Practices in Washington 2012–2016*, Ctr. for Responsible Lending, 14 (2019); Fed. Trade Comm’n *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, (Dec. 2012), <https://tinyurl.com/2s474zv8> (finding that 26% of consumers had errors in their credit reports). In addition, when debt buyers obtain default judgments, consumers are further burdened by court costs, interest, and attorney fees, which are added to the judgment debt. *See* Pew Charitable Trust, *Debt Collectors* at 17–19.

Moreover, these practices may damage a person’s credit score, which is the “admission ticket” to housing, employment, and other opportunities to build and maintain wealth.² Abbye Atkinson, *Borrowing*

²Generally, the three major credit reporting agencies have ceased reporting civil judgments, however, smaller consumer data registries

Equality, 120 Colum. L. Rev. 1403, 1415 (2020); Pamela Foohey & Sara S. Greene, *Credit Scoring Duality*, 85 L. & Contemp. Probs. (manuscript at 2) (forthcoming 2022); Barbara Kiviat, *The Art of Deciding with Data: Evidence from How Employers Translate Credit Reports into Hiring Decisions*, 17 Socio-Econ. Rev. 283, 289 (2019) (roughly half of all employers use credit scores to gauge applicants' trustworthiness); Appleseed & Jones Day, *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases*, 2 (2010), <https://bit.ly/3BVUTs5> (“[W]hen the judgment shows up on credit reports, it becomes difficult for the debtor to find an apartment, get a better job, and obtain credit.”). Credit determines whether, *or at what increased cost*, a person will be able to obtain an auto or education loan, insurance package, or even turn on utilities in a new home. Foohey & Greene.

B. The Financial Health of Vulnerable North Carolinians Is At Great Risk from Debt Buyers.

Low-income consumers, particularly Black and Latino consumers,

like Lexis Nexis, may contain such information. However, charge-offs and delinquent debt may be reported by debt buyers or original creditors.

are more likely to be targeted by predatory lenders and debt buyers. Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Rsch. Ctr. (Dec. 12, 2014), <https://tinyurl.com/545jyx94>; see also Devah Pager & Hana Shepherd, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 Ann. Rev. Soc. 181 (2008) (outlining current disparities in employment and wages). Black and Latino debtors are disproportionately sued and saddled with judgments. See Pew Charitable Trusts, *Debt Collectors*; see also Breno Braga, *Local Conditions and Debt in Collections*, 53 J. of Consumer Aff. 4 (2019) (neighborhoods with higher proportions of residents of color have higher rates of debt in collections).

Women are more likely to struggle with debt and consequently more likely to have charged off debt sold to debt buyers. See Geng Li, *Gender Related Differences in Credit Use and Credit Scores*, Bd. Governors Fed. Res. Sys.: FEDS Notes (June 22, 2018) (single women hold more outstanding debt and more frequently fall into delinquency than single men). Women with children are especially vulnerable because they are paid lower wages than men and often must pay for

childcare. Wendy Wang, Kim Parker & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted About the Growing Trend*, Pew Rsch. Ctr., 17 (2013), <https://tinyurl.com/2p9xvc9v>; Robin Bleiweis, *Quick Facts About the Gender Wage Gap*, Ctr. for Am. Progress (Mar. 24, 2020), <https://tinyurl.com/5xysb935> (finding women, and especially Black women, earn significantly less than men). Due to a combination of these structural barriers, women of color are particularly likely to struggle with repaying their debts. Abbye Atkinson, *Borrowing Equality*, 120 Colum. L. Rev. 1403, 1441–42 (2020).

Another common target of debt collectors and debt buyers are servicemembers. North Carolina has over 100,000 active-duty service members. *Chapter 2: Active Duty Members*, Military On Source, <https://bit.ly/3hgcCkM>. Of all complaints made by servicemembers to the Consumer Financial Protection Bureau, the most common is repeated attempts to collect non-existent debt, coupled with threats of immediate arrest, court action, and negative reports to their commanding officers. Consumer Fin. Prot. Bureau, *Complaints Received from Servicemembers, Veterans, and Their Families* 13 (2014), <https://tinyurl.com/bd3hd22w>.

Also, senior citizens are frequent victims of abuse by debt collectors, including debt buyers. Consumer Fin. Prot. Bureau, *A Snapshot of Debt Collection Complaints Submitted by Older Consumers* 5 (2014), <https://tinyurl.com/mr39cbhv>. Seniors report repeated misconduct including attempts to collect debts from the wrong person, harassment, and threats of “garnishment of wages and federal benefits, arrest, and criminal prosecution.” Wilner & Sheftel-Gomes, *Debt Deception* at 7–14. The latest census data reports approximately 16.7% of North Carolina’s population is aged 65 and older or about 1.7 million persons. U.S. Census Bureau, *Quick Facts*, <https://bit.ly/3JRD2FM>.

II. DEBT BUYERS ARE SOPHISTICATED, POWERFUL LITIGANTS WITH ENORMOUS RESOURCES.

Ms. Townes is one person taking on the billion-dollar debt buying machine, and her case exemplifies the plight of thousands of consumers in North Carolina.

A. Debt Buyers Buy Debts Without Sufficient Documentation To Comply With The Consumer Economic Protection Act.

Debt buyers buy thousands of unpaid debts by executing a series of purchase agreements, effectively an assignment of a seller’s legal interest in the account or debt to a buyer. These accounts often lack accurate

information about charged-off debts from the original creditors or previous debt buyers. *See* Consumer Fin. Prot. Bureau, *Market Snapshot: Online Debt Sales* (Jan. 2017), <https://bit.ly/3IihLVh> (finding more than 75% of the debts sold had been collected upon by two or more creditors); *see also* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 Harv. J. on Legis. 41, 61-64 (2015) (FTC study found one-third of these purchase agreements disclaimed all warranties of accuracy; Twenty percent of these agreements contained problematic warranties, such as “it is accurate to the best of Seller’s knowledge.”). Debt buyers frequently receive nothing more than a spreadsheet with a consumer's name, address, account number, outstanding balance, and the date of the last payment. *See* Rachel Deitch, *An Argument for Regulating Debt Buyers Under the Fair Debt Collection Practices Act*, 25 Geo. J. on Poverty L. & Pol’y 407, 417 (2018). A study by the Federal Trade Commission (FTC) found that debt buyers receive documentation in addition to a spreadsheet for only twelve percent of the debts purchased. *See* Deitch at 417. Prior owners of the debt may refuse to provide the new owners with supporting information after the sale is complete, or these debt sellers may only provide documentation for an additional fee. *Id.* This

lack of proper documentation becomes more pronounced as debt ages, with debts five years or older sold online for one cent or less on the dollar. Nat'l Consumer L. Ctr., *Fair Debt Collection* § 1.3.4.3 (10th ed. 2022).

Debt buyers, like PRA, can analyze purchase agreements to identify the states in which consumers reside and omit those debts without accurate documentation from the sale. *See* Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, 21 (Jan. 2013), <https://bit.ly/3sr9M2N>. Thus, when seeking a default judgment, PRA could comply with CEPA's documentation requirements to provide a court with properly authenticated business records. N.C.G.S. § 58-70-155(b)(4) (2019).

Consumers like Ms. Townes, consumer attorneys and policy organizations, courts, state attorneys general, and the Consumer Financial Protection Bureau (CFPB) have repeatedly identified systemic problems in debt buyer litigation, such as the use of questionable pre-suit documentation, inadequate notice of the debt, and improper service of process. *See* Stifler & Parrish, *Debt Collection*; Press Release; *Ill. Att'y Gen. Madigan Announces \$6 Million Settlement With Encore Capital To Reform Debt Buying & Collection Practices* (Dec. 4, 2018).

In one example, CFPB filed an enforcement action against PRA in 2015 for unfair, deceptive, and abusive practices, including collecting on inaccurate or unsubstantiated debt. *Portfolio Recovery Assoc.*, CFPB No. 2015-CFPB-0023, (Sept. 8, 2015), <https://bit.ly/35v9BKQ>. PRA entered into a consent order with CFPB, which includes PRA's admission that debt purchase agreements disclose that the documentation of consumers debts may be inaccurate, incomplete, or unreliable. *Id.* Five years later, in December 2020, CFPB advised PRA Group of possible violations of this 2015 consent order and CFPB is again investigating PRA for its practices. *See* PRA Group, Inc., Annual Report (Form 10-K) (Dec. 31, 2020), <https://last10k.com/sec-filings/praa>.

Without evidence that PRA is now buying debt with documentation to substantiate the responsible party for the debt and the actual amount owed, this Court should interpret CEPA's documentary requirements to protect consumers from judgments based on debt buyers' unreliable evidence. Debt buyers, like PRA, must be required to provide accurate and reliable evidence of a consumer's debt.

B. Unlike The Consumers Whose Debt Is Purchased, PRA Is A Large, Well-Resourced Corporation.

PRA is the second largest debt buyer in the country. *See* Press Release Consumer Fin. Prot. Bureau, *Encore and Portfolio Recovery Associates Must Refund Millions of Dollars and Overhaul Debt Collection and Litigation Practices* (Sept. 9, 2015), <https://bit.ly/3IIHVGu>. Amid a global pandemic, PRA's parent company, PRA Group Inc., reported \$2 billion in total cash collections in 2020, a 9% increase from the previous year, and \$273 million in revenue, a 2% increase. Press Release, PRA Grp., Inc., *PRA Group Reports Fourth Quarter 2020 Results* (Feb. 25, 2021), <https://bit.ly/35akr8Z>. As a debt buyer Goliath, PRA can just ignore CEPA documentation requirements unless this Court interprets the statute as written.

III. THE ASSEMBLY LINE OF DEBT COLLECTION CASES PREVENTS NORTH CAROLINA COURTS FROM FULFILLING THEIR CONSTITUTIONAL DUTY TO ADMINISTER JUSTICE.

Debt buyers use the court system to perpetuate an assembly-line-style process to obtain judgments against North Carolina consumers. Wilf-Townsend, Daniel, *Assembly-Line Plaintiffs*, 135 Harv. L. Rev., (forthcoming 2022) [hereinafter Wilf-Townsend, *Assembly-Line Plaintiffs*]. Since July 1, 2015, the North Carolina Administrative Office

of the Courts reported that 219,131 “collection on account” cases, including debt buyer cases, were filed in our district courts. *See* N.C. Jud. Branch, *Civil Issue Filings/Order Results*, <https://bit.ly/3veWubi>.³ During the last fiscal year (July 1, 2020–June 30, 2021), 41,312 of these cases were filed in district court, the most filings of any year available online. N.C. Jud. Branch, *Civil Issue Filings/Order Results FY 2020–2021*, <https://bit.ly/3JPbrF6>. For comparison, more collection on account cases were filed than divorce (40,451) or domestic violence cases (33,284) in the same fiscal year. *Id.* Of the 219,131 filings since July 1, 2015, judgment for plaintiff-creditors was granted in whole or part in 132,428 cases or about 60% of the filings.⁴ Approximately 1.1% of the 219,131 cases were denied, involuntary dismissed, or abandoned and moot.⁵ *Id.*

³ This figure was calculated by adding the statewide collection on account cases recorded in civil district court for the fiscal years beginning July 1, 2015, through June 30, 2021.

⁴ This figure was calculated by adding the outcome of “granted in whole or part” recorded for the statewide collection on account cases in civil district court for the fiscal years beginning July 1, 2015, through June 30, 2021.

⁵ This figure was calculated by adding the outcome of “denied, involuntary dismissed, and abandoned or moot” recorded for the statewide collection on account cases in civil district court for the fiscal years beginning July 1, 2015, through June 30, 2021.

Debt collection cases take up an enormous amount of time in North Carolina's courts. As early as 2009, the FTC reported that this continuous flood of debt collection cases "posed considerable challenges to the smooth and efficient operation of courts." Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change*, 55 (Feb. 2009), <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>; see also Nat'l Ctr. of State Cts., *CALL TO ACTION: Achieving Civil Justice for All*, 8 (2016), <https://bit.ly/36GkTfN> [hereinafter *CALL TO ACTION*] (report on recommendations to improve the court system presented to the Conference of Chief Justices).

A. By Obtaining Default Judgments, Debt Buyers Avoid CEPA's Documentation Requirements.

The high profitability of debt buyer litigation depends on limited consumer involvement, with economies of scale making even low-value claims worth pursuing. Wilf-Townsend, *Assembly-Line Plaintiffs*. Most consumers do not formally defend collection suits against them for various reasons, including lack of resources to hire counsel. See Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 Loy. Consumer L. Rev. 179, 208 (2014); Wilner & Sheftel-Gomes, *Debt Deception at 6* ("The vast majority of cases result in

default judgments – automatic wins for the debt buyer because the person sued did not appear in court.”); *see also* Legal Servs. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, 7 (2017), <https://bit.ly/33TSpOt> (“Low-income Americans seek professional legal help for only 20% of the civil legal problems they face.”).

Other reasons consumers may not respond vary, including: the debt buyer’s improper service to a wrong address found in outdated records, intentional failure to serve, and filing of false affidavits of service of process, or the consumer’s confusion over the creditor’s identity and misunderstanding court processes. *See* Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 Harv. L. & Pol’y Rev. 91, 107–08 (2017). Because most consumers do not respond to debt buyer lawsuits, debt buyers obtain default judgments without producing any evidence of the debt that would be required by N.C.G.S. § 58-70-155 if the defendant appeared. *See* Holland, *Junk Justice* at 184 (“Instead of proof, arguably creditors rely on a de facto system of ‘default judgment justice’ wherein the creditors know that very few defendants will ever challenge the lawsuit, and

overwhelmed courts and judges will simply enter default judgments in order to keep the flood of paperwork from bringing the workflow to a halt.”); Pew Charitable Trust, *Debt Collectors* at 16 (“Multiple studies have shown that more than 70 percent of debt cases end in default judgments...”); Fed. Trade Comm’n, *Repairing a Broken System: Protecting Consumers in Litigation and Arbitration*, 7, n. 18 (2010), <https://bit.ly/3LYUF8p> (roundtable participants “estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults”).

B. Debt Buyer Litigation Undermines Our Adversarial System When Consumers Do Not Appear To Defend Lawsuits Or Do Not Have Counsel.

“The idealized picture of the adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is, more often than not, an illusion.” *See CALL TO ACTION* at 10. Consumers sued by debt buyers have no civil right to counsel, and legal services providers lack resources to provide representation to all eligible persons with meritorious cases. *See* Ctr. for Hous. and Comty. Stud. at Univ. of N.C. Greensboro, *In Pursuit of Justice: An Assessment of Civil Legal Needs in North Carolina*, 4 (2021),

<https://ncequaljusticealliance.org/assessment/>. There is one legal services attorney for every 8,000 low-income North Carolinians eligible for legal services, compared to 1 private attorney for every 365 persons. *Id.* at 3. Anecdotally, since 2019, amici⁶ have represented approximately 571 consumers in matters involving one of three of the major debt buyers, including PRA, which represents only a fraction of consumers sued. *See* Pew Charitable Trust, *Debt Collectors* at 13 (Defendants “typically have legal representation in less than 10 percent of debt claims.”); *see also*, *CALL TO ACTION* at 10 (“The majority of defendants in these cases are unrepresented.”). When consumers have counsel, they are more likely to defend and win, with data gathered in Utah showing that 53% of debt collection defendants prevailed with counsel, compared to 13% without. *See* Pew Charitable Trust, *Debt Collectors* at 14.

To manage crowded dockets and reduce the number of cases to be tried, judges encourage parties to discuss settlement. Yet, without counsel, consumers are almost certainly outmatched. They are frequently unaware of defenses, such as the running of statutes of

⁶ Note that the Center for Responsible Lending does not provide direct legal services, and so the representation of consumers is limited to the other organizations who join this brief.

limitations, or any defects with the evidence a debt buyer may claim supports the alleged debt. These discussions typically lead to unfavorable settlements for consumers that contravene fair negotiation. For instance, consumers may unwittingly agree to pay time-barred debt that the debt buyer could not have justly collected.

Collecting debt without the required statutory documentation undermines the confidence of the public in our court system and its “commitment to the fair administration of justice for all.” *See* N.C. Comm’n on Admin. L. and Just., *Final Report: Recommendations for Strengthening the Unified Court System of North Carolina*, 68 (March 2017) <https://nccalj.org/final-report/> (finding “a significant number of respondents believe that low-income people (64%) . . . receive worse treatment in the courts.”).

North Carolina’s Constitution requires that “right and justice be administered without favor, denial, or delay.” N.C. Const. art. I, § 18. Regrettably, that cannot happen when debt buyers circumvent the statutory requirements for authenticating the underlying debt and manipulate the judicial process. When judgments are entered for debt buyers who have insufficient documentation of their debts, the impact of

such litigation transforms our courts into collection agencies and further erodes the public's confidence in our justice system.

CONCLUSION

The legislature enacted CEPA to prevent debt buyer abuses that not only harm North Carolina's consumers, but also undermine its court system. This Court should enforce these statutory protections as written by our legislature. The statutory protections for vulnerable consumers are at stake should this Court adopt the interpretations suggested by debt buyers like PRA and its amicus.

Respectfully submitted, this the 28th day of February, 2022.

AMICI CURIAE

Electronically submitted

Legal Aid of North Carolina
/s/ Celia Pistolis
224 S. Dawson Street
Raleigh, NC 27601
Telephone: (919) 856-2133
N.C. Bar No. 10472
celiap@legalaidnc.org

N.C. R. App. P. 33(b) Certification: I, Celia Pistolis, certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Center for Responsible Lending
by: Nadine Chabrier_
910 17th Street NW, Suite 800
Washington, DC 20006
Telephone: (202) 349-1850
D.C. Bar No. 977887
nadine.chabrier@responsible-lending.org
pending admission pro hac vice

*Legal Aid of North Carolina
pro bono co-counsel-*
Kathryn A. Sabbeth
N.C. Bar No. 40284
Enzo A. Codella R.
Certified Law Student
UNC Clinical Programs
Civil Legal Assistance Clinic
UNC School of Law
102 Ridge Road
Chapel Hill, NC 27514
Phone: 919-962-2888
sabbeth@unc.edu

Charlotte Center for Legal Advocacy, Inc.
by: Karen Fisher Moskowitz, Esq.
Post Office Box 25558
Charlotte, North Carolina 28204
Telephone: (980) 202-7343
N.C. Bar No. 16626
karenm@charlottelegaladvocacy.org

Financial Protection Law Center
by: Maria D. McIntyre
Post Office Box 390
Wilmington, NC 28402
Telephone: (910) 442-1010
N.C. Bar No. 24407
maria@financialprotectionlawcenter.org

Pisgah Legal Services
by: Marjorie Maynard
Post Office Box 2276
Asheville, NC 28802
Telephone: (828)253-0406
N.C. Bar No. 43041
molly@pisgahlegal.org

National Association of Consumer Advocates
by: Adrian M. Lapas
Post Office Box 10688
Goldsboro, NC 27534
Telephone: (919) 583-5400
N.C. Bar No. 20022
adrian@lapaslaw.com

by: Suzanne Begnoche
Post Office Box 2035
Chapel Hill, NC 27515
Telephone: (919) 960-6108
N.C. Bar No. 35158
suzanne.begnoche@begnochelaw.com

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Appellant certifies that the foregoing brief, which is prepared using a 14-point proportionally spaced font with serifs, is less than 3,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by word processing software that includes footnotes and citations in this word count.

/s/ Celia Pistolis
Legal Aid of North Carolina, Inc.
224 S. Dawson Street
Raleigh, NC 27601
Telephone: (919) 856-2133
N.C. Bar No. 10472
celiap@legalaidnc.org

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing Motion and Brief was served on counsel for the respective parties via electronic mail, addressed as follows:

Plaintiff Pia Townes

Carlene McNulty
carlene@ncjustice.org

Jason Pikler
jason.pikler@ncjustice.org

J. Jerome Hartzell
jerry.hartzell@gmail.com

Defendant Portfolio Recovery Associates, LLC

Jonathan A. Berkelhammer
jon.berkelhammer@elliswinters.com

Joseph D. Hammond
joe.hammond@elliswinters.com

Michelle A. Ligouri
michelle.ligouri@elliswinters.com

Amicus Curiae

Caren Enloe
cenloe@smithdebnamlaw.com

This the 28th day of February, 2022.

/s/Celia Pistoris
Celia Pistoris
Legal Aid of North Carolina, Inc.
224 S. Dawson Street
Raleigh, NC 27601
Telephone: (919) 856-2133
N.C. Bar No. 10472
celiap@legalaidnc.org