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CLERK OF THE LEAVENWORTH COUNTY DISTRICT COURT
CASE NUMBER: LV-2025-LM-000413
IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS
NOT COMPLAINT
LIMITED ACTION COURT

**PORTFOLIO RECOVERY
ASSOCIATES, LLC,**

Plaintiff/Counterclaim Defendant,

v.

LEIGH COBB,

Defendant/Counterclaim Plaintiff.

Case No. LV-2025-LM-000413

**DEFENDANT/COUNTERCLAIM PLAINTIFF'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

ANSWER

COMES NOW, Defendant/Counterclaim Plaintiff Leigh Cobb ("Cobb"), by and through her undersigned counsel of record, and, in her Answer to Plaintiff/Counterclaim Defendant Portfolio Recovery Associates, LLC's ("Portfolio Recovery") Petition, admits, denies, and avers as follows:

1. Cobb is without sufficient information to admit or deny the allegations in paragraph 1 of Portfolio Recovery's Petition and thus denies the same.
2. Cobb admits the allegations in Paragraph 2 of Portfolio Recovery's Petition.
3. Cobb denies the allegations in Paragraph 3 of Portfolio Recovery's Petition.
4. Cobb denies the allegations in Paragraph 4 of Portfolio Recovery's Petition.
5. Cobb denies the allegations in Paragraph 5 of Portfolio Recovery's Petition.
6. Cobb denies the allegations in Paragraph 6 of Portfolio Recovery's Petition.
7. Cobb denies the allegations in Paragraph 7 of Portfolio Recovery's Petition.
8. Cobb denies the allegations in Paragraph 8 of Portfolio Recovery's Petition.
9. Cobb is without sufficient information to admit or deny the allegations in paragraph 9 of Portfolio Recovery's Petition and thus denies the same.

10. Cobb denies the allegations in Paragraph 10 of Portfolio Recovery's Petition.
11. Cobb denies the allegations in Paragraph 11 of Portfolio Recovery's Petition.
12. Cobb denies the allegations in Paragraph 12 of Portfolio Recovery's Petition.

AFFIRMATIVE DEFENSES

COMES NOW, Defendant/Counterclaim Plaintiff Cobb and, for her Affirmative Defenses, states to this honorable Court as follows:

1. Cobb specifically and expressly denies that the debt at the heart of this matter is hers. Cobb has never had a credit card with The Bank of Missouri.

2. The Petition fails to state a claim upon which relief can be granted as it sets forth no ultimate facts demonstrating:

- a. That there was a contract;
- b. That consideration was given on the basis of that contract;
- c. That the contract was breached; or
- d. That damages occurred.

3. Portfolio Recovery's claim fails for failure of consideration as Cobb never received anything of value from Portfolio Recovery.

4. Pursuant to K.S.A. § 60-209(h), Cobb specifically and expressly denies the execution of any written instrument upon which any of Portfolio Recovery's claims are founded. As such, no evidence has been provided to substantiate Portfolio Recovery's claim that Cobb is obligated on said account. Cobb demands strict proof of liability on the account in the form of a signed card user agreement, as well as proof of payments made by Cobb to Portfolio Recovery toward the alleged debt.

5. Portfolio Recovery's claim is barred by the Statute of Frauds as it has not alleged any agreement in writing that would obligate Cobb to Portfolio Recovery in any way, and the

nature of Portfolio Recovery's claim is one in which a written contract would be necessary to be enforceable in Kansas.

6. Portfolio Recovery's claims fail because of Portfolio Recovery's own negligence in failing to reasonably investigate Cobb's identity theft claim and identify the proper party in interest.

7. Portfolio Recovery is not a proper party in interest as there is no privity of contract between Cobb and Portfolio Recovery.

8. Cobb asserts the right to assert additional affirmative defenses as they become known during the pendency of this case, up to and including trial.

WHEREFORE, Defendant/Counterclaim Plaintiff Cobb, having set forth her Affirmative Defenses, prays that the Court enter judgment in her favor and against Portfolio Recovery; order this alleged debt to be removed from the trade lines of all credit-reporting businesses; provide for payment of reasonable attorneys' fees and costs incurred herein; and for such other and further relief as the Court may deem just and proper under these circumstances.

COUNTERCLAIMS

COMES NOW, Defendant/Counterclaim Plaintiff Cobb, by and through her undersigned counsel and, for her Counterclaims against Portfolio Recovery, states and avers to the Court as follows:

FACTS COMMON TO ALL COUNTERCLAIMS

1. Cobb has been wrongfully identified as the debtor in this lawsuit filed by Portfolio Recovery.

2. This lawsuit was filed on March 17, 2025 by PRA Group on behalf of Portfolio Recovery.

3. The lawsuit claims Cobb owes \$2,385.61, plus costs.

4. Upon information and belief, the alleged debt stems from an account with The Bank of Missouri that was opened on or about January 6, 2022 (the “Account”).

5. This Account was allegedly opened in Cobb’s name using her personally identifying information.

6. Cobb did not open or agree to this Account.

7. Upon information and belief, Cobb is a victim of identity theft.

8. On or about October 28, 2022, the Account was transferred from The Bank of Missouri to Ally Bank (“Ally”).

9. On or about November 20, 2023, the Account was transferred from Ally Bank to Portfolio Recovery.

10. Portfolio Recovery began reporting the Account and its collection efforts to the three major credit reporting agencies shortly after purchasing the Account.

11. Cobb has submitted multiple disputes through the credit reporting agencies for the Account.

12. Cobb has included documentation supporting she is a victim of identity theft in her disputes, including an FTC identity theft affidavit.

13. Cobb also made at least two complaints in 2024 about Portfolio Recovery’s attempt to collect the fraudulent debt to the Consumer Financial Protection Bureau (“CFPB”).

14. Portfolio Recovery responded to each CFPB complaint by stating that it had verified the debt and confirmed it was owed by Cobb.

15. In August 2024, Cobb reached out directly to Portfolio Recovery via email to dispute the alleged debt.

16. Cobb never received a response to this email.

17. In an attempt to get relief after being stonewalled by Portfolio Recovery, Cobb submitted a complaint to the CFPB against Ally.

18. In a letter to Cobb from Ally dated October 29, 2024, Ally told Cobb that it determined the Account was not opened in her name legitimately and that she is not responsible for payment on the Account.

19. On October 30, 2024, Ally responded to Cobb's CFPB complaint and informed her that after investigation it had accepted her fraud application.

20. Ally also informed Cobb in its response to her CFPB complaint that as of October 29, 2024, it had initiated the process to buy back the fraudulent Account from Portfolio Recovery.

21. Discovery is needed to determine if Ally actually initiated the process to buy back the fraudulent account from Portfolio Recovery and what happened during the process.

22. The wrongful attribution of this debt has caused significant emotional distress to Cobb, as she has had to contend with the stress and inconvenience of defending herself against baseless claims, including completing multiple disputes prior to the lawsuit being filed.

23. The actions of Portfolio Recovery in pursuing this lawsuit against Cobb without proper verification of the debt constitute an abuse of process and malicious prosecution, as they have initiated legal proceedings without probable cause and with disregard for the truth.

24. Portfolio Recovery's actions have not only caused emotional distress but have also threatened Cobb's financial standing by negatively impacting her credit score.

COUNT I
VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT
AGAINST PORTFOLIO RECOVERY

25. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

26. The Kansas Consumer Protection Act ("KCPA") prohibits deceptive and unconscionable acts and practices in connection with consumer transactions in Kansas.

27. The KCPA should be liberally construed to promote its policies of protecting consumers against suppliers that commit deceptive and unconscionable acts and/or practices.

28. Cobb is a “consumer” as defined by K.S.A. 50-624(b).
29. Specifically, Cobb is an individual who sought services for personal purposes in that she retained an attorney to represent her and defend her from the allegations in Portfolio Recovery’s pleading.
30. Portfolio Recovery is a “supplier” because it regularly engages in consumer transactions.
31. Because of Portfolio Recovery’s conduct, Cobb retained an attorney and made a payment to said attorney for services.
32. Thus, Portfolio Recovery’s actions in this case were made ““in connection with” that consumer transaction, as required by K.S.A. 50-626(a) and 50-627(a).
33. Portfolio Recovery engaged in deceptive and unconscionable acts in violation of the KCPA, including, but not limited to, the following:
- a. Willfully making false representations as to material facts concerning the amount and status of the alleged debt, in violation of K.S.A. 50-626(b)(2);
 - b. Falsely stating, knowingly or with reason to know, that Cobb had an obligation to pay Recovery Portfolio an alleged debt, in violation of K.S.A. 50-626(b)(8);
 - c. Continuing to report inaccurate and disputed information to the credit reporting agencies, in violation of K.S.A. 50-626(b)(8); and
 - d. Taking advantage of Cobb’s inability to reasonably protect her interests because of her ignorance of the circumstances and law, in violation of K.S.A. 50-627(b)(1).
34. Cobb has been damaged and is “aggrieved” pursuant to the KCPA as a result of Portfolio Recovery’s conduct.
35. Pursuant to K.S.A. 50-634(b), Cobb is entitled to recover the greater of her actual damages, including garden variety emotional distress, or civil penalties in the amount of up to \$10,000.00 per violation.

36. Further, Cobb is entitled to recover her reasonable attorneys' fees and costs in this action.

37. Portfolio Recovery's conduct was willful, wanton, and indifferent to the rights, health, and safety of Cobb.

**COUNT II
NEGLIGENCE
AGAINST PORTFOLIO RECOVERY**

38. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

39. As a sophisticated business entity, Portfolio Recovery owed Cobb a duty to act with reasonable care, including compliance with state and federal law.

40. Portfolio Recovery breached its duty by failing to verify the accuracy and failing to confirm the validity of the debt prior to commencing its lawsuit against Cobb.

41. Portfolio Recovery further breached its duty by failing to implement adequate procedures to detect and flag inaccurate activity, failing to conduct meaningful and timely reinvestigations after receiving Cobb's disputes, failing to correct known inaccuracies, even after being presented with compelling and verified evidence, and continuing to report inaccurate and disputed information to the credit reporting agencies.

42. Portfolio Recovery's breach of its duty caused Cobb to suffer damages in that she suffered garden variety emotional distress, including anger, anxiety, appetite loss, chest tightness, chronic fatigue, fear, embarrassment, frustration, headaches, hopelessness, insomnia, nausea, and panic attacks.

43. Portfolio Recovery's breach of its duty further damaged Cobb by causing her to suffer credit denials, damage to reputation, and interference with her normal and usual activities.

44. Portfolio Recovery's conduct was willful, wanton, and indifferent to the rights, health, and safety of Cobb.

**COUNT III
ABUSE OF PROCESS
AGAINST PORTFOLIO RECOVERY**

45. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

46. On or about March 17, 2025, PRA Group filed a lawsuit on behalf Portfolio Recovery against Cobb seeking to collect a debt.

47. Portfolio Recovery contends the debt stems from an agreement between Cobb and The Bank of Missouri.

48. Cobb owes no debt to Portfolio Recovery.

49. Cobb also owes no debt to The Bank of Missouri.

50. Cobb has not purchased or received any services from Portfolio Recovery.

51. Cobb also has not purchased or received any services from The Bank of Missouri.

52. Cobb received no benefit from Portfolio Recovery.

53. Cobb received no benefit from The Bank of Missouri.

54. Portfolio Recovery's purpose in suing Cobb for the alleged debt was to obtain funds to which it was not entitled by threatening Cobb with legal entanglement.

55. Portfolio Recovery had no right to sue Cobb to recover funds, making its use of summons and process illegal, improper, and/or perverted.

56. As a result of Portfolio Recovery's actions, Cobb has been damaged.

57. Cobb has been damaged in that she was forced to retain an attorney to represent her against the improper lawsuit filed by PRA Group on behalf of Portfolio Recovery.

58. Cobb's actual damages include, but are not limited to, anger, anxiety, appetite loss, chest tightness, chronic fatigue, fear, embarrassment, frustration, headaches, hopelessness, insomnia, nausea, and panic attacks.

59. Portfolio Recovery's conduct was willful, wanton, and indifferent to the rights, health, and safety of Cobb.

COUNT IV
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
AGAINST PORTFOLIO RECOVERY

60. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

61. The alleged debt at issue in this lawsuit arose out of an apparent personal credit card.

62. By filing the lawsuit against Cobb, Portfolio Recovery has alleged that Cobb owes an obligation to pay money for those personal transactions, as outlined more fully above.

63. These personal transactions are a "debt" as that term is defined by 15 U.S.C. § 1692a(5).

64. Portfolio Recovery is in the business of collecting debts.

65. Upon information and belief, Portfolio Recovery purchased debts from creditors and attempts to collect those debts.

66. In this instance, Portfolio Recovery did in fact attempt to collect the alleged debt it purchased from Ally from Cobb.

67. Thus, Portfolio Recovery is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

68. Additionally, the FDCPA prohibits Portfolio Recovery from engaging in unfair practices in connection with attempts to collect a debt. 15 U.S.C. § 1692f.

69. Violations of 15 U.S.C. § 1692f are not limited to the specifically enumerated conduct.

70. Portfolio Recovery committed an unfair practice when it attempted to collect the debt from Cobb via correspondence and by filing the lawsuit against Cobb seeking a debt that was not permitted by law as Cobb did not incur the debt.

71. As a result of these actions, Cobb has suffered garden variety emotional distress, including anger, anxiety, appetite loss, chest tightness, chronic fatigue, fear, embarrassment, frustration, headaches, hopelessness, insomnia, nausea, and panic attacks.

72. Pursuant to 15 U.S.C. § 1692k, Cobb is entitled to her actual damages, statutory damages in the amount of \$1,000.00, and her reasonable attorneys' fees and expenses.

73. Portfolio Recovery's conduct was willful, wanton, and indifferent to the rights, health, and safety of Cobb.

COUNT V
VIOLATIONS OF THE FAIR CREDIT REPORTING ACT 15 U.S.C. § 1681s-2(b)
AGAINST PORTFOLIO RECOVERY

74. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

75. 15 U.S.C. § 1681s-2(b) is a section of the Fair Credit Reporting Act (FCRA) that outlines the duties of furnishers of information to credit reporting agencies ("CRAs") upon receiving notice of a dispute regarding the completeness or accuracy of any information provided by the furnisher.

76. More specifically, 15 U.S.C. §1681s-2(b) outlines the reporting of information after dispute and notice of error: "A person shall not furnish information relating to a consumer to any consumer reporting agency if—(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and (ii) the information is, in fact, inaccurate."

77. Portfolio Recovery violated 15 U.S.C. §1681s-2(b) by continuing to report inaccurate and disputed information in Cobb's credit file after receiving actual notice of such

inaccuracies, by failing to conduct lawful reinvestigations, and by failing to maintain reasonable procedures with which to filter and verify disputed information in Cobb's credit file.

78. As a result of this conduct, both the actions and inactions of Portfolio Recovery, Cobb suffered damages, and continues to suffer, including economic loss, credit denials, damage to reputation, emotional distress, and interference with Cobb's normal and usual activities.

79. Cobb is entitled to recover damages under 15 U.S.C. §1681o.

80. Further, Cobb is entitled to recover expenses and attorneys' fees from Portfolio Recovery pursuant to 15 U.S.C. §1681n and/or 15 U.S.C. §1681o.

81. Portfolio Recovery's conduct, both actions and inactions, were willful.

**COUNT VI
DECLARATORY AND INJUNCTIVE RELIEF
AGAINST PORTFOLIO RECOVERY**

82. Cobb incorporates by reference the foregoing paragraphs as though fully set forth herein.

83. Portfolio Recovery alleges that Cobb is indebted to it in the amount of \$2,385.61 plus costs.

84. PRA Group has filed this lawsuit on behalf of Portfolio Recovery to attempt to collect this alleged debt.

85. Cobb has not incurred the debt at issue and is not indebted to Portfolio Recovery in any amount.

86. The Court has authority to provide Cobb the relief sought herein, including establishing the rights, status, and duties of the parties pursuant to multiple laws, including the KCPA and Declaratory Judgment Act.

87. Cobb requests the Court issue the following declaratory and injunctive relief:

- a. Declaring the debt is not owed by Cobb; and

- b. Ordering Portfolio Recovery to cease any all current and future attempts to collect the alleged debt from Cobb; and
- c. Ordering Portfolio Recovery to delete any tradelines related to the debt reported to any credit reporting agency.

88. Cobb has no adequate remedy at law for such relief. Indeed, but for an Order of the Court declaring the debt is not owed by Cobb and enjoining Portfolio Recovery from collecting the alleged debt from Cobb and deleting any tradelines reported to any credit reporting agency, there is no mechanism by which Portfolio Recovery can be precluded from demanding payment from Cobb and negatively impacting her credit score.

89. Because of the overlap of factual subject matter with Cobb's KCPA claim, Cobb is further entitled to recover her reasonable attorneys' fees and expenses for seeking this relief.

DEMAND FOR JURY TRIAL

90. Cobb demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

Cobb requests that the Court order relief and enter judgment against Plaintiff/Counterclaim Defendant Portfolio Recovery as follows:

- Declaring that Portfolio Recovery committed the violations of the KCPA outlined above;
- Declaring that Cobb does not owe the debt at issue in Portfolio Recovery's lawsuit;
- Enjoining Portfolio Recovery from collecting the alleged debt from Cobb;
- Enjoining Portfolio Recovery from reporting the alleged debt to any credit reporting agency;
- Granting damages in an amount in excess of \$75,000.00;
- Granting civil penalties to Cobb;
- Granting reasonable attorneys' fees and expenses to Cobb; and

- Granting any such further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Jenilee V. Zentrich

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