

Jersey, which was captioned as *Pollak, Bracha, et al. v. Portfolio Recovery Associates, LLC*; Case No. 3:15-cv-4025. On March 9, 2016, Plaintiff David Beneli filed a similar lawsuit in the United States District Court for the District of New Jersey, which was captioned as *David Beneli, et al. v. Portfolio Recovery Associates, LLC*, Case No. 3:16-cv-1328. These two cases were consolidated by the Court on August 22, 2016. Plaintiffs' alleged PRA violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* ("FDCPA"), by sending consumers written collection communications that contained a false threat of imminent or immediate legal action.

3. PRA has denied, and continues to deny, each claim and allegation of wrongdoing Plaintiff alleges in the Litigation. PRA also has denied, and continues to deny, *inter alia*, any allegations that Plaintiff or the Settlement Class suffered any damage whatsoever, were harmed in any way, or are entitled to any relief as a result of any conduct on the part of PRA as alleged by Plaintiff in this Litigation. Nevertheless, PRA has concluded that further litigation will entail risks, will likely be protracted and expensive with uncertain results, and that settlement of the Litigation is, therefore, advisable to permit the operation of PRA's business without further litigation expenses and the distraction of executive personnel. PRA therefore desires to settle the claims to avoid such additional expense, burden, and uncertainty of further litigation, and to put to rest all claims related to its collection letters and all claims which have or could have been asserted by Plaintiffs or the Settlement Class against PRA in the Action.

4. Plaintiffs, individually and on behalf of the Settlement Class, desire to settle their claims against PRA, having taken into account through Plaintiffs' counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that the Litigation will be further protracted and expensive.

5. Plaintiffs' counsel have conducted an extensive investigation of the facts and the applicable law. Based on the foregoing, and upon an analysis of the benefits afforded by this

Agreement, Plaintiffs' counsel consider it to be in the best interest of the Settlement Class to enter into this Agreement.

6. In consideration of the foregoing and other valuable consideration, Plaintiffs, Plaintiffs' counsel, PRA, and PRA's counsel collectively agree to settle the claims of the Plaintiffs and the Settlement Class arising from PRA's collection letters, subject to the Court's approval, on the following terms and conditions.

TERMS

7. Definitions

7.1 "Action" means the lawsuit captioned as *Pollak, Bracha and David Beneli, et al. v. Portfolio Recovery Associates, LLC*; Case No. 3:15-cv-4025, which is currently pending in the United States District Court for the District of New Jersey.

7.2 "Class Administrator" means KCC, LLC.

7.3 "Class Claims" means those claims arising from the 'LL1' letters sent to Class Members as outlined in Section 7.18 below.

7.4 "Class counsel" means:

Ari H. Marcus, Esq.
Yitzchak Zelman, Esq.
Marcus & Zelman LLC
701 Cookman Avenue, Suite 300
Asbury Park, New Jersey 07712

7.5 "Class Members" means those individuals included in the Settlement Class, exclusive of any person who validly and timely excludes himself or herself from the Settlement in accordance with the provisions below.

7.5 (a) "Zero Balance Class Member" means any Class Member whose account PRA has determined to be designated as "Settled in Full," "Paid in Full," or otherwise had a "zero" balance as of November 20, 2018.

7.5 (b) “Non-Zero Balance Class Member” means any Class Member who PRA has determined had a positive balance on any account at issue as of November 20, 2018.

7.6 “Court” means the United States District Court for the District of New Jersey.

7.7 “Defendant” or PRA means PORTFOLIO RECOVERY ASSOCIATES, LLC and each of PRA’s past or present officers, directors, partners, agents, employees, attorneys, accountants or auditors, consultants, legal representatives, predecessors, successors, assigns, parents, subsidiaries, divisions, and any entity that controls PRA.

7.8 “Defendant’s Counsel” means

David N. Anthony, Esq.
James K. Trefil, Esq.
Meagan A. Mihalko, Esq.
Troutman Sanders LLP
1001 Haxall Point, Suite 1500
Richmond, Virginia 23219

7.9 “FDCPA” means the federal Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.*

7.10 “Final” means when the last of the following with respect to the Final Approval Order approving this Stipulation has occurred: (1) the Court enters a Final Approval Order which: (a) approves the Settlement as fair, reasonable, and adequate; (b) finds that this Settlement is fair and made in good faith; and (c) dismisses with prejudice the claims alleged by Plaintiffs and the Settlement Class in the Complaint; and (2) (a) if no objections are filed, the expiration of three business days after the entry of a Final Approval Order by the Court; (b) if any objections are filed, the expiration of three business days after the time to appeal the Final Order has passed without any appeal having been filed (which date shall be deemed to be 33 days following the entry of the Final Approval Order, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the 33rd day falls on a weekend or a Court holiday, in which case the date for purpose of this Agreement shall be deemed to be the next business day after such 33rd day); or (c) if

such motion to alter or amend is filed, or if an appeal is taken, three business days after a determination of any such motion or appeal that permits the consummation of the Settlement in substantial accordance with the terms and conditions of this Settlement.

7.11 “Final Approval” means the approval of this Settlement by the Court at or after the Final Fairness Hearing, and entry of the Final Approval Order.

7.12 “Final Approval Order” means the order entered by the Court giving Final Approval of this Settlement and dismissing all claims.

7.13 “Final Fairness Hearing” means the hearing at which the Settling Parties present this Settlement and the Final Approval Order for entry by the Court.

7.14 “Plaintiffs” means Bracha Pollak and David Beneli.

7.15 “Preliminary Approval” means the preliminary approval of this Settlement by the Court and conditional certification of the Settlement Class.

7.16 “Related Parties” means PRA’s subsidiaries, associates, and directors.

7.17 “Settlement” means the settlement entered into by the Settling Parties as set forth and embodied by this Stipulation”.

7.18 “Settlement Class” means:

Class A: All New Jersey consumers (1) who received a ‘LL1’ template collection letter from the Defendant, (2) on an obligation owed or allegedly owed to U.S. Bank, (3) during the time period of June 9, 2014 to the present; and

Class B: All New Jersey consumers (1) who received a ‘LL1’ template collection letter from the Defendant, (2) on an obligation owed or allegedly owed to Citibank, N.A., (3) during the time period of March 9, 2015 to the present.

7.19 “Settlement Fund” means the amount paid by PRA pursuant to Section 17 herein.

7.20 “Settling Parties” means, collectively, PRA, by and through its counsel of record, and Plaintiffs on behalf of themselves and all Class Members, by and through Class Counsel.

7.21 “Settlement” or “Agreement” means this Settlement Agreement.

7.22 “Ultimate Approval” means that the Final Approval Order has become Final, as defined herein.

7.23 “Unknown Claims” means all claims, demands, rights, liabilities, and causes of action for damages arising out of, or relating to, claims involving the identical factual predicate alleged in the Action, which any person does not know or suspect to exist in his, her, or its favor at the time of the release of claims which, if known by him, her, or it, might have affected his, her, or its settlement and release of claims for damages. The Settling Parties acknowledge, and the Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

8. **Effective Date.** This Agreement shall become effective upon the Effective Date, which is the date the settlement becomes Final as defined in Section 7.10 above.

9. **Certification of Settlement Class.** For the purposes of settlement, the Parties stipulate to the certification of the Settlement Class as defined in Section 7.18.

10. **Class Size.** During discovery, PRA has provided information to Class Counsel regarding the number of persons in the Settlement Class. Specifically, that there are approximately 3,288 persons (“Class Members”) in the Settlement Class. Per the representation of PRA, the Settlement Class consists of approximately 1,104 Zero Balance Class Members, with the remaining 2,184 Class Members being Non-Zero Balance Class Members as of November 20, 2018.

11. **Net Worth.** The Parties acknowledge that the FD CPA limits class recovery of statutory damages up to the lesser of \$500,000.00 or one (1) percent of PRA’s net worth. During discovery, PRA has made certain representations to Class Counsel concerning its net worth. As a result of significant in-depth settlement discussions and negotiations, the Parties have agreed PRA will pay \$98,144.00 in statutory damages to the Settlement Class and a credit in an amount not to

exceed the outstanding balance of each Account, up to \$500.00, collectively up to \$1,092,000.00 in credit. Under the circumstances, the parties agree that this amount is fair and reasonable.

12. **Relief to Plaintiffs and the Settlement Class.** In view of all the foregoing, PRA shall provide the following relief to Plaintiffs and the Settlement Class:

- (a) Subject to Court approval, PRA will create a class settlement fund of \$98,144.00 (“Class Recovery”), which the Class Administrator, KCC, LLC will distribute *pro rata* among those Class Members who do not exclude themselves (“Claimants”) as follows: \$50.00 per Zero Balance Class Member and \$16.00 per Non-Zero Balance Class Member. Class Members will receive a *pro rata* share of their Class Recovery by check. Checks issued to Class Members will be void sixty (60) days from the date of issuance.

In addition, PRA will provide, without imposing any condition or charge whatsoever, a credit to each account belonging to a Non-Zero Balance Class Member (“Account”), in an amount not to exceed the outstanding balance of each Account, up to \$500.00 per Non-Zero Balance Class Member and collectively up to \$1,092,000.00. No cash payment will result from any credit provided to a Non-Zero Balance Class Member’s account(s), and PRA agrees not to issue any Non-Zero Balance Class Member a form 1099-C due to the credit. PRA agrees that it will reflect said credit in the Account balance on any subsequent communication regarding each Account and that it will provide notice of the credit in the Account balance to any agent or third party that acts on PRA’s behalf in furtherance of any collection activity on any Account;

- (b) Subject to Court approval, PRA shall pay each Plaintiff \$1,000.00 for their statutory damages and individual claims pursuant to 15 U.S.C. 1692k(a)(2)(B)(i), plus \$3,000.00 each in recognition for their services to the Settlement Class.
- (c) Any checks that have not been cashed by the void date, along with any unclaimed funds remaining in the Class Settlement Fund, will be disbursed in the following order: (i) to pay the costs associated with providing notice to Class Members and administering the Class Settlement Fund, including any costs resulting from corrective notices that may be required to be issued by the Settlement Administrator and any subsequent objections that may arise therefrom; and (ii) donated to a charitable organization as a *cy pres* award, subject to Court approval.

13. Although PRA disputes all liability in the Litigation, for purposes of this Agreement PRA agrees to pay Plaintiffs’ reasonable attorneys’ fees and costs as provided under 15 U.S.C. § 1692k. As such, and subject to Court approval, PRA agrees Class Counsel shall be entitled to receive \$199,856.00, which covers all fees and all expenses arising out of the Action. The

award of fees, costs, and expenses to Class Counsel shall be in addition and shall not in any way reduce the settlement amounts to be provided to the Class Members. Upon payment of \$199,856.00 to Class Counsel, PRA shall have no further obligation with respect to Class Counsels' fees, costs, and expenses, or the fees, costs, or expenses of any other attorney on behalf of Plaintiff or any Settlement Class Member.

14. Class Members shall have forty-five (45) days after mailing of the notice of the proposed Settlement to exclude themselves from, or object to, the proposed Settlement.

15. Any Class Member may seek to be excluded from the Agreement by opting out within the time period set by this Court, such opt out rate not to exceed five percent (5%). Any Class Members desiring to exclude themselves from the Litigation must serve copies of the request to the Class Administrator by the date set by the Court. Any Class Member who opts out of the Settlement Class and the Agreement shall not be bound by any prior court order or the terms of the Agreement.

16. Any Class Member may object to this Agreement by sending said objection to the Clerk of the Court and serving copies of the objection on Class Counsel and PRA's counsel at the addresses set forth in Section 30 of this Agreement within the time period set by the Court. Any objection must include the name and number of the case and a statement of the reason why the objector believes that the Court should find that the Agreement is not in the best interests of the Settlement Class. Any Class Member who objects to the Agreement may appear at the Final Approval Hearing and, subject to Court approval, be heard on the fairness of the settlement.

17. **Payment of Settlement Funds.** Within fourteen (14) days before the Effective Date, PRA shall distribute all monies set forth in Section 12(a) to the Class Administrator. The Class Administrator shall then distribute all such payments as soon as practical. Within fourteen (14) days before the Effective Date, PRA shall distribute all monies set forth in Section 12(b) and Section 13

to Class Counsel. The check for the monies described in Section 12(b) and Section 13 shall be made payable to “Marcus & Zelman, LLC,” and Class Counsel will provide PRA with any financial or other documentation necessary for such payment to be made.

18. **Release.** Upon the Effective Date, the Parties grant the following releases:

- (a) Plaintiffs, including each and every one of their respective agents, representatives, attorneys, heirs, assigns, or any other person acting on her behalf or for her benefit, and any person claiming through her (collectively “Releasors”), releases and discharges PRA, as well as its parent corporations, predecessors and successors in interest and present and former affiliates, subsidiaries, insurers, officers, directors, agents, employees, members, shareholders, general partners, limited partners, beneficiaries, representatives, attorneys, or assigns, (in their respective capacities as officers, directors, agents, employees, members, shareholders, general partners, limited partners, beneficiaries, representatives, attorneys, or assigns for Defendant) (collectively, “Released Parties”), from all causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time which Releasors now have or ever had against the Released Parties, or any of them, under any legal theory, whether or not alleged, related to or arising from matters that occurred from the beginning of time up through the Effective Date. Without limiting the generality of the foregoing, Releasors release Released Parties of all claims that were made or that could have been made in this lawsuit including all claims relating to PRA’s collection activity.
- (b) Each member of the Settlement Class who does not opt out releases and discharges the RELEASED PARTIES of all causes of action, suits, liability, and claims, including claims for the payment of attorney’s fees and costs arising out of or related to PRA’s conduct that gave rise to the claims in this matter.
- (c) Opt Out Limit. In the event the number of persons opting out of the Settlement Class exceeds five (5) percent of the total number of Class Members, then the Agreement shall, at PRA’s sole option, be null and void, and of no effect.

19. **Materiality of Release.** The release by Plaintiffs and the Class Members in the Action is a material term of this Agreement and not severable from the payment provisions. If any court materially modifies, renders unenforceable, or finds to be unlawful the release in this Litigation, PRA may rescind and terminate this Agreement provided it does so within ninety (90) calendar days of such action by a court. The remaining terms of this Agreement are severable. If a court materially modifies, renders unenforceable, or finds to be unlawful any term of this Agreement

other than the release or payment provisions, the remaining terms of this Agreement shall remain in full force and effect.

20. The releases set forth herein are conditioned upon the Court's approval of the Agreement and PRA meeting its obligations herein. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the Parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

21. **Notice Costs and Related Matters.** As each cost or expense is incurred and invoiced by the Class Administrator, PRA shall pay directly to the Class Administrator all the reasonable costs and expenses necessary to administer and facilitate the Settlement, including, but not limited to, the costs and expenses of printing and mailing Notice and issuing and mailing settlement checks to Class Members.

22. **Notice.** Within fourteen (14) days of entry of the Preliminary Approval Order, PRA's Counsel shall, through the Class Administrator, cause actual notice in the form of **Exhibit 1**, to Class Members using PRA's last known and addresses of the Class Members. The Class Administrator shall distribute the notice via any form of U.S. Mail providing address forwarding. Each notice shall be sent with a request for forwarding addresses. In the event that a notice is returned as undeliverable and a forwarding address is provided, the Class Administrator shall cause to be forwarded any such returned notice to the address provides within four (4) days of receipt. Neither the Class Administrator, PRA, nor Class Counsel is required to skip trace any notices that are returned as undeliverable.

23. PRA shall provide notice of this proposed class settlement to the appropriate state and federal authorities, and file proof of same with the Court, in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("CAFA").

24. **Preliminary Approval.** As soon as practicable after execution of this Agreement, the Parties shall make application to the Court for the Preliminary Approval Order, attached as **Exhibit 2**, which:

- (a) Preliminarily approves this Agreement;
- (b) Certifies the Settlement Class defined in ¶ 10 for settlement purposes;
- (c) Appoints Ari Marcus and Yitzchak Zelman as Class Counsel;
- (d) Appoint Plaintiffs, Bracha Pollak and David Beneli, as the representative of the Settlement Class;
- (e) Sets dates for Class Members to opt-out or to object;
- (f) Schedules a hearing for final approval of this Agreement;
- (g) Approves **Exhibit 1** hereto as notice to the Settlement Class, to be directed to the last known address of the Class mMembers as shown in PRA's business records;
- (h) Finds that mailing of the Settlement class notice and the other measures specified in Section 22 are the only notice required to the Settlement Class and that such notice satisfies the requirements of due process pursuant to the Federal Rules of Civil Procedure, including Rule 23, the United States Constitution, and any other applicable laws.

25. The Parties agree to request the form of notice attached hereto as **Exhibit 1** and propose the form of preliminary approval order attached hereto as **Exhibit 2**. The fact that the Court may require non-substantive changes in the proposed class notice or preliminary approval order does not invalidate this Agreement.

26. **Final Approval.** At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of this Agreement, and the expiration of at least ninety (90) days from the preliminary approval of the Settlement (as required by

CAFA), Plaintiff, Class Counsel, PRA, and PRA's counsel shall request that the Court enter a Final Order:

- (a) approving the terms of this Agreement as fair, reasonable, and adequate;
- (b) providing for the implementation of its terms and provisions;
- (c) certifying for purposes of settlement the Settlement Class;
- (d) finding that the notice given to the Settlement Class satisfies the requirements of due process pursuant to the Federal Rules of Civil Procedure, including Rule 23, the United States Constitution, and any other applicable laws;
- (e) dismissing the claims of Plaintiff and the Settlement Class alleged in the Complaint without prejudice and without costs;
- (f) retaining exclusive jurisdiction to enforce the terms and provisions of this Agreement;
- (g) directing PRA, after all money has been distributed from the Class Recovery and no later than thirty (30) days after the Void Date, to file a notice apprising the Court that the terms of the Agreement have been complied with and providing the Court with an accounting of how the money in the Class Recovery was distributed; and
- (h) directing that ten (10) days after the filing of the notice contemplated in Section 26(g) above, the dismissal of the claims of Plaintiff and the Settlement Class shall be with prejudice and without costs, absent a timely motion by either Party.

27. The Parties agree to request the form of final order attached hereto as **Exhibit 3**.

Any required non-substantive changes in the final order does not invalidate this Agreement.

28. **Release of Attorneys' Lien.** In consideration of this Settlement Agreement, Plaintiff's counsel hereby discharges and releases the "Released Parties," as defined in

Section 18(a) above, of and from any and all claims for attorneys' fees, by lien or otherwise, other than the amount of Class Counsels' fees and costs to be distributed pursuant to Section 13.

29. **Miscellaneous Provisions.** The Parties and their attorneys agree to cooperate fully with one another in seeking approval of this Agreement and to use their best efforts to effect the consummation of this Agreement and the settlement provided for herein. Whether or not this Agreement is consummated, it shall in no event be construed as, or be deemed to be, evidence of an admission on the part of PRA of any liability to the Settlement Class.

30. Notices of exclusion requests and objections related to this Agreement shall be sent to:

Ari Marcus, Esq.
Marcus & Zelman LLC
701 Cookman Avenue, Suite 300
Asbury Park, New Jersey 07712

Notices to PRA shall be sent to:

James K. Trefil, Esq.
Troutman Sanders
1001 Haxall Point, Suite 1500
Richmond, Virginia 23219

The persons and addresses designated in this paragraph may be changed by any signatory hereto by written notice to the other signatories hereto.

31. The foregoing constitutes the entire agreement between the Parties with regard to the subject matter hereof and may not be modified or amended except in writing, signed by all Parties hereto, and approved by the Court.

32. This Agreement may be executed in counterparts, in which case the various counterparts shall constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

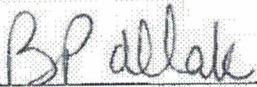
33. Each and every term of this Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Settlement Class, and any of their successors and personal representatives, and shall bind and shall inure to the benefit of the Released Parties, all of which persons and entities are intended to be beneficiaries of this Agreement.

34. This Agreement shall be governed by and interpreted in accordance with the laws of the state of New Jersey.

35. If final approval is granted, the Parties shall retain the Settlement Class list and a list of Settlement Class members who opted out or excluded themselves for six months thereafter, and may destroy them after that period.

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have so agreed.

Plaintiff:



Bracha Pollak

Dated: 3/1/19

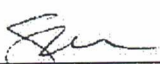
Plaintiff:



David Beneli

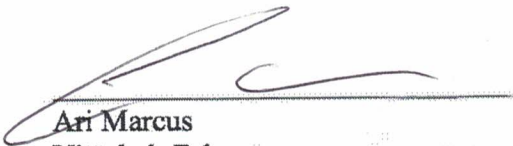
Dated: 3/1/19

Defendant:



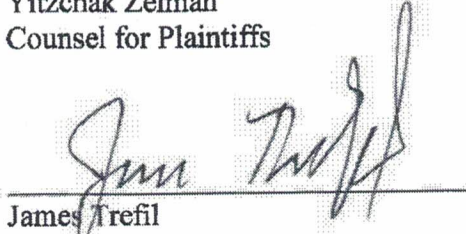
Steven R. Zahn
Sr. Counsel - Litigation
Portfolio Recovery Associates, LLC

Dated: 26 Feb 2019



Ari Marcus
Yitzchak Zelman
Counsel for Plaintiffs

Dated: March 4, 2019



James Trefil
Counsel for Defendant
Portfolio Recovery Associates, LLC

Dated: 3/26/2019