

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF CONSUMER FRAUDS & PROTECTION

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In the Matter of the

Assurance No. 13-444

Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of New York, of

SHERMAN FINANCIAL GROUP, LLC

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) has conducted an investigation (the “Investigation”), pursuant to Executive Law § 63(12) and General Business Law Article 22-A, of the debt collection practices of Sherman Financial Group, LLC (“SFG”).

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG and the relief agreed to by the OAG and SFG (collectively, “the parties”).

**I. DEFINITIONS**

1. For purposes of this Assurance, the following terms have the following meanings:
  - a. “SFG” shall mean Sherman Financial Group, LLC and any of its subsidiaries or corporate affiliates engaged in debt collection activities, including debt collection litigation, within New York State.
  - b. “Communication” shall mean any conversation, discussion, letter, email or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means.
  - c. “Debt Collection Action” shall mean a judicial action or arbitration to collect on a debt assertedly owed by a consumer residing in New York State.

d. “Original Creditor” shall mean the company or entity that originally provided the credit or loan to the consumer or otherwise owned the debt at the time of default.

e. “Third-Party Debt Collector” shall mean any third party engaged in debt collection activities in New York State on behalf of SFG, including any attorneys who bring Debt Collection Actions on behalf of SFG.

f. “Time-Barred Action” shall mean a lawsuit to collect on a debt assertedly owed by a consumer residing in New York State that was determined by the OAG to be commenced outside of the applicable statute of limitations for the causes of action asserted therein.

g. “Time-Barred Debt” shall mean a debt assertedly owed by a consumer residing in New York State that is outside of the applicable statute of limitations for a creditor to sue to collect on the debt.

## **II. FINDINGS OF THE ATTORNEY GENERAL**

### **Parties and Background**

2. SFG is a privately-held limited liability company with corporate headquarters in Charleston, South Carolina.

3. SFG is engaged in the business of purchasing portfolios of delinquent or charged-off debts from other entities, such as the Original Creditor on the debt or another debt buyer, and then seeking to collect on the debt from consumers. SFG, as with other debt buyers, purchases these portfolios at often deeply discounted prices from the face value of the debt. The majority of the debt purchased by SFG is in the form of defaulted credit card debt.

4. SFG is one of the largest buyers of consumer debt in the nation. According to a recent report issued by the Federal Trade Commission, SFG ranked first amongst all debt buyers

in the nation in terms of the dollar value of consumer debt purchased in 2008, with a face value of \$16 billion in debts purchased by the company in that year alone.<sup>1</sup>

5. SFG, through its corporate affiliates, acts as a “debt collector” under 15 U.S.C. § 1692a(6) of the federal Fair Debt Collection Practices Act and a “principal creditor” under Article 29-H of New York’s General Business Law. Several of SFG’s corporate affiliates are licensed as “debt collection agencies” by the New York City Department of Consumer Affairs, including Anson Street LLC, LVNV Funding LLC, PYOD LLC, and Resurgent Capital Services, LP.

#### **SFG’s Non-Judicial Debt Collection Activities**

6. After purchasing a portfolio of debt, SFG typically first attempts to collect on the debt through non-judicial methods, such as through collection calls and letters.

7. SFG attempts to collect through non-judicial means both on debt that is within the applicable statute of limitations and on Time-Barred Debt. There is no blanket prohibition in New York State against a debt collector attempting to collect on Time-Barred Debt through non-judicial means. In these circumstances, however, the debt collector must not lead the consumer to believe that the debt collector will sue on the debt should the consumer fail to pay.

8. Consumers who receive a collection call or letter from SFG regarding a Time-Barred Debt without having been informed by the company of the debt’s legal status may not realize that the debt is outside of the applicable statute of limitations and may believe that they will be sued if they fail to pay the debt. It is possible that if consumers understood that they would not be sued on a Time-Barred Debt, at least some of these consumers would choose not to make a payment on the debt in response to SFG’s collection letters and calls.

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<sup>1</sup> See Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* (January 2013), at T-1, available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

9. Since April 2010, the New York City Department of Consumer Affairs has required debt collectors to disclose in all Communications with consumers seeking to collect a Time-Barred Debt, the fact that the debt is outside of the legal time limit to sue on the debt.<sup>2</sup> Following implementation of this rule, SFG has included the required disclosure in written or oral communications with residents of New York City about a Time-Barred Debt.

10. Since August 2012, SFG has disclosed to New York consumers outside of New York City in its initial written communication concerning a Time-Barred Debt that the debt is beyond the legal time limit to sue on the debt. Prior to that time, SFG did not include such a disclosure in its Communications with New York consumers who reside outside of New York City.

11. It is SFG's practice not to bring suit in instances where SFG's right to sue on a formerly Time-Barred Debt is reactivated due to a consumer making a partial payment on his or her debt.

#### **SFG's Debt Collection Actions**

12. In some instances, when SFG's non-judicial debt collection measures prove unsuccessful, the company, through its outside counsel, commences a lawsuit against the consumer for the value of the debt assertedly owed.

13. Each year, SFG brings thousands of debt collection lawsuits against consumers throughout New York State. According to a search of the electronic "eCourts" database of the New York State Unified Court System, SFG, through its affiliate LVNV Funding LLC, filed more than 92,000 debt collection actions in New York courts between 2007 and 2012.<sup>3</sup>

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<sup>2</sup> See Rules of the City of New York, tit. 6, ch. 2 § 2-191.

<sup>3</sup> This total derives from aggregating the results of searches for the term "LVNV Funding" within the "WebCivil Local" and "WebCivil Supreme" databases of the eCourts system.

14. Typically, SFG initiates these debt collection actions through standard form summons and complaints prepared and filed by their outside counsel. The complaints usually assert causes of action for breach of contract and/or account stated.

15. The complaints do not always provide sufficient information to allow a reasonable consumer to determine whether SFG's claims are within the applicable statute of limitations, such as the date of last payment or of delinquency on the alleged debt, the jurisdiction in which the cause(s) of action accrued, or the statute of limitations of that jurisdiction.

16. The majority of these debt collection lawsuits brought by SFG are not answered by consumers and result in default judgments against the consumers, in which a judgment is entered in favor of the company for the full value of the debt claimed to be owed.<sup>4</sup> The court papers that SFG submits in support of its application for a default judgment are standardized with the company typically submitting a single-page form "Affidavit of Merit" from a SFG employee in support of the application.

17. On May 13, 2009, the Chief Clerk for the Civil Court of the City of New York issued directive CCM-186 that required that all requests for default judgments entered by the Clerk must be accompanied by an affidavit from the plaintiff attesting that, after reasonable

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<sup>4</sup> Although estimates vary, well more than half of all debt collection lawsuits in New York State, and perhaps as much as 90% of such lawsuits, result in default judgments in favor of the plaintiff. *See, e.g.,* Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), at 7, available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf> (noting that panelists in FTC roundtable "estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent"); New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Service Industry* (April 2010), at 4, available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf> (finding 79% of consumer credit cases filed in New York City Civil Court in 2008 resulted in default judgments against the defendant); The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (October 2007), at 17-18, available at [http://www.urbanjustice.org/pdf/publications/CDP\\_Debt\\_Weight.pdf](http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf) (finding that 80% of cases within randomly selected sample of New York City Civil Court debt collection actions resulted in a final default judgment against the defendant).

inquiry, the plaintiff (or its attorney) has reason to believe that the applicable statute of limitations on plaintiff's claim had not expired at the time the action was commenced. On June 1, 2010, the directive was amended to require that the affidavit also identify the jurisdiction in which the plaintiff's cause of action accrued and the statute of limitations of that jurisdiction, if other than New York.

18. Since May 2009, SFG, through its counsel, has filed an affidavit attesting that its cause(s) of action was filed within the applicable statute of limitations when it applies for a default judgment in New York City civil court. Prior to this time, the company did not always include such an affidavit with its applications for default judgments. Nor does the company currently require that its applications for default judgment elsewhere in the state, outside of New York City, include an affidavit addressing the statute of limitations.

#### **SFG'S Filing of Time-Barred Actions**

19. The applicable statute of limitations in debt collection actions filed in New York is governed by New York's "borrowing statute," § 202 of the Civil Practice Law and Rules ("CPLR"). This statute is designed to prevent plaintiffs from forum shopping for a favorable statute of limitations.<sup>5</sup> It requires that a cause of action against a defendant that accrued outside of New York State be timely filed under both New York's statute of limitations and the statute of limitations of the jurisdiction in which the cause of action accrued:

An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

CPLR § 202. The statute is of general applicability, governing any New York action that

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<sup>5</sup> See *Global Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 528 (1999).

accrued outside of the state, and is “substantially unchanged since 1902.”<sup>6</sup>

20. In New York, the statute of limitations for a cause of action to collect on a debt owed to a creditor is generally six years. *See* CPLR § 213(2) (six-year statute of limitations for “an action upon a contractual obligation or liability, express or implied”). Many states outside of New York have shorter statutes of limitations that govern debt collection claims accruing in those jurisdictions. For example, many creditors are incorporated or have their principal place of business in Delaware, which has a three-year statute of limitations. *See* Del. Code Ann. Tit. 10, § 8106.<sup>7</sup>

21. In April 2010, the New York Court of Appeals issued its decision in *Portfolio Recovery Assocs., LLC v. King*, 14 N.Y.3d 410, 416 (2010), which reaffirmed prior holdings by the Court that, in order for an economic cause of action to be timely, it must be commenced within the statutes of limitations of both New York and the jurisdiction where the cause of action accrued.<sup>8</sup> As subsequent holdings have made clear, the Court of Appeals’ decision in *King* was a straightforward application of both CPLR § 202 and then-existing precedent and did not change the law governing what is required to bring a timely action in New York.<sup>9</sup>

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<sup>6</sup> *Triarc*, 93 N.Y.2d at 528.

<sup>7</sup> Several other states have statutes of limitations of three or four years. *See, e.g.*, Cal Code Civ. Proc. § 337 (four-year statute of limitations for breach of written contract and account stated causes of action in California); Kan. Stat. Ann. § 60-512 (three-year statute of limitations in Kansas); Md. Code Ann. Cts. & Jud. Proc. § 5-101 (three-year statute of limitations for breach of contract and account stated causes of action in Maryland); N.C. Civ. Proc. § 1-52.1 (three-year statute of limitations in North Carolina); N.H. Rev. Stat. Ann. § 508.4 (three-year statute of limitations in New Hampshire); 42 Pa. Cons. Stat. § 5525 (four-year statute of limitations in Pennsylvania); Tex. Civ. Prac. & Rem. Code Ann. § 16.004 (four-year statute of limitations in Texas).

<sup>8</sup> *See Triarc*, 93 N.Y.2d at 529.

<sup>9</sup> *See Windsearch, Inc. v. Delafrange*, 90 A.D.3d 1223, 1224 (3d Dep’t 2011) (“We do not agree with plaintiff that the holding in *Portfolio* represents a new rule of law that must be applied prospectively.”); *Diaz v. Portfolio Recovery Assocs., LLC*, No. 10 CV 3920 (MKB) (CLP), 2012 U.S. Dist. LEXIS 72724, at \*9 (E.D.N.Y. May 24, 2012) (“The analysis in *King* is straightforward, relying on existing New York precedent, and does not note any contrary prior decisions by any New York court.”).

22. Prior to the Court of Appeals' decision in *King*, SFG, like many other plaintiffs in consumer credit actions, failed to ensure that its Debt Collection Actions were timely pursuant to the requirements of CPLR § 202. This resulted in SFG obtaining judgments in hundreds of Time-Barred Actions where the jurisdictions in which the causes of action accrued had statutes of limitations shorter than six years.

23. Based on data produced by SFG, the OAG has determined that SFG obtained, and in some instances continues to collect on, judgments in more than four hundred Time-Barred Actions between October 27, 2008 and August 14, 2012.

24. By reason of the foregoing, the OAG believes that SFG has engaged in conduct violative of New York Executive Law § 63(12), New York General Business Law ("GBL") §§ 349 and 601, and the federal Fair Debt Collection Practices Act ("FDCPA").

25. Executive Law § 63(12) authorizes the OAG to bring an enforcement action when a person or business entity engages in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transaction of business.

26. GBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this State.

27. GBL § 601 prohibits a principal creditor or its agent from claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist. The statute defines a principal creditor to include any person, firm, corporation or organization to which a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of such person, firm, corporation, or organization.



28. The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of a debt, including falsely representing the character, amount, or legal status of a debt, threatening to take any action that cannot legally be taken, or using any false representation or deceptive means to collect or to attempt to collect a debt. (15 U.S.C. § 1692e.) In addition, the FDCPA prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect a debt. (15 U.S.C. § 1692f.)

### **III. PROSPECTIVE RELIEF**

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation of SFG subject to the terms of this Assurance;

WHEREAS, without admitting or denying any of the above allegations, SFG is entering into this Assurance in order to settle and resolve the OAG's investigation; and

WHEREAS, the parties each believe that this Assurance is a prudent and appropriate way to resolve this dispute;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

1. SFG shall fully comply with New York Executive Law § 63(12), GBL §§ 349 and 601, and the FDCPA.

#### **Prohibited Practices**

2. SFG will not make any material misrepresentation to collect or attempt to collect a debt.

3. SFG will not represent, directly or indirectly, that it has the right to sue on Time-Barred Debt.

4. SFG will not commence or cause to be commenced any lawsuits to collect on any Time-Barred Debt.

5. SFG will not commence or cause to be commenced a Debt Collection Action unless, after a reasonable inquiry, SFG or its counsel has reason to believe that the causes of action asserted therein are within the applicable statute(s) of limitations of both New York and the jurisdiction in which the cause of action accrued, if other than New York.

6. Consistent with SFG's current practice, SFG will not bring suit in instances where SFG's right to sue on a formerly Time-Barred Debt is reactivated due to a consumer making a partial payment on his or her debt.

*Sale of Time-Barred Debts*

7. When selling a Time-Barred Debt to another entity, SFG will not sell, transfer, or assign with the debt any purported right to commence any Debt Collection Action to recover on the debt.

8. SFG will include in all of its contracts to sell, transfer, or assign a Time-Barred Debt a covenant stating that the buyer, transferee, or assignee will not bring suit on any Time-Barred Debt acquired in the transaction at issue.

*Collection Calls and Letters*

9. SFG will include the following information in any written Communication seeking to collect on a debt allegedly owed by a consumer residing in New York State:

- (a) The name of the Original Creditor of the debt;
- (b) The last four numbers of the original account number or other original account identifier; and
- (c) The date of the consumer's last payment on the debt, the date the balance became due, or the date of default.

10. SFG will disclose in all Communications seeking to collect on a Time-Barred Debt that the legal time limit to sue on the debt has expired and thus SFG will not sue the consumer to collect on the Time-Barred Debt.

11. For any debt that is beyond the date for exclusion from consumer reports provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c, SFG will disclose in all Communications about the debt with a consumer residing in New York State that, because of the age of the debt, SFG will not report the debt to any credit reporting agency.

12. For written Communications, the disclosures required in Paragraphs 10 and 11 above shall be in at least 12 point type that is prominent, and shall be placed adjacent to the information in the Communication about the amount claimed to be due or owed on the debt.

13. SFG shall not make any representation or statement, or take any other action that interferes with, contradicts, or otherwise undermines the disclosures required in Paragraphs 10 and 11 above.

*Pleadings in Debt Collection Actions*

14. SFG will include the following information in any complaint it files in a Debt Collection Action:

- (a) The name of the Original Creditor of the debt;
- (b) Identification of the complete chain of title of the debt;<sup>10</sup>
- (c) The last four numbers of the original account number or other account identifier;
- (d) The date of the consumer's last payment on the debt, the date the balance became due, or the date of default; and

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<sup>10</sup> In connection with debt purchased after September 1, 2009, SFG shall comply with DRP-182 of the Directives and Procedures of the Civil Court of the City of New York, and attest to the full chain of title.

- (e) An allegation that the causes of action asserted therein are not outside of the applicable statute of limitations for enforcing the debt.

Applications for Default Judgment

15. SFG will submit an affidavit with any application for a default judgment in a Debt Collection Action attesting that the action was commenced within the applicable statute(s) of limitations. The affidavit, which may be from SFG's attorney, shall include the following information:

- (a) The name of the Original Creditor of the debt;
- (b) The jurisdiction where the cause of action accrued;
- (c) The statute of limitations for the jurisdiction where the cause of action accrued;
- (d) The date of the consumer's last payment on the debt, the date the balance became due, or the date of default; and
- (e) A statement that after reasonable inquiry, SFG or its counsel has reason to believe that the applicable statute(s) of limitations has/have not expired.

Training and Certification Requirements

16. Within fifteen (15) days of the Effective Date of this Assurance, SFG shall provide a copy of this Assurance to all individuals at SFG who engage in collection activities in New York.

17. SFG shall draft training materials summarizing the requirements of this Assurance within thirty (30) days of the Effective Date of this Assurance. SFG shall provide a copy of the final version of these training materials to the OAG upon their completion.

18. Within sixty (60) days of the Effective Date of this Assurance, SFG shall provide training on the requirements of this Assurance to all of its employees with responsibility for debt collection activities within New York State. In addition, SFG shall provide training on the requirements of this Assurance to all newly-hired employees with responsibility for debt collection activities within New York State within thirty (30) days of their hiring date.

19. Within fifteen (15) days of the Effective Date of this Assurance, SFG shall provide a copy of this Assurance or a summary thereof to all of its Third-Party Debt Collectors. SFG shall require that each such Third-Party Debt Collector return a written certification (“Certification”) within thirty (30) days of the Effective Date of this Assurance, certifying that the Third-Party Debt Collector has reviewed and will abide by the terms of this Assurance.

20. If the Third-Party Debt Collector declines to return a completed Certification to SFG, SFG will cease employing such Third-Party Debt Collector for any future debt collection activities within New York State. SFG shall provide a copy of all completed Certifications to the OAG upon the OAG’s request.

#### **IV. RELIEF TO CONSUMERS**

21. The OAG has provided to SFG a list of cases filed by SFG between October 27, 2008 and the Effective Date of the Assurance for which the OAG believes SFG obtained a default judgment against a consumer in a Time-Barred Action. Each case on this list shall be designated a “SFG Time-Barred Action” for the purpose of this Assurance.

22. SFG has agreed to cease its collection activities with respect to the judgments it obtained in connection with the SFG Time-Barred Actions. Within thirty (30) days of the Effective Date of this Assurance, SFG will direct that any pending garnishments, levies, liens, restraining notices, or attachments relating to such judgments be released, and seek to vacate the

judgments with the court. Thereafter, SFG will not attempt to collect on the debt underlying the judgments, and will not report the debt to credit reporting agencies.

23. Any New York consumer not so designated as an SFG Time-Barred Action may notify the OAG in writing within sixty (60) days of the Effective Date of this Assurance that SFG obtained a default judgment against such consumer in a Time-Barred Action. The consumer shall provide any documentation to the OAG that he or she possesses in support of this claim. The OAG shall then make an initial determination as to whether the subject judgment was predicated on a Time-Barred Action and will promptly notify SFG of such determination. SFG shall then have thirty (30) days to review and, if applicable, dispute the OAG's initial determination. If SFG disputes the OAG's initial determination, SFG shall provide the OAG with a written summary of its reasons therefore, including any supporting documentation. The OAG shall then make, and provide to SFG, the OAG's final determination as to whether any such judgments were predicated on a Time-Barred Action. If it is so determined, within thirty (30) days of SFG's receipt of the OAG's final determination, SFG shall afford such judgments the same relief as is provided to SFG Time-Barred Actions, as set forth in paragraph 22 of this Agreement.

24. Nothing in this Assurance shall deprive a consumer from asserting any legal or equitable right he or she may have, including, but not limited to, any right to seek relief on the grounds that the debt owed by the consumer is a Time-Barred Debt or the lawsuit brought by SFG was a Time-Barred Action.

#### **V. PAYMENT TO THE STATE**

25. In consideration of the making and execution of this Assurance, and within three (3) business days of the Effective Date of this Assurance, SFG shall pay by wire transfer,

certified or bank check payable to the State of New York one hundred seventy-five thousand dollars (\$175,000) as costs, penalties, and fees. If payment is made by check, it shall be payable to the State of New York and delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: Brian N. Lasky, Assistant Attorney General, 120 Broadway, 3rd Floor, New York, New York, 10271.

## **VI. COMPLIANCE**

26. SFG shall monitor compliance by all Third-Party Debt Collectors and take appropriate corrective action against non-compliant Third-Party Debt Collectors, including terminating SFG's relationship with such entities, when the Third-Party Debt Collector engages in conduct in violation of the terms of this Assurance.

27. SFG shall promptly and thoroughly investigate consumer complaints and designate a person or entity to act as a direct contact for the Attorney General for resolution of consumer complaints. Within thirty (30) days of the Effective Date of this Assurance, SFG shall provide the OAG with the name and address of the direct contact designated to handle consumer complaints filed with the OAG.

28. Within one hundred and eighty (180) days of the Effective Date of this Assurance, SFG shall file with the Attorney General a report, in writing, setting forth in detail the manner and form in which it has complied with this Assurance.

29. SFG shall, as requested by the Attorney General, provide the Attorney General with copies of the records and documents sufficient to demonstrate SFG's compliance with the requirements of this Assurance.

## **VII. MISCELLANEOUS**

30. The OAG has agreed to the terms of this Assurance based on the OAG's own Investigation as set forth in the Findings in Part II above and the representations that SFG has made to the OAG. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

31. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by SFG in agreeing to this Assurance.

32. This Assurance resolves and releases all claims regarding SFG's collection of Time-Barred Debts and the bringing of Time-Barred Actions that are the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the OAG's review of acts, practices, or courses of conduct that occur after the Effective Date of this Assurance.

33. SFG represents and warrants, through the signatures below, that the terms and conditions of Sections III through VI of this Assurance are duly approved, and execution of this Assurance is duly authorized. SFG shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis, but shall be permitted to state that they do not admit or deny the findings set forth in this Assurance. Nothing in this paragraph affects SFG's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceeding to which the OAG is not a party.

34. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of wrongdoing or liability by



SFG or any of its affiliates. The parties agree that nothing in this Assurance shall create any private rights, causes of action, third party rights or remedies of any other individual or entity against SFG or any of its affiliates.

35. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

36. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except to a successor in interest.

37. It is understood and agreed that this Assurance shall apply to SFG, whether acting through its respective directors, officers, employees, representatives, agents, assigns, successors, affiliates, subsidiaries or other business persons or business entities whose acts, practices, policies are directed, formulated or controlled by SFG.

38. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

39. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and SFG shall make no representation to the contrary.

40. Pursuant to Executive Law § 63(15), any violation of the terms of this Assurance shall constitute *prima facie* proof of violation of General Business Law §§ 349 and 601 and/or

Executive Law § 63(12) in any civil action or proceeding thereafter commenced by the OAG against SFG.

41. If a court of competent jurisdiction determines that SFG has breached this Assurance, SFG shall pay to the OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation reasonable legal fees, expenses, and court costs.

42. Nothing contained herein shall be construed to deprive any person of any private right under the law.

43. This Assurance constitutes the entire agreement between the OAG and SFG and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

44. Any notices, reports or other written documents required by this Assurance shall be provided by first-class mail and/or email to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the People of the State of New York, to

Brian N. Lasky  
Assistant Attorney General  
Office of the New York State Attorney General  
Bureau of Consumer Frauds and Protection  
120 Broadway, 3rd Floor  
New York, New York 10271  
Tel. (212) 416-8915  
Fax. (212) 416-6003  
brian.lasky@ag.ny.gov

For SFG:

Victor L. Hou  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Tel. (212) 225-2000  
Fax (212) 225-3999  
vhou@cgsh.com

Luke Umstetter  
Resurgent Capital Services  
55 Beattie Place, Suite 110, MS 425  
Greenville, South Carolina 29601  
Tel. (864) 248-8700  
Fax (866) 467-1182  
lumstetter@resurgent.com

Such notices, statements and documents shall be deemed to have been given upon mailing.

45. SFG shall provide written notice to the OAG of any change in address within ten days of such change.

46. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

47. Notwithstanding anything else in this Assurance, if compliance with any provision of this Assurance would render compliance with any existing or future provision of New York or federal laws or regulations relating the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with the relevant provision of the Assurance. SFG shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Assurance is rendered impossible by state or federal law or regulation.

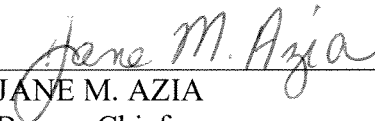
48. This Assurance may be executed in multiple counterparts.

49. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

WHEREFORE, THE SIGNATURES EVIDENCING ASSENT TO THIS Assurance  
have been affixed hereto on the dates set forth below.

Dated: October 23, 2013  
New York, New York

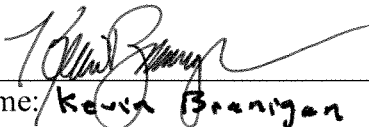
**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York  
By:

  
\_\_\_\_\_  
JANE M. AZIA  
Bureau Chief  
Bureau of Consumer Frauds and Protection

  
\_\_\_\_\_  
BRIAN N. LASKY  
Assistant Attorney General

Dated: October 22, 2013  
\_\_\_\_\_, \_\_\_\_\_

**SHERMAN FINANCIAL GROUP, LLC**

By:   
\_\_\_\_\_  
Name: Kevin Branigan  
Title: Authorized Representative