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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

Case No. 4:21-CV-00189-LPR

LAURA LYNN HAMMETT,)	
)	
PLAINTIFF,)	
)	
-v-)	
)	
PORTFOLIO RECOVERY)	
ASSOCIATES, LLC,)	
)	
DEFENDANT.)	Little Rock, Arkansas
)	April 26, 2022, 10:06 a.m.
_____)	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEE P. RUDOFISKY
UNITED STATES DISTRICT JUDGE

Appearances:

FOR THE PLAINTIFF	Laura Lynn Hammett, Pro se
FOR THE DEFENDANT	David S. Mitchell, Jr. Rose Law Firm 120 East Fourth Street Little Rock, AR 72201
-and-	James K. Trefil, ESQ., and John Komisin, ESQ. Troutman Sanders, LLP 1001 Haxall Point Richmond, VA 23219

Proceedings reported by machine stenography; transcript prepared utilizing computer-aided transcription.

1 (Call to the order of the Court.)

2 THE COURT: Everyone be seated, please.

3 For the record, this is Laura Lynn Hammett versus
4 Portfolio Recovery Associates, LLC and Does 1 through 99 -- at
5 least that's the way the case is captioned right now -- case
6 number 4:21-CV-00189. Let me have everybody introduce
7 themselves for the record; why don't we start with the
8 plaintiff.

9 MS. HAMMETT: Hi. Thank you, Your Honor.

10 My name is Laura Hammett, and I'm the plaintiff, pro
11 se.

12 THE COURT: Very good go. Thank you.

13 Defendants?

14 MR. TREFIL: James Trefil for defendant, Portfolio
15 Recovery Associates.

16 MR. MITCHELL: Good morning, Your Honor. David
17 Mitchell also on behalf of the defendant, Portfolio Recovery
18 Associates.

19 THE COURT: Okay. Very good.

20 I know we have a number of motions pending today.
21 Here is how we are going to proceed to try to make this as
22 efficient as possible but also let everybody get out whatever
23 it is they would like to get out on the record.

24 Number one, we will start off with Ms. Hammett's
25 motion to amend. Each side can do 10 minutes. Then we will

1 go to Ms. Hammett's motion for partial summary judgment. Each
2 side can do 10 minutes. And I should say you do not have to
3 take up all 10 minutes, that's totally up to you. And quite
4 frankly, if we go over by a very small amount, I'm okay with
5 that, too. At the end of 10 minutes, Glenn will sort of hold
6 up a hand to me and to everybody else just to kinda let us
7 know where we are. And then, finally, we will do defendants'
8 motion for summary judgment, and for that one everybody can
9 have 20 minutes, because it's a bigger motion, and it involves
10 a bunch of more claims and issues. Same rules apply there.

11 I know there is also an outstanding motion in limine
12 or essentially a motion to exclude certain expert evidence.
13 I'm not sure we're going to deal with that one today, but we
14 can talk about that at the end of everything else. That one
15 seems more of a -- if we get past all this, then I may deal
16 with that, but I'll take the parties' position on that after
17 we deal with everything else.

18 Ms. Hammett, let me before we start, just make sure.
19 In terms of how you're feeling today, first of all, I am sure
20 you're nervous. I totally get that. Anybody would be
21 nervous. Even the lawyers tend to get nervous sometimes, but
22 certainly folks who are representing themselves pro se, this
23 is not a, you know, normal experience. So nervous I
24 understand. What I really want to make sure of, though, is
25 you feel like you are thinking clearly and can understand

1 what's going on and are not medicated in some way that you
2 think will interfere with that.

3 MS. HAMMETT: Yes, sir. I am on no medication, and
4 I actually feel really well. So I'm ready to proceed.

5 THE COURT: Okay. If at any point you need us to
6 stop so you can get a drink or take a break, that is perfectly
7 fine.

8 Let me set some ground rules. Neither side is going
9 to speak while the other side speaks. So when you're speaking
10 they're not going to interrupt you; when they're speaking
11 you're not going to interrupt them; no matter how wrong or bad
12 or anything else either side thinks what the other is saying.
13 I'm sure you all have pens and paper there. The idea is
14 you'll write that stuff down, and then when I turn to your
15 side, you can tell me why everything the other side just said
16 is entirely wrong and makes no sense.

17 Fair enough, Ms. Hammett?

18 MS. HAMMETT: Yes, sir.

19 THE COURT: Fair enough, defendants?

20 MR. MITCHELL: Yes, Your Honor.

21 THE COURT: Okay. So Ms. Hammett, the floor is
22 yours at this point for 10 minutes to tell me anything you
23 want to tell me about why I should grant you leave to amend
24 your complaint as you filed that motion and it's currently
25 pending.

1 MS. HAMMETT: Thank you.

2 I am going to keep my comments brief. Please tell
3 me if I'm sitting too close to the microphone. I haven't done
4 this very often.

5 THE COURT: I think you probably either need to
6 bring it even a little closer or speak a little louder.

7 MS. HAMMETT: Okay. I'm going to use far less time
8 than you have said. May I reserve an opportunity to rebut if
9 I need to?

10 THE COURT: You may.

11 MS. HAMMETT: Okay.

12 THE COURT: And so you can reserve if you want up to
13 two minutes to rebut.

14 MS. HAMMETT: Great. Thank you.

15 I don't speak well. I don't feel comfortable at
16 all. I oftentimes use the analogy of -- well, never mind. I
17 was going to say I use the analogy of Moses when he says, why
18 are you asking me, I can't speak very well, and I feel like
19 that. So mostly I just ask you to read the documents that
20 I've submitted. I worked on them very diligently, and they
21 should be pretty much full.

22 For this motion to amend, the important issue is in
23 adding the doe defendants, naming them as CompuMail and the
24 PRA Group, Inc. And CompuMail is self-explanatory. Their
25 name was on the envelope. Well, their address was on the

1 envelopes, and their names was on the PRANET data that I was
2 given in discovery. So to be able to ask them anything about
3 those entries, I think that they would have to be at least a
4 party or at least to come in as a witness, but it says that
5 they're the ones who were getting the mail back. And so if we
6 need to delve into like what PRA did when mail was returned or
7 how they knew that it was returned, because PRA is saying that
8 they have a letter that was returned to them. What they're
9 saying was their first letter that didn't derive to me, but
10 they're claiming that they sent a similar letter again, and so
11 I'd like to talk to CompuMail.

12 THE COURT: Let me ask you something about
13 CompuMail. I think that's the right name, but we all know
14 what we're talking about. Are you, in your request to add
15 them as a defendant, are you claiming that CompuMail did
16 anything wrong aside from what the defendant sitting here
17 today did wrong? So -- well, let me ask you that, if you know
18 the answer.

19 MS. HAMMETT: Well, yeah, I was thinking that some
20 of the things that I claimed that PRA Group -- I mean, I'm
21 sorry, that Portfolio Recovery did were actually done by
22 CompuMail. So the -- any violation of the FDCPA, why I want
23 to bring CompuMail in is because otherwise PRA can do the
24 empty chair defense.

25 THE COURT: I get that. I get your point.

1 MS. HAMMETT: Okay.

2 THE COURT: I think what I'm trying to make sure of
3 is when I read your complaint or your motion to amend the
4 complaint and your amended complaint, what I got from it is
5 that what you're basically saying is CompuMail might be
6 responsible for some of the things you have already alleged
7 against the defendant here, but you're not saying that
8 CompuMail did other things that are unlawful, meaning
9 everything you're alleging against CompuMail is essentially
10 derivative of what you've claimed against the defendant. Is
11 that right or wrong?

12 MS. HAMMETT: That's correct.

13 THE COURT: Okay. That's what I wanted to
14 understand. Now, you can go on.

15 MS. HAMMETT: Okay. So with PRA Group, Inc.,
16 they're obviously more important to me. I think that one
17 thing that I don't think that I put into the motion, but that
18 I noticed yesterday, is that the protective order, there is a
19 procedure required to notify a nonparty and the opposing party
20 when PRA was required to disclose documents, and they did
21 disclose documents that have a copyright on them of PRA Group,
22 Inc. So those are documents that belong to PRA Group, Inc.,
23 and by the LLC deciding not to contact them, not to give me or
24 them this notification that's required -- I think it's --
25 yeah, it's number 3 in the stipulated protective order -- they

1 didn't go through that process, and therefore they've
2 essentially said that document belongs to them. And so PRA
3 Group, Inc. and the LLC are both claiming ownership of those
4 documents.

5 In fact, in the deposition we discussed that, I
6 brought that up, and it seemed like counsel did not realize
7 that it said PRA Group, Inc. on the copyright line, because
8 they asked me, oh, you mean, you know, in the body of the
9 manual it says, you know, we're a subsidiary of whatever, but
10 they didn't realize that, but they are using their documents
11 and claiming them to be their own.

12 PRA Group, Inc. files consolidated financial
13 reports. They talk about this case in their annual reports,
14 not by name but by category. And the CFPB consent
15 agreement -- and I did put this in the motion, but it's really
16 the most important item is that the CFPB consent agreement
17 said that PRA Group, Inc. was responsible for policy, and they
18 were -- had gotten all of the papers that were required.

19 THE COURT: Let me ask on that point a similar
20 question to the question I asked about CompuServe (sic). Am I
21 right that essentially all of the wrongdoing here in terms of
22 the actual violations that you're alleging would be derivative
23 of what the defendants here did wrong? So essentially you're
24 really just saying, pierce the corporate veil and go up to
25 them, but you're not suggesting that PRA Group did something

1 sort of independently wrong, it's just they're responsible for
2 whatever Portfolio Recovery Associates did wrong that you've
3 already claimed. Is that correct?

4 MS. HAMMETT: Less so than with CompuMail.

5 I would say that piercing corporate veil and that
6 the wholly-owned subsidiary being like an alterego is the big
7 picture, but there are a couple of items, like they have the
8 same person who does one of the jobs, I think it's compliance
9 officer, the head compliance officer, is actually listed as
10 working for PRA Group, Inc. And also that PRA Group, Inc. is
11 it sounds like making the policy, like they wrote the manuals.
12 So I think that their responsibility is very active, whereas
13 CompuMail, they do say that they assist, but I don't know the
14 level of assistance, and they do have a, let's say
15 administrative task.

16 THE COURT: I get your point.

17 MS. HAMMETT: Yeah.

18 THE COURT: I think what I'm trying to make sure of,
19 though, is in terms of what PRA -- what you're saying PRA
20 Group has done wrong, it's the -- with the one exception of
21 your additional claim against everybody, which we can talk
22 about in a second, with what PRA Group is doing wrong, it's
23 the same claims and conduct as it is against the defendant
24 sitting here today, correct?

25 MS. HAMMETT: Yes.

1 THE COURT: Okay. You can keep going. That's what
2 I needed to know. You don't have to, that's perfectly fine.

3 MS. HAMMETT: I'd rather not. Thank you.

4 THE COURT: Okay. I think you have done a very good
5 job. I appreciate you doing it.

6 MS. HAMMETT: Thank you.

7 THE COURT: Okay. Defendants?

8 MR. TREFIL: Thank you, Your Honor. David Mitchell
9 on behalf of the defendant, Portfolio Recovery Associates.

10 Your Honor, at the outset I want to point out that
11 this is -- this proposed second amended complaint is the
12 plaintiff's third bite at the apple here. Ms. Hammett filed a
13 183-paragraph complaint, and after Portfolio Recovery
14 Associates answered that complaint, only a few weeks later,
15 Ms. Hammett, on April 12th, 2021, filed a first amended
16 complaint totaling 316 paragraphs. PRA answered that and now
17 is faced with a proposed second amended complaint consisting
18 of 406 paragraphs that seeks to add two new defendants,
19 CompuMail and PRA Group, Inc., and to add additional claims.

20 Your Honor, as outlined in PRA's brief in response
21 to the motion to amend, Ms. Hammett's motion to amend should
22 be denied for three reasons: First, Your Honor, the
23 amendments would be futile; second, Your Honor, the Court
24 lacks personal jurisdiction over proposed defendant PRA Group,
25 Inc.; and, third, Your Honor, plaintiff's motion is

1 procedurally improper and fails to comply with the terms of
2 the scheduling order.

3 First, with respect to futility, the Eighth Circuit
4 and I believe courts across the country have regularly held
5 that a proposed amendment is futile and should be denied if
6 the amended claim could not withstand a motion to dismiss.
7 Your Honor, that's exactly what we have here. Plaintiff's
8 proposed second amended complaint does not contain the
9 requisite factual allegations to support these new claims
10 against these new defendants. Rather, they consist largely of
11 legal conclusions only, and as a result, they are futile.

12 I'd like to address specifically the two new
13 defendants that Ms. Hammett seeks to add.

14 First, Your Honor, with respect to CompuMail, and I
15 believe as Ms. Hammett just stated in her arguments, there are
16 not independent factual allegations in the proposed complaint
17 to support the elements of the claims she attempts to bring of
18 intentional infliction of emotional distress, negligence, and
19 violation of the FDCPA against CompuMail. Rather, Ms. Hammett
20 just generally alleges in her complaint, and I quote, that
21 CompuMail -- excuse me -- quote, worked in concert with PRA
22 and, quote, is regularly used by debt collectors.

23 In addition to that, Ms. Hammett has argued that
24 some of the mailings, or at least one of the mailings she
25 received had a CompuMail return address on the envelope. Your

1 Honor, these generic allegations, which are the only factually
2 specific allegations against CompuMail in the complaint, are
3 not sufficient to withstand a motion to dismiss, and as a
4 result they would be futile.

5 With respect to PRA Group, Inc., Your Honor,
6 Ms. Hammett also fails to make any direct allegations against
7 it for conduct specific to PRA Group, Inc. that would give
8 rise or support the elements of the claims that Ms. Hammett
9 purports to bring against it. Rather, as Ms. Hammett, I
10 believe, conceded, her claims against PRA Group are almost
11 entirely or perhaps are entirely based on the fact that PRA
12 Group, Inc. is the parent corporation to defendant Portfolio
13 Recovery Associates. But, Your Honor, as we've briefed
14 extensively, the law is clear that a parent corporation is not
15 liable for the debts of its subsidiaries except in very
16 limited circumstances, such as where the corporate form has
17 been illegally abused to the injury of a third pressure, and
18 Ms. Hammett's proposed complaint lacks sufficient allegations
19 to support a veil-piercing claim.

20 Ms. Hammett today has pointed out that -- and she
21 does in her reply, excuse me, as well -- that PRA Group files
22 annual reports that include the finances of Portfolio Recovery
23 Associates, and she also argues that PRA Group entered into a
24 consent agreement in 2015 with the Consumer Financial
25 Protection Bureau, and finally, I think this just came out

1 today, that PRA Group allegedly shares or dictates corporate
2 policies or shares officers.

3 Your Honor --

4 THE COURT: I think the one I'm concentrated most on
5 is the consent agreement. Quite frankly, the first one, most
6 companies do that, and that doesn't on its own mean piercing
7 the corporate veil. The last one, I get the point, and it's
8 an interesting argument, but I'm -- there may be reading too
9 much into that.

10 I do want to ask about the consent order, because
11 that's sort of what's a little bit unique here.

12 MR. MITCHELL: Yes, Your Honor.

13 And I will ask if I go astray, that my colleague,
14 Mr. Trefil, chime in, because he may be more familiar with
15 that than I.

16 But my understanding, Your Honor, is that in 2015,
17 without admitting any fault whatsoever, PRA Group entered into
18 a consent agreement with a administrative agency, the Consumer
19 Financial Protection Bureau, to resolve certain claims against
20 PRA Group and its subsidiary, Portfolio Recovery Associates,
21 about its debt collection practices. But, Your Honor, nothing
22 in that consent agreement stripped PRA Group, or maybe I
23 should say Portfolio Recovery Associates, LLC from its
24 independent, you know, corporate standing as an entity
25 separate and distinct from PRA Group. Rather, just in that

1 administrative proceeding, the CFPB -- and I'm not privy to
2 the reasons why or how -- but addressed its claims, or the
3 claims against PRA that, again, were settled without admission
4 of liability jointly, looking at both the parent corporation
5 and its subsidiary.

6 THE COURT: But I guess what my question there is,
7 and I'll have to go back and read the very specific language
8 of the consent agreement or consent decree, but I guess my
9 question there is if two entities have a different
10 personality, right? It's not usual that one entity says,
11 yeah, I'm going to make sure this other entity does what it's
12 supposed to do. Here, it does seem like PRA Group said, hey,
13 I have the power, and I'm about to use it, to make sure that
14 PRA, LLC does exactly what it's supposed to do. If they can
15 do that, why doesn't that show sort of veil-piercing control?

16 MR. MITCHELL: Your Honor, my -- to respond to that,
17 I would point out, first, control is not the end-all, be-all
18 of a test. There has to be control that then is improper in
19 some way to the -- that causes an injury to a third person.

20 Portfolio Recovery Associates, LLC, following that
21 consent order, continues to, you know, conduct the business of
22 Portfolio Recovery Associates as an independent entity. This
23 was over seven years ago, Your Honor, I believe when that
24 consent order was entered, and there is nothing in that
25 consent order, again, that strips the corporate distinction

1 between the two entities or otherwise would alter, for this
2 Court's purposes, the veil-piercing analysis.

3 MR. TREFIL: And, Your Honor, if I may add just two
4 more points.

5 THE COURT: You may.

6 MR. TREFIL: The first is -- and I was not privy to
7 the CFPB proceeding. But there's a difference between the
8 relationship between PRA Group and PRA, LLC for purposes of
9 negotiating with the CFPB during the administrative process
10 versus control over the day-to-day operations.

11 THE COURT: Move your microphone a little closer to
12 you.

13 MR. TREFIL: My apologies, Your Honor.

14 There's a difference between the relationship
15 between PRA Group and PRA, LLC for purposes of negotiating a
16 resolution of administrative process with the CFPB and the
17 kind of day-to-day control and management of the operations
18 that would be required to pierce the veil in this particular
19 instance. PRA Group, as the holding company and sole owner of
20 PRA, LLC, certainly has the legal authority to enter into
21 agreements with the CFPB on PRA, LLC's behalf, but it does not
22 as a matter of day-to-day operations intervene in the debt
23 collection practices of PRA, LLC.

24 THE COURT: I understand your point.

25 MR. TREFIL: And then the second point I would add

1 is that the consent decree expired by its terms in 2019, and
2 --

3 THE COURT: That was my next question. Thank you
4 for telling me that.

5 MR. TREFIL: And PRA is currently under no consent
6 decree.

7 THE COURT: Okay. We can move on.

8 MR. MITCHELL: Thank you, Your Honor.

9 I'd also like to address the additional claims that
10 Ms. Hammett seeks to add against Portfolio Recovery
11 Associates.

12 THE COURT: Let me stop you first. I'm going to
13 give you some more time because I'm asking a bunch of
14 questions, but let me stop you for a second just to make sure.

15 On your personal jurisdiction point, if I find that
16 there is enough to pierce the corporate veil, I take it that
17 sort of takes the personal jurisdiction question out of play,
18 because if there's personal jurisdiction for you all and then
19 there's enough to pierce the corporate veil, there really
20 wouldn't be an extra-personal jurisdiction question; is that
21 correct?

22 MR. MITCHELL: Your Honor, I think that's correct.

23 THE COURT: Fine.

24 MR. MITCHELL: Once the veil is pierced, it's
25 pierced.

1 THE COURT: Okay. You can go on.

2 MR. MITCHELL: Thank you.

3 So with respect to the additional claims Ms. Hammett
4 attempts to add against Portfolio Recovery Associates, they
5 each are also futile. First, Ms. Hammett seeks to add a claim
6 for violation of the Consumer Financial Protection Act. That
7 act, however, does not provide for a private cause of action,
8 and in our briefing we've cited numerous, maybe dozens of
9 cases that have reached that holding, Your Honor, and I submit
10 that is settled law at this point.

11 Second, Your Honor, Ms. Hammett has attempted to
12 convert or perhaps add onto her existing FDCPA claims a new
13 state law or common law negligence claim. And, Your Honor,
14 the negligence claim is futile and could not withstand a
15 motion to dismiss, because it lacks the required element of a
16 supporting duty of care that must exist in any negligence
17 claim.

18 Ms. Hammett, in her briefing, submits improperly or
19 erroneously that the FDCPA itself, that the statute provides
20 that duty of care. But, Your Honor, that theory has been
21 expressly rejected by the District Court of the Eastern
22 District of Arkansas in Loftis v. Credit Acceptance Corp. that
23 was in our briefing.

24 THE COURT: So if I recall correctly, that case was
25 from about 2011. I may be off a little bit. Has there been

1 anything in Arkansas since then that would call into question
2 Loftis?

3 MR. MITCHELL: I checked as recently as last even
4 thing, Your Honor, on that, and I have not identified any
5 additional cases on it. The Westlaw flag is still green on
6 Loftis on my search.

7 THE COURT: And what do you think I do with the fact
8 that Loftis called the decision a close call? And obviously
9 Loftis is not precedential for me. Is your position basically
10 just, look, Loftis was right and I should, you know, be
11 persuaded by it?

12 MR. MITCHELL: Your Honor, I think the analysis the
13 Court applied in Loftis is persuasive and was the right
14 analysis. The Court in Loftis I believe focused on repeated
15 statements by Arkansas state courts that violation of a
16 statute is not negligence per se, and then the Court, based on
17 that finding, concluded that if violation of a statute is not
18 negligence per se, how could it ever then form a duty or
19 satisfy the duty element.

20 THE COURT: Do you agree with Loftis'
21 characterization of it as a close call?

22 MR. MITCHELL: Your Honor, I think that the Court
23 was being respectful of other courts that have come out the
24 other way on that. I think the analysis, though, in Loftis is
25 correct.

1 THE COURT: Okay.

2 MR. MITCHELL: Finally, Your Honor, I want to
3 address the additional FDCPA claim, specifically the 1692e(10)
4 claim that was included in the proposed second amended
5 complaint. And that claim, Your Honor, is somewhat unique
6 here, because it is based not on conduct by our client, but
7 rather derives entirely from a Rule 37 meet and confer letter
8 that we sent as counsel for Portfolio Recovery, LLC to
9 Ms. Hammett in an attempt to resolve deficiencies in
10 Ms. Hammett's discovery responses. Your Honor, this claim is
11 futile and would not withstand a motion to dismiss for several
12 reasons.

13 First, Your Honor, there are no facts to support
14 that counsel in this case was acting as a, quote, debt
15 collector in sending the meet and confer letter. PRA, of
16 course, is the defendant in this lawsuit, and we -- our client
17 has not asserted any counterclaims against Ms. Hammett. And
18 based on that fact in particular, there's just no way to
19 construe, Your Honor, counsel's activity in sending a meet and
20 confer letter or a discovery deficiency letter as acting as a,
21 quote, debt collector under the FDCPA.

22 And, second, Your Honor, for many of the same
23 reasons, there are no facts to conclude or support the element
24 of the statute that the letter was sent, quote, in connection
25 with the collection of any debt. Again, a fair reading of

1 that letter makes clear it is an attempt to remedy discovery
2 deficiencies in Ms. Hammett's responses to written discovery,
3 not an effort or not sent in connection with the collection of
4 a debt, because Portfolio Recovery Associates has not sued
5 Ms. Hammett to collect a debt in this case. Accordingly, this
6 claim also fails, and the Court should find that it is futile.

7 And, finally, I want to touch on the lack of
8 personal jurisdiction argument, Your Honor, if I may, and I
9 will try to be brief.

10 THE COURT: I was going to say, I -- you can do it
11 if you want for the record. I'm not sure it's ultimately
12 going to be very important, but quickly.

13 MR. MITCHELL: Thank you, Your Honor.

14 Well, I will then just highlight our arguments, and
15 we will rest on our brief on that point, that there are no
16 facts to support the exercise of either general or personal
17 jurisdiction over PRA Group, and for that reason, as well,
18 Ms. Hammett's motion with respect to PRA Group is futile.

19 THE COURT: Okay.

20 MR. MITCHELL: Thank you, Your Honor.

21 THE COURT: I appreciate it.

22 Ms. Hammett, the defendants went on pretty long, but
23 partially that's because I asked a bunch of questions and
24 partially because there's just a bunch of different claims
25 that I understand they needed to deal with in the motion to

1 amend. You're more than welcome on rebuttal to take as much
2 time as you feel you need.

3 MS. HAMMETT: Thank you.

4 I apologize that I'm a novice, and I went on and on
5 way too long on the complaints. My reasoning for that was
6 because I had come up against Iqbal/Twombly in the past, and I
7 wanted to make sure that I didn't have the same motion to
8 dismiss for that purpose.

9 The -- on PRA Group's -- they advertise their stock
10 nationwide. I agree with you, I think that they do submit to
11 the personal jurisdiction if they are -- if the corporate veil
12 is pierced.

13 I don't know what I put in the amended complaint. I
14 didn't read it yesterday, honestly. I had many other things
15 to do. But I did know that I only mean to include CompuMail
16 in the FDCPA claims. I don't mean to include CompuMail in any
17 intentional inflection of emotional distress, outrage or
18 anything like that, because the -- those outrage claims arise
19 more from the PRA refusing to stop contacting me and the
20 telephone calls, and CompuMail was not involved in those
21 telephone calls.

22 The negligence needs a duty of care, and PRA calls
23 me a customer. So they often, in their manuals and in the PRA
24 Group, Inc. annual reports, refer to the alleged debtors as
25 customers. So I -- I'm not that well versed on duty of care,

1 I have never had a claim that included that, but it seems like
2 if somebody's a customer, you owe them some duty of care. And
3 I think that's what the FTC or the legislature had in mind
4 when they wrote the FDCPA was they're saying, you need to take
5 better care. And the CFPB, in the consent agreement, they
6 also even took that duty of care further for Portfolio
7 Recovery Group -- I mean, for PRA, LLC.

8 And so that's it. That's all I have.

9 THE COURT: I appreciate it very much.

10 First of all, just so you know, I perfectly well
11 understand your Iqbal/Twombly concern. I get that. And,
12 secondly, you should also know that you do speak very well,
13 and I understand you may be something of a novice at this, but
14 you're certainly at or above the level that we expect from pro
15 se plaintiffs. So take a breath, relax, you're doing great.

16 MS. HAMMETT: Thank you.

17 THE COURT: Okay. Very good. I'm going to take the
18 motion to amend under advisement. I'm probably going to
19 issue, just so you know, a consolidated order that addresses
20 almost all of these motions at once.

21 We're now going to go on to plaintiff's partial
22 motion for summary judgment. And so here, Ms. Hammett, is
23 your opportunity to tell me why, for the claims that you've
24 moved for summary judgment on, why there's no dispute of
25 material fact, or I should say no genuine dispute of material

1 fact, and why as a matter of law you should win, as opposed to
2 this claim and other claims going to the jury. Do you
3 understand all of that?

4 MS. HAMMETT: Yes.

5 THE COURT: Okay. So you have the floor for 10 more
6 minutes, if you want. And, again, you don't have to take all
7 of it. As much as you'd like to say. A lot of what today is
8 is making sure that you have a chance to get your full case
9 out.

10 MS. HAMMETT: Thank you.

11 THE COURT: And when I say full case, I don't mean
12 your witnesses and everything, I just mean your full
13 explanation.

14 MS. HAMMETT: Thank you, Your Honor.

15 Again, I don't want to repeat what I put in my
16 document, so I'll just say the most important thing about this
17 to me is that I carved out the most narrow item of the FDCPA
18 claim that I could. I knew that there were other items of the
19 FDCPA claim that I could probably win on a motion for summary
20 judgment, but I feel like what the legislature wanted when
21 they wrote this was giving the plaintiff attorney fees and
22 costs, and those are useless to me if I can't afford an
23 attorney now, and I -- you know, I'm spending a lot on costs.
24 It's really almost a hundred dollars for every document that I
25 file because of the mileage, the copying, parking, everything.

1 So, and as much as I have an aptitude for this, I'm
2 one person who's not well educated in law, and the defendant
3 has the finest attorneys available, and a lot of them. In the
4 depositions we had two attorneys present, and they had their
5 computers on and were getting e-mails from the corporate
6 counsel in Virginia and another attorney, and they have their
7 staff.

8 So just for example, yesterday I wanted to prepare
9 my paperwork, but, like I had shuffled it six times, and I
10 hired my son, Shawn Lynn, to come and put everything in order
11 for me, and he's too old to be an indentured servant, so I
12 paid him with -- I paid him to drive here and file a document,
13 as well, and it was \$230, and that was the family deal.

14 So I want to get over that hurdle, because whether
15 you accept my novel idea of having prepayment of the attorney,
16 I am meeting with an attorney again today after court to try
17 to enlist his services. It will be so much easier if I'm able
18 to say, I already have one FDCPA claim, and you know that
19 you'll get paid eventually. So I prefer to do something
20 with -- you know, and you can be creative, and you're
21 obviously brilliant. And so if you could come up with
22 something where maybe they reimburse me for the costs I've
23 already had or doing this pay as you go.

24 THE COURT: So let me ask you something,
25 Ms. Hammett. If -- and this is a big "if." I haven't come to

1 a conclusion yet. If I conclude that under the law I simply
2 can't give you fees and costs at this point, even if I thought
3 you absolutely were going to prevail or even on summary
4 judgment would prevail on this particular claim in your
5 partial summary judgment motion, do you still want partial
6 summary judgment, or is the whole purpose of this simply for
7 you to try to get the attorney's fees and costs at this point,
8 and if I can't do that, then we basically should sort of just
9 go on, in your perspective, to trial?

10 MS. HAMMETT: No. I definitely want as much of it
11 as you can give me. If it's not saying -- because I know
12 that's a novel idea, and there -- it might be fraught with
13 problems or irregularities, I don't know, but I definitely
14 would like, for other purposes. You know, one is hopefully we
15 can negotiate a settlement.

16 THE COURT: So even if -- and, again, big "if," but
17 even if fees at this point, meaning at this point of the
18 proceedings, are off the table, you still want me to determine
19 whether or not you're entitled to partial summary judgment on,
20 for example, your 807(2)(A) FDCPA violation claim; is that
21 correct?

22 MS. HAMMETT: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. HAMMETT: Now, I do not know the answer to this.
25 I would -- because I carved out one item that at the time I

1 thought was an absolute that I would prevail on it, I still
2 think that I will prevail on it, but they have brought in one
3 scintilla of evidence that there might have been an account
4 opened in my name, but it still doesn't address that there was
5 a -- they say that I made a final payment, but the final
6 payment was zero. So I don't know where the mistake was made,
7 but obviously there was a mistake made, because if the final
8 payment was not zero and it was the amount that they allege I
9 owed, and somebody wrote zero in there, then I still would win
10 on the FDCPA claim. So when they came in with their motion
11 for summary judgment on all claims, I went and did the
12 exercise of showing them why the other claims are valid and
13 that I should prevail. And so I'm hoping that you're allowed
14 to expand, or maybe as part of their motion say, well, you
15 don't win on this FDCPA section, but you obviously win on this
16 one.

17 THE COURT: I appreciate your question. The answer
18 to that is, no, that's not the legal procedure.

19 So you had a specific partial summary judgment
20 claim. You're either going to win on that one or lose on that
21 one. But lose does not mean they win, right? Lose simply
22 means, at least for purposes of your summary judgment -- and
23 let's -- I'm going to assume now for a second that we've
24 gotten past the motion to amend, because you're going to hear
25 from the other side, and one of the things they're going to

1 say is that this 807(2)(A) claim is not even part of the case
2 right now. But for purposes of the discussion we're having,
3 let's just assume it gets added as part of the motion to
4 amend.

5 So if you lose on partial summary judgment, all that
6 means is that on that 807(2)(A) issue, we'd be going to trial
7 unless they win on all of their various summary judgment
8 motions or all of their various issues they've raised on
9 summary judgment, and it includes, for example, 807(2)(A). So
10 your motions for summary judgment are two distinct animals,
11 and you can't, by virtue of your response to them, sort of
12 sneak in -- and I don't mean that in a bad way, but sneak into
13 the backdoor sort of a pro summary judgment for you.

14 So those are the rules. I have it enforce them
15 fairly for both sides, and I'm going to enforce them fairly.
16 So we are where we are.

17 MS. HAMMETT: Thank you, Your Honor.

18 THE COURT: Okay. Anything else before we go over
19 to the defendants on your partial summary judgment motion?

20 MS. HAMMETT: No, Your Honor.

21 THE COURT: Okay. Defendants.

22 MR. TREFIL: Thank you, Your Honor.

23 To get the technical parts out of the way, as Your
24 Honor correctly noted, I'll point out that this is asking for
25 judgment on a claim that's not in the first amended

1 complaint -- she's not allowed to do that -- it's alleging
2 facts not in the complaint, and it's seeking relief not
3 authorized by the FDCPA.

4 THE COURT: So let me ask you this, and part of this
5 may well have been the Court's, not mistake, but just a
6 function of various timelines. Obviously she filed a motion
7 to amend, which I'm going to resolve but haven't resolved that
8 yet. Assuming I resolve that for one second in her favor, at
9 least on the extra claims part, not necessarily on who she can
10 sue, but on the extra claims part, what is appropriate at that
11 point, then, to do with those extra claims? Is it to then
12 either give you all a chance to sort of move to defeat it by
13 virtue of summary judgment? Is it to deal with her partial
14 motion for summary judgment and just give you extra time to
15 respond? What -- I guess what I'm trying to figure out is
16 where this happens in the cue. If I let her amend and you all
17 have provided a merits-based response on that issue, why
18 shouldn't I just go ahead and decide your sort of merits-based
19 response on the issue?

20 MR. TREFIL: Well, I think that that's the way I
21 would handle it if I were sitting in your chair, Your Honor.
22 And as I mentioned, I was trying to get the technical aspects
23 of this out of the way. I would, you know, want to get to the
24 meat on this.

25 THE COURT: No, but that's fair.

1 MR. TREFIL: In terms of how I would procedurally
2 handle two summary judgment motions and a motion to amend that
3 are kind of floating around at the same time, as I'll discuss
4 in a bit, at least as far as this particular additional claim
5 is concerned, not only has plaintiff failed to establish, you
6 know, that there's no genuine dispute of material fact as to
7 her non-ownership, but the undisputed facts show that it was,
8 in fact, her account.

9 THE COURT: Well, and so that's really my more
10 difficult question.

11 So let's assume I grant her the motion to amend on
12 this issue, on the claim, and let's assume I agree -- again,
13 all assumptions. Please don't try to read tea leaves, because
14 I'm just stringing out questions here. And then assume that I
15 agree with you that she doesn't win on the partial summary
16 judgment motion on this claim. For understandable reasons, I
17 think I understand you all have not moved for summary judgment
18 on this claim. Which, of course, that makes sense --

19 MR. TREFIL: We can't.

20 THE COURT: -- because at this point the claim isn't
21 in the case.

22 What do I do with that? So I know I can -- I know I
23 could deny her partial summary judgment motion. I don't know
24 at this point that I could grant you summary judgment on the
25 claim without you all having moved for it. So where -- what

1 do I do there?

2 MR. TREFIL: Um, I'm not entire -- I mean, clearly,
3 if the Court were to grant leave to add an additional claim at
4 this point we would promptly move on that. So one way to
5 handle that is simply give us time to file the brief, and
6 we'll go ahead and do it. Because the facts are the facts.
7 We're through can discovery. We know what we're looking at.
8 So we would certainly move.

9 I suppose if you did -- I think the e(10) claim
10 comes close to this, so you could kind of, kind of fudge it a
11 little bit, but, you know, we'd be more than happy to brief
12 that if Your Honor added the new claim.

13 THE COURT: That's a fair answer. Okay. Keep
14 anything. I appreciate that. Thank you for helping me out
15 with that thicket.

16 MR. TREFIL: All right. Getting to the substance of
17 plaintiff's claim here, it's based on the notion that there is
18 no dispute that this is not her account. And I apologize if
19 the language comes out a little funny, but for her to prevail
20 on this motion, she has to demonstrate that there is no
21 genuine disputed material fact that Ms. Hammett did not in
22 fact own this Capital One account. In point of fact, PRA has
23 produced ample evidence that she did. The evidence has been
24 increasing throughout the discovery process. We provided a
25 bill of sale and affidavit of sale, load data identifying name

1 and time the account was purchased, the address of record that
2 she has acknowledged at the time of the debt sale, her Social
3 Security number and telephone number.

4 Most importantly, these last two items both have to
5 deal with Capital One. The first is it took Capital One some
6 time, but they managed to locate and provide PRA with the
7 charge-off statement for the Capital One account at issue. It
8 bears Ms. Hammett's name, it bears the address that
9 Ms. Hammett has acknowledged she had at one point in time.
10 The amount on the charge-off statement corresponds to the
11 charge-off amount on the load data that PRA received when it
12 purchased the account.

13 THE COURT: Let me ask you a very basic and probably
14 silly question. Can you just explain to me what a charge-off
15 statement is and means, and is it something that gets sent to
16 Ms. Hammett -- and really some of this is actually just for my
17 own personal edification. Some of it may be material, but
18 some of it I just want to understand what we're talking about.

19 MR. TREFIL: Absolutely, Your Honor.

20 Yes, a charge-off statement is the statement that
21 the original creditor issues to the consumer when they charge
22 off the account, when they put it in the delinquent pile and
23 put it in a pool of debts to sell to debt buyers such as my
24 client. It is sent to the plaintiff. In this case it was
25 sent to the Erlanger Street address in California that

1 Ms. Hammett acknowledges was hers at one point in time. So
2 this charge-off statement is essentially -- it's the final
3 statement.

4 Now, there is -- the amount of the debt at the time
5 of charge-off may or may not be different than the amount of
6 debt when the account is sold by the creditor to a debt buyer.
7 So, for example, in this case they differ. It was
8 1900-something, at charge-off it was 2200 when the account was
9 sold. Those were additional fees and charges that Capital One
10 added to the account when it sold the account to PRA.

11 THE COURT: And is that because there is generally,
12 A, some time, and, B, potentially more fees between when you
13 put it in delinquent mode and when you sell it? Is that the
14 reason?

15 MR. TREFIL: Well, I can't speak on Capital One's
16 behalf, but my understanding is that there is not only time,
17 but there are actions that need to be taken to take the
18 account from its status as a -- you know, an account that
19 Capital One was treating as an active account, to an account
20 and put it in a pool for auction to debt buyers. So there are
21 administrative fees that are -- that accompany that.

22 THE COURT: That's a generic enough explanation.
23 That helps me.

24 Can you just give me where in the record the
25 charge-off statement is? I just want to make sure that I look

1 at that document.

2 MR. TREFIL: I believe for purposes of this
3 particular motion, we actually filed a notice of supplemental
4 authority tied to this motion that had the charge-off
5 statement, along with the business records affidavit from
6 Capital One. That is the additional piece that is important.

7 THE COURT: Okay.

8 MR. TREFIL: That is important here.

9 THE COURT: That is helpful, because for whatever
10 reason I'm not sure I saw the actual document, so I want to
11 make -- no, I don't have to do it here, I'll do it back in
12 chambers.

13 MR. TREFIL: Okay.

14 THE COURT: I just want to make sure I lay eyes on
15 that actual document so I understand.

16 MR. TREFIL: I have copies in triplicate if you ...

17 THE COURT: Well, if you give Ms. Hammett one of the
18 copies, then you can hand me one of the copies, and I'll take
19 a look at it. And obviously just for the record, I'm going to
20 go back and look at what was filed obviously to make sure it's
21 the same as this, but we're just using this for sort of
22 exhibit purposes to educate the poor judge.

23 MR. TREFIL: The document I just handed to
24 Ms. Hammett and the Court is a business record affidavit from
25 Capital One that attaches two exhibits, the first of which is

1 the charge-off statement we were just discussing. It is a
2 three-page document with Bates numbers PRA Hammett 2110
3 through 2112, and that reflects the charge-off balance of
4 \$1916.05.

5 THE COURT: Okay. Right now we're going to reveal
6 on the record that my wife is the one that deals with all the
7 financial stuff, so can you just walk me through to show me
8 how I know that this is a quote-unquote charge-off as opposed
9 to just a normal bill or something like that?

10 MR. TREFIL: Well, the easiest -- I mean, the
11 easiest way to -- that I know that it is, is that it matches
12 the charge-off amount in the load data that PRA received from
13 Capital One.

14 This particular statement does not include an
15 identification for the consumer that the account has been
16 sold, because at this point the account has not been sold yet.
17 What an original creditor typically does to inform the
18 consumer that the account has been sold off is to provide
19 what's referred to as a sales notification letter. So there's
20 really nothing in this particular document that's going to
21 advise the consumer that the account has been charged off at
22 this point, other than the fact that it has been, you know, it
23 is identified as delinquent.

24 THE COURT: Okay. So I guess just get to make
25 sure -- and, again, I -- this doesn't mean it's not evidence

1 of something; it may well be evidence of something. But I
2 just want to make sure when you say a charge-off statement,
3 this isn't really a charge-off statement. Is that right or
4 wrong?

5 MR. TREFIL: It is a charge-off statement from
6 Capital One's point of view. Capital One charged off the
7 account after this statement was issued, and then when it sold
8 it to PRA, it had a different fee.

9 Now, for purposes of this motion, it doesn't matter
10 if we are talking about the charge-off statement or any
11 statement. The reason that a statement is important in this
12 case is this is a document with plaintiff's name, plaintiff's
13 address, the Capital One account matching the account number
14 that we're talking about in this case.

15 THE COURT: So I'm with you, but let me -- I guess
16 here's what I'm trying to figure out, and let me string this
17 together, and then you tell me where I'm wrong. And I will
18 say I understand that this is making up a lot of
19 hypotheticals, but I want to sort of play this out with you.

20 So let's assume we have this document from Capital
21 One, and the balance is \$1916.05.

22 MR. TREFIL: Yes, Your Honor.

23 THE COURT: And this is in, I guess, April of 2011?

24 MR. TREFIL: 2011, that's correct.

25 THE COURT: And when was the sale of the debt to you

1 all?

2 MR. TREFIL: November 2013.

3 THE COURT: Okay. Let's just assume for a second
4 that sometime between 2011 and 2013, Ms. Hammett, or somebody
5 representing Ms. Hammett, or somebody on Ms. Hammett's behalf,
6 paid off her debt. Now, I recognize in this case Ms. Hammett
7 has not said that. That's not what she's claiming has
8 happened. But let's just assume somehow between 2011 and when
9 it was sold to you, it became zero dollars. Is there
10 something else aside from the load data that tells me that
11 didn't happen, or is it really is it just the load data?

12 MR. TREFIL: No, it's -- well, in terms of the
13 documents that we have here, it is the load data. The load
14 data identify -- the load data is a printout of the electronic
15 information transmitted from Capital One to PRA when this
16 account was sold. And there are two account balances included
17 on that load data, one for the charge-off amount that matched
18 the 1916 amount we're talking about here.

19 THE COURT REPORTER: Slow down, sir.

20 MR. TREFIL: My apologies.

21 The first being the 1916 amount, the load data that
22 we're talking about for this charge-off statement, and the
23 second being the account balance at the time of sale to PRA.

24 Now, the last piece of evidence that we have that
25 prevents Ms. Hammett from establishing the lack of a genuine

1 dispute of material fact that this debt is not hers, during
2 the second portion of her deposition, she testified about a
3 call she had with Capital One which took place in August of
4 2021. This would be prior to mediation that PRA arranged to
5 try to resolve this matter quickly and efficiently. It took
6 place prior to the filing of this motion, where Capital One
7 advised her that they confirmed the account, they confirmed
8 the amount, and Ms. Hammett made a recording of that call.
9 She didn't tell us about this until we took her second
10 deposition a couple of weeks ago -- well, a month ago -- and
11 didn't provide the recording until sometime in April, I
12 believe, April 19th, perhaps. But, you know, at the very
13 least, in terms of her motion for summary judgment, all of
14 these at the very least demonstrate a genuine issue of
15 material fact as to the ownership of the debt from her
16 perspective.

17 THE COURT: I recognize we're in a little bit of an
18 odd situation, because it's really Ms. Hammett's testimony
19 about this, and so in some sense it would be Ms. Hammett
20 making a hearsay objection. It's a little bit odd to me. But
21 let me just ask you, forgetting the procedural oddness, let me
22 ask you about the rule. Would what Ms. Hammett heard from
23 Capital One constitute hearsay? And if it would, should that
24 matter for purposes of summary judgment?

25 MR. TREFIL: It would not. This -- it's a party

1 admission, Your Honor. She is -- it doesn't even come within
2 the hearsay rules, and --

3 THE COURT: Well, but she's repeating what Capital
4 One told her. Capital One is not a party, right? The
5 out-of-court statement is what Capital One said. That doesn't
6 strike me as a party admission.

7 MR. TREFIL: Well, the Capital One statement is not
8 a party admission. Ms. Hammett's statement that Capital One
9 told her this, is a party admission.

10 THE COURT: Well, I may still be -- we may be just
11 sort of having a difficulty in conception of this, because
12 let's assume -- let's assume Ms. Hammett took the stand at
13 trial, right, and you asked Ms. Hammett, what did Capital One
14 tell you. I think I understand the question is -- the legal
15 question that I have to grapple with is would the out-of-court
16 statement made by Capital One, if you're seeking to use it for
17 the -- for its truth, would that constitute hearsay, and that
18 I don't think is the admission of a party opponent.

19 MR. TREFIL: Well, that is true. Capital -- I mean,
20 it -- well, we have the added wrinkle of the call recording,
21 but --

22 THE COURT: Yeah.

23 MR. TREFIL: -- but it -- I would certainly argue at
24 trial, if we were doing this, that the entire -- that the
25 entire -- the entire statement coming from Ms. Hammett as a

1 party in litigation is admissible against her as a party
2 admission, period. That would be the position I would take on
3 that.

4 THE COURT: And I think that's a fair and
5 interesting argument. I'm not sure if you'd win on it or lose
6 on it. It's an interesting argument.

7 Let me ask you I guess sort of the nub of this
8 question for at least my purposes today. Let's assume I
9 disagreed with you and thought it was hearsay and was not
10 admissible at trial. If that's where my head is right now,
11 what do I do with it for summary judgment? Can I use it or
12 can I not use it if I think at trial it will be inadmissible?

13 MR. TREFIL: Well, if you thought it would be
14 inadmissible at trial, I would -- my suggestion to the Court
15 would be not to rely on that. I don't think we need to rely
16 on that. That was a very late piece of evidence that came in
17 during Ms. Hammett's second deposition. I think that the
18 cumulation of documentary evidence, from bill of sale to the
19 affidavit of sale, load data, and the statement with the --
20 you know, with the business records affidavit from Capital One
21 laying the foundation, is certainly sufficient to establish
22 the existence of the debt and the ownership of the debt as a
23 matter of law and undisputed fact in PRA's favor, not in
24 Ms. Hammett's favor.

25 So the -- I would like the Court to consider the

1 conversation with Capital One, but I don't think it's
2 necessary for purposes of resolving this motion.

3 THE COURT: What do I do with the fact that you all
4 did eventually send Ms. Hammett something that says, you know,
5 the account is closed, she owes zero dollars -- and I
6 understand your argument that that can mean a lot of different
7 things, I get it, but is there any documentation or anything
8 else that says, the reason it's zero dollars is because, you
9 know, we knew we weren't getting this money, or it was past
10 the statute of limitations, or we just didn't want to fight
11 about it anymore and we were -- we didn't want to
12 quote-unquote waste the time? Is there any documentary
13 evidence of what the sort of zero-dollar revelation, why it
14 was made, or is it all just sort of either circumstantial
15 evidence or maybe testimonial evidence?

16 MR. TREFIL: Well, I mean, it's testimonial evidence
17 for certain. Ms. Dreominer (phonetic) testified about that.

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 But what I can tell you is that there is absolutely
3 nothing in the zero-balance letter to say that, you never owed
4 this debt. There's nothing in the zero-balance to say we've
5 resolved the dispute in your favor, it simply says, we're
6 closing your account. And the reason for that, we're looking
7 at a 10-year-old account, and at that point it, you know, it
8 didn't make any sense to continue. Ms. Hammett speculates
9 that PRA's motivation is that she never actually owed the debt
10 in the first place, but the documents demonstrate to the
11 contrary.

12 THE COURT: Okay. I appreciate it.

13 Just to make sure we are on the same page -- and I'm
14 going to ask Ms. Hammett this, as well, so I want to make sure
15 all of the parties are on the same page -- in the partial
16 motion for summary judgment, I only think there is one claim
17 being made, but I want to make sure -- meaning one claim on
18 which she's asking for a partial summary judgment, but I want
19 to make sure I haven't missed something or everybody agrees
20 with that.

21 MR. TREFIL: My understanding is that there is one
22 claim, FTC 807(2)(A), or 1692e(2)(A) would be the statutory
23 equivalent.

24 THE COURT: But that's the same, yes.

25 MR. TREFIL: That's correct.

1 THE COURT: Okay. So it's the 807(2)(A). And I
2 agree with that. I'm really asking you more so Ms. Hammett
3 can hear me ask you and make sure she agrees with that, as
4 well.

5 Hold on one second.

6 Okay. Ms. Hammett, similar to the last time, I have
7 taken a long time with the defendants, because I had a bunch
8 of questions for them and really wanted to make sure about
9 what their argument was. But because of that, if you would
10 like, you can have as much time as you want to sort of rebut
11 their case.

12 MS. HAMMETT: Thank you.

13 So this is on my partial summary judgment?

14 THE COURT: This is just on your partial summary
15 judgment.

16 MS. HAMMETT: Okay. Because there are genuine
17 disputes of material fact on the other aspects of the case.

18 On this particular one violation, which is that the
19 way that I understand that statute is that they're telling me
20 that I owed a particular amount, and I did not owe that
21 particular amount. At the time that I wrote my motion, I had
22 no evidence whatsoever, no validation that there was a debt.
23 And no matter how many times PRA says that I agree that there
24 was that particular debt, I never have. I have been extremely
25 careful in choosing my words and saying I don't recognize this

1 debt. I have no memory of it.

2 I have given them an opportunity, and I gave them an
3 opportunity when this all started, when I was getting the
4 phone calls, please tell me, why should I believe you?
5 Because I'm a person who pays my debts. But if I don't
6 believe that I owe somebody money, I'm not just going to hand
7 them cash.

8 THE COURT: Generally a good rule in life.

9 MS. HAMMETT: Yeah. So I do not say -- accept that
10 this particular account was mine. It makes sense that I owned
11 a charge card by Capital One. I think half the nation does.

12 I have, since we've gotten into discovery, and since
13 especially they gave what they're calling that charge-off
14 statement -- which I disagree. That's not a charge-off
15 statement, it's just a statement. But I understand what
16 they're saying, but that's the only thing that they've showed
17 me that makes me believe that there is -- that it wasn't just
18 Laura Lyman who owned the account and that somebody input data
19 wrong, like the same person who said that my last payment was
20 zero, or, you know, whatever the errors that they make.

21 Counsel has made errors that were egregious, like
22 filing my confidential credit reports on the Internet. And so
23 people make mistakes. And it might not be nefarious, it might
24 just be a bona fide error, but I believe that this is not. I
25 believe that Capital One has a policy and practice of

1 attempting to collect on debts before they have validated
2 those debts, and that they came in with a new statement nine
3 months later and said, we found this, we're not gonna tell you
4 where, but it, you know, somebody found it behind the cooler,
5 maybe. That is not proof.

6 So there's no evidence on the bill of sale that
7 they've given. It doesn't attach that 6049 number. It
8 doesn't even say the name of the account that they're forward
9 flowing. That, they just pulled one out of a drawer. It
10 doesn't refer to me, or the account number, or anything. I
11 have no reason to believe that they validated this debt.

12 The business records affidavit that they handed
13 us --

14 THE COURT: Let me ask you this, Ms. Hammett.

15 MS. HAMMETT: Yes.

16 THE COURT: Do you at least accept that there is
17 some evidence of this debt, between the account balance in
18 2011 that we saw and the load data being essentially the same?
19 Whether or not you think a juror should accept that, do you at
20 least agree that a rational juror might look at that and might
21 say, yes, there's this debt?

22 MS. HAMMETT: I think a rational juror would say
23 Capital One believed they had an account, and it's likely that
24 they did. And I agree, it's likely that I had an account with
25 Capital One. I don't use credit often; I tend to use a debit

1 card. You know, you've seen my credit report. I don't -- I
2 did not have any credit at all, and -- but when I was in the
3 stock market I was in on margin, and I had borrowed \$500,000.
4 I have, since then, opened a credit card just to establish
5 some credit, and I have a FICO score of 742 I just found like
6 a couple weeks ago. So that -- you know, like I have decent
7 credit. I always have, I think.

8 And apparently, you know, there was this Capital One
9 account that for some reason is showing a balance, but there's
10 no evidence of what it was. And since this has all been going
11 on, I have found that my former romantic partner and business
12 partner was defrauding me of a huge amount of money, and it --
13 it's very plausible that if there is an account, that he just
14 got the card; he intercepted any mail. We lived together, so,
15 you know, it's -- there is a plausibility that there, you
16 know, could have been that kind of misuse of a credit card
17 that was in my name, but I don't think that PRA has met its
18 burden, its initial burden, that before it even begins to try
19 to collect, to show that -- and what the CFPB said is that
20 they were not verifying these. They knew that they were
21 riddled with errors. I even get the Laura Lyman letter, you
22 know, showing that there are errors that they make, and there
23 is a very obvious error that my last payment was zero. That
24 makes no sense.

25 So, really, I think that they have not come in with

1 the legal documentation that shows the basic elements of me
2 owing any money. So, and that -- and even this business
3 records affidavit was written in 2023 (sic). Now, I did call
4 Capital One in August, and I told PRA that in the first
5 deposition on March 2nd, and I had a e-mail to them with the
6 recording on March 3rd, and I can show that, and I actually
7 will show that if we go to trial to show that they are not
8 honest. And I took -- they asked me for a copy of that
9 recording again just last week, and I told them through e-mail
10 that I had already sent it to them, here's a second copy, and
11 I told them the date. And so they did know about it before
12 the deposition and before the -- well, before the second
13 deposition. And the ... I'm sorry I'm getting out of ...

14 THE COURT: It's okay. Take your time.

15 MS. HAMMETT: Yeah. So there was no chain of
16 custody between Capital One, who told me that they did not
17 have any records in August, and then they write this affidavit
18 that says that that's something that they -- you know, I don't
19 even know that they claim to have made the document, but
20 they -- in the affidavit, they did not say that that was
21 included in the second document. So they used one affidavit
22 to -- as a business records authentication of something that
23 there was no chain of custody on, and then they added two
24 documents to it that are unrelated documents, and the way that
25 they wrote this affidavit makes it sound like it's both.

1 So I'm saying that there is no genuine dispute of
2 material fact. They can -- they're disputing it with their
3 words, but they're not disputing it with any evidence.

4 THE COURT: I understand your position.

5 Anything else? And I should say obviously we're
6 just talking about the partial summary judgment motion.

7 MS. HAMMETT: Right.

8 Just for the record, I do believe it's hearsay what
9 Capital One said to me. It's not the party admission. They
10 told me that they have the same line item, and that was all.

11 THE COURT: Now, you're planning on, if we get to
12 trial, you're planning on using that at trial, though,
13 correct, or no?

14 MS. HAMMETT: I would, yeah.

15 THE COURT: Okay. That's fine. I just want to
16 know.

17 MS. HAMMETT: And the reason I didn't bring it
18 forward before is it's just a really terrible recording. Like
19 a lot of it's staticky, and not much is said except that, and
20 then most of it was me trying to find out how to send a
21 subpoena, and I never got to that step.

22 THE COURT: Okay.

23 MS. HAMMETT: So, okay, give me one moment.

24 THE COURT: Take as much time as you need. I'm not
25 rushing you at all.

1 MS. HAMMETT: I'm just repeating, I believe I said
2 this during the deposition and gave a case name and citation,
3 but PRA has claimed in the past that they -- that an alleged
4 debtor was in default, where the alleged debtor had, in fact,
5 filed an answer to their suit, and then that same person came
6 in and filed an FD CPA claim. So it is their practice to just
7 say she admitted it, and I didn't admit it, that person didn't
8 admit it, and the \$12 million-worth of other people that they
9 had to give restitution to did not admit it.

10 I have one more sentence to look at. Oh, there --
11 on the issue of their three letters that supposed now they're
12 saying waived the debt, they never used the word "waiver," and
13 PRA claims that everything that they do is documented on
14 PRANET. There is no notation of waiving that debt.

15 Thank you, Your Honor.

16 THE COURT: I appreciate it.

17 Okay. I'm going to take that motion under
18 advisement, as well.

19 We are going to take a 10-minute break and then come
20 back and do the defendants' motion for summary judgment. As I
21 said, defendants, you will all have about 20 minutes,
22 plaintiff will also have 20 minutes if she wants it, and then
23 you all will be able to have a short reply.

24 Okay.

25 (A recess was taken from 11:28 to 11:41 a.m.)

1 THE COURT: Everybody be seat, please.

2 Okay. Defendants, you're up.

3 MR. TREFIL: Thank you, Your Honor.

4 I'd like to start by just going through what is no
5 longer on the table from plaintiff's first amended complaint.
6 Plaintiff has abandoned, expressly abandoned, her claims under
7 the Telephone Consumer Protection Act, Section 1692c(c), which
8 is the claim under a provision requiring that a collector
9 cease collection efforts after a written cease and desist
10 request. Plaintiff has acknowledged that PRA did in fact stop
11 all collection efforts after she sent in one of those written
12 cease and desist requests.

13 THE COURT: And I'm going to stop you just for a
14 second.

15 Ms. Hammett, as we go through this, I recognize that
16 on some of these, not all of them, but on some you may agree,
17 on some you may disagree, I get that. Just make sure you
18 write it down so you can, when it's your turn you can respond
19 to what they're saying.

20 MS. HAMMETT: Okay.

21 THE COURT: Do you understand?

22 MR. TREFIL: And finally --

23 THE COURT: Hold on a second. Hold on.

24 MR. TREFIL: My apologies.

25 THE COURT: Do you understand?

1 MS. HAMMETT: Yes, I understand what you said. I
2 think I might have missed what he said, because I understood
3 him saying I had abandoned a TCPA claim.

4 THE COURT: Yeah, he did, and you may or may not
5 agree with that.

6 MS. HAMMETT: Okay.

7 THE COURT: And my point is I understand there may
8 be some things here that he's about to say that you may agree
9 with or may completely disagree with. What I want to make
10 sure you do is if you disagree with them, just write them down
11 so when I come to you later, you can tell me that.

12 MS. HAMMETT: Okay.

13 THE COURT: Okay. Go ahead.

14 MS. HAMMETT: Thank you.

15 MR. TREFIL: Thank you, Your Honor.

16 And the last claim expressly abandon is the claim
17 for negligent infliction of emotional distress, which does not
18 exist under Arkansas law.

19 Plaintiff has also abandoned by omission, in other
20 words, by not responding in her opposition to PRA's motion for
21 summary judgment to her claims under 1692e(11), which, as best
22 I can make out, is -- has to do with PRA not identifying
23 itself, e(14), which is the LLC issue, and then all of her "G"
24 notice claims, 1692g(a)(3), (4) and (5). Those are the claims
25 arising from the validation notice. 1692g provides that

1 within the first 30 -- that within five days after the first
2 initial communication, the debt collector has to provide
3 what's called a "G" notice to a consumer. That "G" notice
4 advises the consumer that they have the right to seek
5 validation of a debt within 30 days, and plaintiff has not
6 responded to PRA's motion for summary judgment on~--

7 THE COURT: And I take it your point on these,
8 which, of course, I'll give Ms. Hammett a chance to talk about
9 later, I take it your point on the, I guess what I'll call
10 implicit waiver argument or dropping argument, is that
11 Ms. Hammett, in that section of her responsive brief,
12 basically said for time constraints she's not going to respond
13 to those, and then she went on to say some -- a couple of more
14 sentences in terms of she's incorporating things or stuff like
15 that. But I take it your point is that was the implicit
16 abandonment of those claims? Is that your point?

17 MR. TREFIL: That is correct, Your Honor. And PRA
18 believes it's entitled to judgment with respect to all of
19 these claims.

20 Here's what's left for discussion today:
21 Ms. Hammett's claim under 15 U.S.C. 1692b, presumably b(3),
22 having to do with third-party communications; her claim under
23 1692c(a)(1) having to do with calls outside the 8:00 a.m. to
24 9:00 p.m. window; 1692d and d(5), which is conduct having the
25 tendency to harass, oppress or annoy; and 1692e(10) and e(13),

1 which have to do with false, deceptive or misleading
2 representation, and this could conceivably incorporate the
3 e(2)(A) claim that we discussed earlier, as well; and finally
4 the two state law claims of outrage and invasion of privacy.
5 All these fail as law -- as a matter of law. PRA has
6 presented evidence with respect to each one of these claims in
7 its briefs that its collection efforts were proper and did not
8 violate the FDCPA or Arkansas law, and plaintiff has responded
9 with little more than bald denials of facts or speculation
10 insufficient to defeat summary judgment.

11 We cited cases in our briefs on this point. The
12 Eighth Circuit's very clear, the nonmoving party must do more
13 than rely on allegations --

14 THE COURT: I think you're going to have to pull
15 that closer and speak louder and slower.

16 MR. TREFIL: My apologies, Your Honor.

17 THE COURT: And don't worry. I'm from New York. I
18 can understand you, but so our court reporter doesn't have a
19 coronary.

20 MR. TREFIL: The nonmoving party must do more than
21 rely on allegations or denials in the pleadings, and the Court
22 should grant summary judgment if any essential element of the
23 prima facie case is not supported by specific facts sufficient
24 to raise a genuine issue for trial. Eighth Circuit, Register
25 versus Honeywell Fed.

1 This Court very recently, although I don't have the
2 judge, but December 29th, 2021: Unsubstantiated beliefs and
3 bare allegations are insufficient to create a genuine issue of
4 material fact.

5 Plaintiff also raises a -- discusses the concept of
6 spoliation. The mere fact that the record evidence, the
7 documents that PRA -- the voluminous documents that PRA has
8 produced don't tell the story she wants them to tell, I don't
9 know what to say about the spoliation claim. There's
10 absolutely no evidence that anything has been destroyed
11 whatsoever, but I -- you know, we can address that if the
12 Court wants to.

13 But getting to the specifics of the claim, the
14 third-party contact issue is based on alleged 2014 calls to a
15 third party, a Mr. Williams, who had some kind of relationship
16 with plaintiff. These calls took place in 2014. Any
17 discussion with Mr. Williams would be time barred. And
18 Ms. Hammett's allegations are based on what she says
19 Mr. Williams told her, which would be inadmissible hearsay.
20 But even more to the point, the only record evidence here
21 establishes that PRA never -- never made contact with the
22 number in question, the 8660 number, never contacted or spoke
23 with anybody, defeating this third-party contact claim as a
24 matter of law. Plaintiff offers nothing but speculation in
25 opposition to this. Judgment is appropriate on this 1692b(3)

1 claim.

2 For the calls after 9:00 o'clock, the record shows
3 two calls, on January 28th and February 2nd, 2021, that fell
4 roughly 15 minutes outside the 9:00 o'clock window. The
5 undisputed evidence demonstrates that at that point in time,
6 PRA's address of record for plaintiff was in California.

7 THE COURT: Can you go into a little more depth on
8 this claim? I'll tell you this is one that just sort of had
9 me take a second look. And here's my issue. I obviously
10 understand, and I'm sure I'm going to butcher the exact name
11 of it, but basically the good faith defense. I get that.
12 Here's what my question is. It seems maybe, maybe there's
13 some potential record evidence that you all had run some type
14 of credit check and perhaps knew that there were at least some
15 addresses that potentially could be the plaintiff's in
16 Arkansas, although there's perhaps more -- there was perhaps
17 more evidence that it was still in California.

18 I guess what I'm trying to figure out is why
19 shouldn't the requirement for the good faith defense be that
20 if you have any indication that there's potentially more than
21 one state in which the plaintiff could be living, you all need
22 to make sure that in all of those various potential states you
23 don't call after 9:00 p.m. Does that make -- does my question
24 make any sense to you?

25 MR. TREFIL: No, I understand what Your Honor's

1 saying.

2 That's not what the new CFPB's Reg. F requires.
3 Under the new Reg. F, which does not apply to this matter,
4 this would fall within the safe harbor. PRA's address of
5 record for plaintiff was the 5757 Erlanger Street address up
6 through February 18th, 2021, when an Amity Road address in
7 Conway was obtained through a telephone conversation with
8 plaintiff.

9 PRA has provided its address source detail record,
10 which is a chart listing the different addresses --

11 THE COURT: You gotta stay on the microphone. He's
12 gonna kill me over here.

13 MR. TREFIL: PRA's address source detail record
14 identifies which address of record PRA had on which date.

15 Now, Your Honor asked about this alleged inquiry
16 that appeared on an Experion credit report. Couple points to
17 make there. The first is -- well, one, this is from a report
18 pulled in 2021 for a -- an alleged inquiry that took place in
19 2019. Plaintiff never asked Experion, so hearsay, but we'll
20 put that aside for the moment. The -- even if that soft
21 inquiry that shows up on the Experion credit report provided
22 the entire credit report that Ms. Hammett was using -- in
23 other words, if PRA actually accessed it, the number of
24 addresses -- and she and I discussed this during her
25 deposition. There were several dozen addresses, almost all of

1 which were California. There was one Arkansas address, and
2 none of those addresses had any dates on them.

3 So even if the mere entry on a credit report was
4 enough to demonstrate that PRA actually accessed her credit
5 report, it provides absolutely no evidence that PRA knew that
6 plaintiff was in Arkansas at the time.

7 THE COURT: Well, but that's what -- I guess that's
8 really my question. And I take your point on all of the stuff
9 before the "even if." I understand that. I acknowledge there
10 are some good arguments there that I'm going to have to think
11 about, but work with me on the sort of latter part of this.

12 So let's assume that in 2019 you all had, let's even
13 make it 10 California -- I know this is not the right number,
14 but 10 California addresses and one Arkansas address. I guess
15 what I'm asking is, why wouldn't you have to put into your
16 sort of machine, you know, that tells you when you can call,
17 why wouldn't you have to put in California and Arkansas?
18 Because, yes, you're right, it's likely that one of the 10
19 California addresses was where she was living, as opposed to
20 the Arkansas address, but there's a chance that she was at the
21 Arkansas address. And so for the good faith exception to
22 apply, why wouldn't your system have to essentially include
23 both?

24 MR. TREFIL: Well, it's referred to as the bona fide
25 error defense, and --

1 THE COURT: Fair enough.

2 MR. TREFIL: -- and what the -- I mean, the way the
3 defense works is if there are -- if there is a violation, and
4 it was unintentional and there are policies designed to
5 address that, that's what's referred to as bona fide error.
6 And I guess what Your Honor seems to be suggesting is that
7 anytime there is any address anywhere that a debt collector
8 sees that might apply to a consumer, that turns the violation
9 into an intentional one.

10 THE COURT: No, I guess my point is you have to have
11 reasonable -- to take advantage of this defense, at least as I
12 think I understand it, you have to have reasonable policies
13 and procedures to make sure something like this doesn't occur.
14 And I guess my question is if that's right, if I'm right about
15 the word "reasonable," or if ultimately, whether it actually
16 says it or not, you all agree you have to have reasonable
17 procedures that are aimed at preventing just this type of
18 accident, why isn't the reasonableness determined based on
19 whether your policies and procedures account for both the
20 potential that she lives in the California addresses and the
21 Arkansas address, when you don't know which one and both show
22 up? Of course, in this case it's not both, it's 10 to one, I
23 understand that, but you take my point.

24 MR. TREFIL: I do understand your point.

25 I've never come across that issue in the context of

1 the bona fide error defense, and here we have the added
2 wrinkle of the phone number itself being a California area
3 code phone number. Everything was pointed to California as
4 being plaintiff's last address. There was absolutely nothing
5 to indicate that there was a different address that applied to
6 her.

7 But I guess to make this point even more clear for
8 purposes of PRA's motion, all of this assumes that PRA had
9 access to this credit report in the first place.

10 THE COURT: I'm with you there.

11 MR. TREFIL: And this is important, because the mere
12 fact that a soft inquiry showed up on the credit report
13 doesn't -- I can tell you from difficult personal
14 experience -- doesn't mean that PRA pulled the credit report.
15 And Ms. Hammett didn't do the --

16 THE COURT: But doesn't it at least mean that a
17 rational juror could make that inference?

18 MR. TREFIL: Well, it might if there were actual
19 facts to underlie it. If Ms. Hammett had deposed Experion to
20 find out what PRA had access to, what does this mean, but she
21 never did that. They'd be going solely off of the soft
22 inquiry.

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[REDACTED]

So there is no evidence. All plaintiff has to go on is this one inquiry that shows up in a credit report. She has no idea what PRA actually had access to. So she would have -- she has -- there are several leaps of speculation you have to get through for her to get to this point, and it's her burden to show that.

THE COURT: Or at least it's her burden to show that a rational juror would make that inference or could make that inference.

MR. TREFIL: Yes, that's -- it's her -- it is her burden to present sufficient evidence to allow a reasonable juror to come to the conclusion that PRA should have known she was in Arkansas.

THE COURT: Okay. I understand your argument on this point. We can go on.

MR. TREFIL: Okay. The annoy, oppress or harass prong. This would be 1692d and d(5). This is -- there's no evidence that there was any abusive language coming from PRA in any of these -- these calls, so this devolves into a call

1 volume question, and PRA's records from PRANET showed that it
2 made 188 calls to all numbers on plaintiff's account in the
3 year prior to filing, or 15.7 per month.

4 The -- now that we have Reg. F, there's a nice
5 straightforward rule for -- it's seven calls in seven days.
6 That's a new rule. It doesn't apply to these cases. And so
7 you typically have to go look for a prior case that looks at
8 numbers and says what is or is not annoying or harassing, and
9 the Van Horn case that we cite to out of the Western District
10 of Missouri found that 28 calls per month was insufficient,
11 absent a written cease and desist request, which plaintiff
12 acknowledges PRA honored, Eighth Circuit courts have
13 repeatedly held that intent to annoy, abuse or harass cannot
14 simply be referred from the fact that defendant called
15 plaintiff daily or nearly so.

16 THE COURT: Is there any Eighth Circuit precedent on
17 this that either tells me explicitly, or as you say, kind of
18 tracking the how-many-calls-is-okay type of idea --

19 MR. TREFIL: Yeah.

20 THE COURT: -- binds me one way or the other?

21 MR. TREFIL: I have looked, Your Honor. I'm unaware
22 of a binding case on this. I can tell you that the number
23 that the district court in Van Horn found was insufficient as
24 a matter of law to be a 1692d violation was 28 per month.
25 We're looking at 15.7 here.

1 Now, plaintiff has --

2 THE COURT: Let me stop you there, and let me tell
3 you my sort of concern here, and it's a little bit more of an
4 abstract concern.

5 So I, as a general matter, do not get a smile on my
6 face whenever Congress or a state has something that says
7 annoy, harass, that type of language, because quite frankly,
8 I'm not sure how judges or really juries are supposed to
9 understand what Congress meant by annoy, harass, and where the
10 line is between, you know, this is just a gripe I have versus
11 this is annoying and harassing me.

12 What do I use to solve that?

13 Now, I understand you have this Van Horn case, but
14 of course, you know, that's just another district court case.

15 MR. TREFIL: It is.

16 THE COURT: And I mean, yes, I can sort of find it
17 persuasive, but is that anything more than just that judge's
18 kind of opinion about what may or may not be harassing and
19 annoying? Is there something somewhere that kinda gives me a
20 statutory or guide, yardstick about what is harassing and
21 annoying?

22 MR. TREFIL: Um, what -- I mean, for example, in the
23 Van Horn case, the Court went through a number of situations,
24 you know, conduct that was, in fact, annoying or harassing.
25 Multiple calls on the same day, repeated calls one right after

1 the other, that kind of thing. So that certainly gives an
2 indicia.

3 THE COURT: But I guess my question is it almost
4 feels like we're in an I-know-it-when-I-see-it situation, as
5 opposed to a, here's the definition of annoying and harassing,
6 and here's why this doesn't rise to the definition. Has
7 anyone that you can know of come up with a good definition of
8 what in this statute the terms "annoy" and "harass" and
9 similar terms mean?

10 MR. TREFIL: You know, frustratingly, no. It's --
11 like I've said, prior to Reg. F, it was a matter of finding
12 your jurisdiction, finding district court cases. Because
13 those rarely -- I have yet to find good court of appeals cases
14 specifically focused on that issue, and so you're just looking
15 for numbers that give you a ballpark of where you are. Here
16 in the Eighth Circuit we have the Van Horn case at 28.

17 What I would do, though, although Reg. F does not
18 apply retroactively in this situation, I think it's certainly
19 instructive for the Court to take a look at what the CFPB
20 thought was appropriate for a debt collector, and seven calls
21 in seven days translates to, that's roughly what Van Horn was
22 looking at. So I think there is some backstopping there
23 behind the analysis in Van Horn.

24 THE COURT: I appreciate that help, and I think you
25 can probably sense the struggle I have, which is -- and quite

1 frankly, I'm pretty sure it may also be the struggle
2 Ms. Hammett has, which is the term "harass" and "annoy"
3 probably means something different in the law, as a legal term
4 of art, than it might mean to the normal person walking on the
5 street, which is a little bit worrisome, because honestly, if
6 you asked a normal person walking on the street if a debt
7 collector calls me, you know, every two days, is that annoying
8 and harassing, I'm pretty sure the answer you're going to get
9 is, yes. Someone would have to have something wrong with them
10 to say, no, it's wonderful. And I'm just struggling with how
11 to reconcile that problem.

12 MR. TREFIL: And that's a very good point, Your
13 Honor. And, you know, this is in the context where almost by
14 definition, any contacts from my client will be viewed by a
15 delinquent consumer as annoying and harassing.

16 The Court in Van Horn closed with some language I
17 thought was particularly on point here: "Plaintiff
18 essentially argues the FDCPA is violated anytime a debt
19 collector persistently attempts to contact a debtor, and the
20 debtor subjectively feels he or she is being harassed. This
21 argument is unconvincing and does not comport with the
22 language or purpose of the FDCPA or case law. The FDCPA does
23 not prohibit debt collectors from employing legitimate,
24 reasonable, non-abusive means to collect a debt. Rather, the
25 FDCPA purports to protect such conduct."

1 The Court went on to dismiss or to enter judgment
2 against the plaintiff in that case.

3 But we often think of the FDCPA as solely being to
4 protect the consumers. It's there to protect legitimate debt
5 collectors, as well. It's aimed at specific conduct, and
6 where it sometimes goes astray is people will -- it sometimes
7 goes astray because debt collectors who make significant
8 efforts to comply with the law wind up with these claims
9 anyway just because they're out there doing this and because
10 consumers, any consumer who spends someone else's money and
11 doesn't pay it back and winds up getting phonecalls because of
12 it is unhappy about it.

13 Going on with the call volume issue, plaintiff, very
14 late in the case, acquired six months' worth of her Verizon
15 phone records. She found, at first, 15 calls she said were
16 PRA. She withdrew one of those during her deposition. The
17 basis for this was each of those calls was identified as
18 one-minute call length. Plaintiff also stated that some of
19 the calls, although it's unclear that she actually answered
20 all of them, she says that at least for some of them they
21 opened with, hello, I'm so-and-so calling on a recorded line,
22 which amounts to "hello" in the commercial world.

23 PRA's looked at the phone numbers associated with
24 this. There's evidence from one of Mr. Allen's declarations
25 that it owned none of the phone numbers associated with these

1 calls. But for purposes of this motion, let's just assume
2 that those are actual calls.

3 THE COURT: I was going to say, does it matter? In
4 your view, does it matter if there are the extra 15 calls?

5 MR. TREFIL: It doesn't. You can give plaintiff
6 those 15 calls. You can give her, there are an additional
7 five calls in her original interrogatory response. You can
8 give her one she identified as a call from PRA that she
9 actually made. And you add them all up, you wind up with 17.3
10 calls a month, which is still, you know, significantly lower
11 than what the Van Horn court, as well as the CFPB now,
12 considers to be a violation.

13 Now, one other issue. And, you know, plaintiff
14 has -- she obtained the Verizon records late in the case. PRA
15 had originally subpoenaed them and wasn't able to get them.
16 She obtained six months' worth of them, advising us that she
17 expected to find numerous calls on these Verizon records that
18 were attributable to PRA. She managed to find 15 in six
19 months' worth.

20 One of the issues that for purposes of this motion
21 is plaintiff's 56(d) request --

22 THE COURT: I was just about to ask that, so I'm
23 glad you're going to it.

24 MR. TREFIL: -- where she is seeking information
25 about PRA's phone service provider.

1 Now, I can get into some detail on that. I've read
2 the Court's order from yesterday, and much of it applies to a
3 56(d) context here.

4 PRA didn't, did not identify at least one of its
5 telephone service providers to plaintiff because she didn't
6 ask -- she didn't serve the interrogatory asking for it. What
7 she did was she served two requests for production, number 75
8 and 76; the first saying any documents listing you as the
9 account holder for any telephone number from January 2013 to
10 the present; and number 76, any documents demonstrating
11 payments you have made for any telephone service from
12 January 2013 to the present. PRA objected to both. Plaintiff
13 did not move to compel until the last day of discovery.

14 The first document doesn't exist, and the second one
15 asking for PRA's payments is well beyond the scope of
16 Ms. Hammett's claims here.

17 THE COURT: Explain to me on the first one why it
18 doesn't exist.

19 MR. TREFIL: PRA does not have a telephone service
20 provider in the typical way you would think of a telephone
21 service provider. Well, first off, step back for a second.
22 Ms. Hammett knows one of PRA's phone service providers
23 already. She's known them since December of 2018, and that's
24 LiveVox. PRA makes a number of calls using the LiveVox
25 system. The way that works is PRA reps make calls from their

1 desktop. Those calls go through a cloud network to LiveVox,
2 and those calls go out. Ms. Hammett never subpoenaed LiveVox.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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[REDACTED]

THE COURT: And I take it even if it did, it certainly doesn't exist in your possession.

MR. TREFIL: That's correct.

Having said that, Ms. Hammett has, you know, has repeatedly, much as she did with her Verizon records, she's sure there's going to be something else available with PRA's third-party phone service provider. [REDACTED]

[REDACTED]

THE COURT: I'm sorry, say that again just for ...

MR. TREFIL: [REDACTED]

THE COURT: [REDACTED], okay.

MR. TREFIL: And I can tell you we've had a little project recently completed. I've represented PRA for a number of years. I've never, never had -- I'm basically their TCPA national counsel. I've never done this before, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] That
document's in triplicate.

THE COURT: One to Ms. Hammett and one to me.

MR. TREFIL: Yes, Your Honor.

[REDACTED]
[REDACTED], so if the motion to extend or for additional
discovery were still open, I would be saying right now that
this evidence is more comprehensive than anything Ms. Hammett
could have gotten from a subpoena to [REDACTED]
[REDACTED].

But we ran the search. The search terms are
identified in paragraph 14. It's the actual code that they
use to do the search, and there were a total of 14 hits from
November 2013 to the present.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], and for
purposes of 56(d), this is the -- this is the evidence that,
if Ms. Hammett wants to say that there are additional facts

1 she needs discovery of, this is what she would be able to get,
2 at best.

3 THE COURT: Okay. Let -- I understand that you
4 can't speak to the accuracy of that. I get that. Let me just
5 make sure I understand sort of the field of play here in some
6 sense.

7 So you mentioned before LiveVox and Azimut and I
8 think Avaya.

9 MR. TREFIL: Avaya, that's correct.

10 THE COURT: [REDACTED]

11 [REDACTED]
12 [REDACTED] And pretend I am stupid. So if that question sounds
13 stupid, just explain to me at the basic level. Because what
14 I'm trying to figure out is, is this really everything, or
15 when I turn to Ms. Hammett, is she gonna tell me that this is
16 only one of three or four things that she wants?

17 MR. TREFIL: Well, she wants several things, but in
18 terms of the additional call information, there are two -- to
19 answer the Court's question first, there's no relationship
20 between LiveVox, Azimut, Avaya and [REDACTED]. Avaya,
21 Azimut and LiveVox are calling technologies, different calling
22 technology that PRA uses, and if we were arguing the TCPA
23 motion, I would be talking about them much more at much
24 greater length, but they're described in our briefs.

25 The difference between LiveVox on the one hand and

1 Azimut and Avaya on the other, is that LiveVox -- PRA
2 doesn't -- there's no LiveVox machine like there is an Avaya
3 machine. PRA doesn't own the software like it does with
4 Azimut. LiveVox is a stand-alone company, and it coordinates
5 the calls. So PRA call reps make the calls, those calls go to
6 the cloud, they go out through LiveVox. You can subpoena
7 LiveVox to get call records, and Ms. Hammett didn't do that.

8 THE COURT: And with -- and I understand your point
9 that she didn't do that. Obviously, I'll talk to her about
10 that also. But if she had done that, do I take it she may
11 have come back with significantly different things than what
12 is here in [REDACTED]?

13 MR. TREFIL: Well, what you'll find is this.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 THE COURT: Got it. Now, I understand.

18 MR. TREFIL: And what you'll see from the chart is
19 that the calls are all 2018 and 2017. There are no -- there
20 are no more recent calls. PRA switched over to full LiveVox,
21 so it virtually is full LiveVox at this point. So
22 additional -- there may be additional records from LiveVox
23 regarding Ms. Hammett's calls. I can tell the Court that I've
24 reached out to Avaya to see if they could -- I was trying to
25 duplicate this process for Avaya. Excuse me, for LiveVox. I

1 haven't heard back. The idea being that we want to make sure
2 that it's understood that there is nothing else out there.
3 There is, in fact, LiveVox still out there. Ms. Hammett
4 hasn't made a good-faith effort in discovery to obtain
5 anything from them, nor did she depose PRA at any point and
6 ask them any questions about this.

7 THE COURT: When you say LiveVox, she's known about
8 it since I think you said 2018, but maybe I'm wrong, how do I
9 know that? Where is that in the record?

10 MR. TREFIL: When PRA started using LiveVox? I'm
11 not sure that it's --

12 THE COURT: No, no. That Ms. Hammett has known --

13 MR. TREFIL: Oh, it's in our other documents we
14 produced to her in December of 20' -- excuse me. If I said
15 2018, I misspoke. Let me -- December of 2021.

16 THE COURT: Okay. So if -- the fact of LiveVox is
17 in the documents that you produced --

18 MR. TREFIL: Yes.

19 THE COURT: -- or the fact that you all use LiveVox.

20 MR. TREFIL: Yes.

21 THE COURT: Got it.

22 MR. TREFIL: I mean, had she served an interrogatory
23 asking us to identify our telephone service providers, we
24 would have identified LiveVox and [REDACTED], but she did
25 not serve that interrogatory.

1 So we have 14 hits, and all of which are duplicated
2 in the PRANET call history.

3 THE COURT: At different times, right? And I take
4 it your point is that you can't figure out why their times are
5 off from your times?

6 MR. TREFIL: The -- we haven't spoken to ██████████
7 ██████████ about it. The best our IT folks can figure, one,
8 you're dealing with two different system clocks, and there are
9 also differences depending on the time zone where the call was
10 made.

11 THE COURT: I got it. I understand.

12 MR. TREFIL: But for purposes of the 1692d claim, to
13 the extent Ms. Hammett says she needs additional discovery,
14 our response to that would be she didn't ask for it in the
15 first place. When we -- what she did ask for, if we objected
16 to, she did move to compel, and she did not -- she made no
17 effort to depose PRA to identify any additional documents that
18 she might need, there being a good-cause component implicitly
19 built into 56(d). You can't just sit on your hands until the
20 end of discovery and then say, I need more time to fight
21 sum -- to oppose summary judgment. That essentially turns the
22 56(d) into a motion for extension the Court denied yesterday.

23 THE COURT: So let me ask you perhaps an obnoxiously
24 technical question, but I'm going to do it anyway.

25 MR. TREFIL: I'll do my best.

1 THE COURT: Ms. Hammett filed her 56(d) request or
2 requested 56(d) relief in essentially her summary judgment
3 papers, or at the very least in a motion filed around that
4 time. This declaration, which is responsive to that issue,
5 obviously has been filed after the summary judgment briefing
6 and everything else. Why should I consider it as part of sort
7 of this go-round, as opposed to saying since it's beyond any
8 of the summary judgment response deadlines, I shouldn't
9 consider it this time around?

10 MR. TREFIL: You talking about this declaration?

11 THE COURT: Yes.

12 MR. TREFIL: Well, you know, this declaration was
13 just very recently completed. This was -- as I said, this was
14 a project, and it took some convincing on my part. But the --
15 I give the Court a very practical reason for considering it,
16 which is, that's the best she's going to get. So you can give
17 her more discovery, but she's not going to find anything.
18 There's nothing else out there, and that was the point of the
19 exercise.

20 THE COURT: Okay. Except potentially LiveVox stuff,
21 which we don't know one way or the other, and your arguments
22 there would be she knew about them way earlier and could have
23 asked.

24 MR. TREFIL: That's correct.

25 THE COURT: Okay. I understand your argument.

1 Anything else you want to talk about?

2 MR. TREFIL: In terms of the total motion?

3 THE COURT: Yes.

4 MR. TREFIL: Okay. Yes. Apologies, I do need some
5 more time.

6 THE COURT: Go ahead.

7 And Ms. Hammett, you will get as much time as you
8 need.

9 MR. TREFIL: In terms of the -- there are a couple
10 of side issues. There was the recorded line issue and the
11 fraud affidavit. I'm not entirely certain what the basis is,
12 why a reasonable juror would think it was harassing for a
13 business to call using a recorded line, especially when an
14 alternate line is made available.

15 In terms of the false, deceptive or misleading prong
16 of Ms. Hammett's FDCPA claims, that would be the e(10) and
17 e(13), we talked about this a bit, the -- in terms of her
18 partial summary judgment motion, she's basing it on a dispute
19 process letter and a meet and confer letter that Mr. Mitchell
20 discussed in his argument, neither of which is an attempt to
21 collect a debt.

22 There is a question about a backdating issue. I
23 would point out that: One, not material. Two, all we have is
24 Ms. Hammett's speculation that the letters were backdated.
25 She just, she saw the date and she saw when she got the letter

1 and assumed they must have been, but she never deposed PRA to
2 find out when the letters actually went out.

3 And as far as the using the LLC at the end of
4 Portfolio Recovery, case law is very clear we don't have to do
5 that. We're talking, you know, trade names or d/b/a's for
6 companies, and there's no evidence that there is any other
7 Portfolio Recovery Associates out there.

8 In terms of the outrage or intentional infliction of
9 emotional distress claim, the conduct here just doesn't rise
10 anywhere close to the level necessary. Ms. Hammett didn't
11 specify exactly what conduct she is and asked the Court to
12 glean the record for her, but here's what she says in her
13 motion. She talks about incessant phone calls, backdating
14 letters, causing cognitive dissonance. She talks about the
15 validation requested and that PRA shouldn't have mailed
16 anything after, because somehow it never validated the debt.

17 One, Ms. Hammett has implicitly abandoned her 1692g
18 claim. Two, the record evidence demonstrates that PRA did, in
19 fact, send her a "G" notice at the Erlanger Street address
20 that she has admitted to living at back in 2013, and received
21 no validation request from her in the 30 days required, so
22 that defeats that claim entirely.

23 And this third-party contact with Mr. Williams. To
24 put this in some kind of perspective -- and two cases, one an
25 Arkansas state case and one Judge Baker here in the Eastern

1 District, causing someone to be arrested isn't enough under
2 the Arkansas summary judgment equivalent in the Cordus
3 (phonetic) case in 1989, and Judge Baker found that alleged
4 wire fraud, falsified lease documents and fraudulent lawsuit
5 wasn't enough in Farm Credit Leasing. That was in 2021.

6 So even if you take all of her allegations as true,
7 it's just not enough to get you to outrage or intentional
8 infliction of emotional distress as a matter of law. It
9 simply isn't.

10 As far as the intrusion upon seclusion claim, there
11 are five elements outlined in our motion. Two of them are
12 key, the second and fourth. The second element is the
13 defendant intentionally intruded physically or otherwise upon
14 plaintiff's solitude or seclusion, and believed or was
15 substantially certain that he lacked the necessary legal
16 authority to do so. PRA's conduct, for the reasons we
17 describe, did not violate the FDCPA. It was legally
18 authorized. As the Court in Van Horn made clear, the FDCPA's
19 designed to protect legitimate collection efforts.

20 So the second prong of the intrusion upon seclusion
21 claim can't be met. PRA was --

22 THE COURT: So is your point that the number of
23 call~-- the frequency of the calls per day, at least if that's
24 what we're going on, the frequency of the calls per day, or
25 over the course of a month, or whatever, would have to be

1 essentially unlawful under the FDCPA in order for them to be
2 potentially actionable under this state law tort? Is that
3 right?

4 MR. TREFIL: I -- that's the way I read this
5 particular prong.

6 THE COURT: Okay.

7 MR. TREFIL: That the FDCPA, as discussed, not only
8 protects consumers, but it protects legitimate debt
9 collectors. It says, you can legally do -- you can -- if
10 someone owes you money, you can do things to collect on it. I
11 don't even want to, just talking about the First Amendment
12 issues involved here, but at the very least, you can do X, Y
13 and Z.

14 THE COURT: Although to be fair, just for the record
15 because I think it's fair, you haven't raised the First
16 Amendment as a defense to this, right?

17 MR. TREFIL: No, that's correct. Yes, we're not
18 raising any First Amendment challenge to the FDCPA.

19 THE COURT: Let me tell you my problem on this one,
20 or at least what I'm struggling with. There is a case, and I
21 don't know if you all have seen it, I don't think it was in
22 your brief. There is a case called CBM of Central Arkansas,
23 d/b/a Collection Consultants, Inc., versus Bemel, B-e-m-e-l,
24 and I believe it's 623 S.W. Reporter 2d 518, and it is from
25 1981. So it's a nice old case, but I don't -- but I don't

1 know that it has been sort of supplanted or updated, although
2 there are more recent cases, but I'm not sure there are more
3 recent cases that in some way overrule this or lessen its
4 viability. In that case, the tort of outrage was at issue,
5 but also, and perhaps more importantly for our question here,
6 the tort we're speaking about, which I guess I'll just say
7 invasion of privacy and intrusion upon seclusion.

8 There, there were 50 collection letters that were
9 sent, but the letters weren't really what was at least so much
10 in the Court's mind. The Court says something like, her real
11 grievance arises from about 70 telephone calls she allegedly
12 received during the period. And there, the period is about 10
13 months. She worked at her job until midnight and usually
14 slept until about 10:00 a.m., but over her protests, the
15 appellant's employees repeatedly called her home at
16 7:00 o'clock or later, awakening her. There were also many
17 calls at her place of employment, also over her objections.
18 She testified that the calls so upset her by causing
19 flashbacks. You don't have to worry about that part.

20 And then what I see it saying here is -- and, look,
21 there are -- there's other pieces of evidence, too. At one
22 point the caller misidentified himself intentionally. And so
23 the facts are not exactly one to one, but the Court basically
24 says, we need not consider the tort of outrageous conduct
25 discussed fully in the Restatement of Torts, because the jury

1 could have found a wrongful invasion of privacy. We recognize
2 such a cause of action in *Olan Mills v. Dodd*, and then it says
3 in *Dodrill v. Ark. Democrat Co.*, we quoted the basic
4 principles stated in 652(a) of the Restatement. This language
5 from Comment D of 652(b) supports the cause of action in the
6 present case.

7 And then they quote significantly from this
8 Restatement, and they say: "There's likewise no liability
9 unless the interference with plaintiff's seclusion is a
10 substantial one of a kind that would be highly offensive to
11 the ordinary reasonable man, as the result of conduct to which
12 the reasonable man would strongly object. There is no
13 liability for not" -- or, "thus, there is no liability for
14 knocking at the plaintiff's door, or calling him to the
15 telephone on one occasion, or even two or three, to demand
16 payment of a debt. It is only when the telephone calls are
17 repeated with such persistence and frequency as to amount to a
18 course of hounding the plaintiff, that it becomes a
19 substantial burden to his existence that his privacy is
20 invaded."

21 The trouble I'm having there is that these were 70
22 calls over 10 months, which is basically seven calls a month,
23 and here we're talking about something a bunch more. And so
24 I'm trying to figure out what to do with that case, you know,
25 given essentially that I'm kind of bound by it in this sense.

1 MR. TREFIL: Well, what I would say is that -- two
2 things I would point out. First is the case predates the
3 FDCPA, and it also predates the Cooms (phonetic) case that I
4 was discussing outlining the elements of the claim, the second
5 of which being that the necessary legal authority. So if you
6 combine those two together -- I mean, I'm just going off the
7 top of my head. We're more than happy to brief this if Your
8 Honor would like us to, but just going off the top of my head,
9 I would point out that what the Court was grasping for back in
10 1981 wound up essentially being the d(5) standard, conduct
11 with the intent to annoy, oppress or harass. Okay? And the
12 standard for -- the standards for those have -- you know, I
13 can't speak to the 70 in 10 months, but it's clear that courts
14 have, since the FDCPA was enacted, have considered what that
15 number means, and in particular in the debt collection context
16 it's important to remember that -- and this goes to the fourth
17 element, which is, you know, acting in a manner consistent
18 with an expectation of privacy.

19 When you spend someone else's money and don't pay it
20 back, there are consequences that come with that, and one of
21 the cases that we cited admittedly is a Kansas case, but it's
22 applying the context of the Second Restatement of Torts I
23 think made this point very clear. It said: "It must be
24 recognized the right to be left alone is qualified by the
25 rights of others. When one accepts credit, the debtor

1 impliedly consents for the creditor to take reasonable steps
2 to pursue payment even though it may result in actual, though
3 not -- even though it may result in actual, though not
4 actionable, invasion of privacy. In the debtor-creditor
5 situation, the right of a debtor to privacy is subject to the
6 right of a creditor to take reasonable steps to collect a
7 debt." That's the Lowe case, District of Kansas 2003.

8 And it's a -- this '81 case notwithstanding, the
9 point that I would make here is that PRA's actions conformed
10 at all times with the FDCPA. Under -- just applying the
11 straight elements of the intrusion upon seclusion claim,
12 they're legally authorized to do what they did, and, you know,
13 applying that, the standard from Cooms and FDCPA combined gets
14 you to where I think you need to be. And taking that also in
15 the context of the debt collection situation, where you have a
16 delinquent debtor, you know, arguing that -- you know, where
17 you wind up with a complaint because someone is making calls
18 to a delinquent debtor, to a certain extent they have invited
19 those calls.

20 THE COURT: Would you all do me a favor? Would you,
21 maybe in the next -- maybe 10 days from today, would you all
22 provide me a three-page, no more than three pages, a
23 three-page supplemental brief basically just sort of
24 explaining to me what I do with this case and why; whether you
25 think it's distinguishable on its facts, whether you think

1 it's distinguishable because of the emergence of the FDCPA and
2 also the Cooms case.

3 MR. TREFIL: Certainly.

4 THE COURT: Just a sort of, a short brief
5 explanation would help me.

6 And Ms. Hammett, I am going to give you seven days
7 from when they file their supplemental brief to file your
8 supplemental brief on the same issue, but only on this issue.
9 And it's -- this is just a pure legal issue. This is not a
10 fact issue, anything like that. So three pages just on this
11 particular case.

12 And, again, to be clear, it is CBM of Central
13 Arkansas versus Bemel, 623 S.W.2d 518, from the Arkansas
14 Supreme Court, November 9, 1981.

15 MR. TREFIL: Certainly, Your Honor.

16 THE COURT: Okay. I appreciate that.

17 Anything else?

18 MR. TREFIL: One final point in terms of the
19 plaintiff's request for time under 56(d). She asks about
20 physically inspecting PRANET.

21 THE COURT: Honestly I'm not really sure you need to
22 take your time on that one. I mean, you can if you want to
23 say something for the record, but I well understand your
24 briefing on this point.

25 MR. TREFIL: Okay. All right. No formal request;

1 extremely sensitive documents. The entire time I've
2 represented my client we've done one inspection, and that was
3 because it was an MDL, and the expert had to physically see
4 the equipment in order for his report to be okay. So I'll
5 be -- enough said.

6 THE COURT: Okay. Thank you.

7 Ms. Hammett, your turn. And, again, take as much
8 time as you need.

9 MS. HAMMETT: Thank you, Your Honor.

10 First, I did not receive the order that you -- it
11 sounds like you made an order that they received yesterday,
12 but because I was denied the access to eFlex, I don't hear
13 about things timely.

14 THE COURT: Okay. Can we print out a copy of the
15 order and give it to Ms. Hammett?

16 MS. HAMMETT: Thank you.

17 THE COURTROOM DEPUTY: Yes, sir.

18 THE COURT: And let's do it now.

19 THE COURTROOM DEPUTY: Okay. It's coming.

20 THE COURT: Ms. Hammett, if you want, you can wait
21 to read the order and then continue. It's totally up to you.
22 It's a short order.

23 MS. HAMMETT: Okay.

24 THE COURT: What would you like to do?

25 MS. HAMMETT: Do you want to just tell me what it

1 is?

2 THE COURT: Well, it's written, so I can go over it,
3 but would you like to wait to read it for two minutes and then
4 you can keep going? It's up to you. Whatever you want.

5 MS. HAMMETT: No, I'll start speaking.

6 THE COURT: Okay. That's fine.

7 MS. HAMMETT: I'm not -- I don't have this
8 organized, and I'm just kind of going through my notes.

9 THE COURT: Totally up to you, but if you want to
10 keep going, you can keep going. If you want to wait, we can
11 wait.

12 MS. HAMMETT: Okay. Thank you. You're so kind.
13 You are.

14 I did not abandon the claims 1692e(11), 1692g. I
15 was writing as quick as I could. I don't know if I missed
16 some of them, but in general, I know that I got to a place
17 where I had like a few more hours left, and I had to decide
18 how to use that before that was due. And I will make a little
19 complaint that they put my deposition, they rescheduled it to
20 be on the day that the summary judgment was due, and the fact
21 that I am not allowed to use the electronic filing, which is,
22 by the way, the only order that you've made that I really
23 disagree with completely, because it makes it -- it takes away
24 my time. And so I knew that I couldn't go to the deposition
25 on March 2nd and then drive home and finish up and drive back.

1 So, you know, you understand. I mean, you're nodding, so I
2 know you understand.

3 THE COURT: I understand your point.

4 MS. HAMMETT: Okay. I did get --

5 THE COURT: Hold on.

6 MS. HAMMETT: Okay. I'm sorry.

7 THE COURT: I understand your point.

8 If I recall correctly, I believe I gave you a bunch
9 of extensions to file your summary judgment papers, and I
10 understand you feel like you didn't get to it, and I get that,
11 but to be perfectly honest, it doesn't strike me that you
12 didn't have enough time to do it.

13 MS. HAMMETT: Okay. I did -- but, and if it was
14 completely a hundred percent my fault that I didn't plan my
15 time accordingly, and I can say this is my first time doing --
16 you know, so you understand.

17 THE COURT: That I understand.

18 MS. HAMMETT: Right. So I didn't know how to
19 apportion the time. But when I got to that point and I wrote
20 that comment, I'm just going to leave it at this, I actually
21 did have enough time to touch on almost everything after that,
22 and I did incorporate the statement of uncontroverted facts,
23 which sounds like a misnomer to me.

24 THE COURT: I saw your incorporation. That, I did
25 see.

1 MS. HAMMETT: Yes. And I was -- in that I was
2 thorough and was able to finish. And so all of my arguments
3 from that document show that I did not abandon those claims.

4 If you don't mind, I'll take a minute to read
5 this --

6 THE COURT: For sure. That's perfectly fine.

7 MS. HAMMETT: -- to see if it affects anything.

8 (Pause in proceedings.)

9 MS. HAMMETT: Okay. And what is the 56(d) request?

10 THE COURT: That is your request to get more time
11 for summary judgment so you can do more discovery.

12 So essentially just so you understand, the Court
13 understood you to be making two different requests. At one
14 point you made a request to extend the discovery deadline and
15 to get certain discovery. I -- that's what I addressed there
16 in terms of the extending the discovery deadline and seeking
17 discovery outside the time limits. There, I denied that
18 motion, but you will notice in that motion that I said that is
19 a different question from your 56(d) request, which is that
20 the Court should essentially put off ruling on summary
21 judgment and let you do some more limited discovery on certain
22 things, which I have yet to address and will address after
23 today after we hear argument.

24 MS. HAMMETT: Okay. Thank you.

25 So on the 1692e(11) about not identifying itself, my

1 complaint is that they didn't make a meaningful
2 identification, and the statute uses the word "meaningful
3 identification." And what they would say is not even what was
4 in their script, because their script does have them say that
5 they're with Portfolio Recovery Associates. They said each
6 time, hi, this is Risa (phonetic) Gore on a recorded line for
7 Laura Lynn, is she available. And so I would, if I didn't
8 hang up immediately, say, who is this. And you have the
9 recordings of some of those calls where I did say -- I said at
10 different times, don't call me on a recorded line, um, who is
11 this, no, who are you, things to that effect. So they were
12 not giving me a meaningful identification.

13 And I had all this other stuff going on in my life.
14 So I had stalkers, and I did have someone who was trying to
15 sue me, and that just got dismissed. But that's been six
16 years now. And so at that time it could have well been him,
17 and it could have well been my former spouse, who is still
18 spying on me for some reason.

19 So 1692g was -- did not provide the "G" notice.

20 I did not live at Erlanger. They keep repeating
21 that I lived there, and I have explained in my documents that
22 I never moved in. I -- you know, I put some utilities in my
23 name, apparently, and that's how they came up with that
24 address, but I didn't ever get mail there.

25 And so the way the communication is defined is that

1 it has to be received, and so they're saying, we sent you a
2 letter in 2013. Well, I didn't receive that letter, so there
3 was no communication.

4 In the conduct that was outside of the statute of
5 limitations for the FDCPA, which would be the Mike Williams.
6 First of all, Mr. Williams was a very good man, and I have no
7 regrets of having been with him. It just, you know, ended.
8 So he appears to me to be deceased. I tried finding him and I
9 can't. So, and he hasn't contacted me since back then, in
10 2014 I think it was. So I think he might not be with us any
11 longer. But, so it's not hearsay, I think, if he said it to
12 me and he's not here anymore to repeat it for the jury.

13 But the conduct that was outside of the statute of
14 limitations goes towards the outrage, and it was continuing
15 conduct.

16 THE COURT: So let me just make sure I understand.
17 So one of the things that I think I understand happened
18 outside the statute of limitations is this letter that was
19 sent to the address you said you didn't live at, right?

20 MS. HAMMETT: Yes.

21 THE COURT: Would you agree that that claim in and
22 of itself is off the table because it's outside the statute of
23 limitations, and, rather, it's really just sort of part of
24 potentially the outrage tort or something like that, or no?

25 MS. HAMMETT: If I'm understanding you correctly, I

1 don't think that the "G" notice requirement is outside the
2 statute of limitations, because they're saying, we did send
3 you the "G" notice back in 2013, and I'm saying, you needed to
4 send me a "G" notice in 2021.

5 THE COURT: Okay. Fair enough.

6 MS. HAMMETT: Okay. So they -- on the issue of the
7 calls and the number of calls and also where I was living at
8 the time, you'll notice a lot of calls, like hundreds made to
9 that number that ends in 2653. That number begins with 870,
10 which is blocked out so you don't see it, but 870 is an
11 Arkansas number. So they're being very deceitful to say that
12 they didn't have any idea I was living in Arkansas, because
13 they called Arkansas hundreds of times that they admit to,
14 and --

15 THE COURT: Were their calls to the 870 number, were
16 those at the same time that they called you those two
17 instances outside the 9:00 o'clock time? So when were the --
18 when were the -- if you remember, and if you don't, it's fine,
19 when were those two instances that they called you after
20 9:00 o'clock?

21 MS. HAMMETT: Those were to the 6000 number. So
22 those were the more recent ones. Those were inside the
23 statute of limitations.

24 THE COURT: No, I understand that. What time period
25 was that? When were those two calls, do you remember?

1 MS. HAMMETT: I think in 2021.

2 THE COURT: Okay. And when were these calls to the
3 870 number? Did they start before that?

4 MS. HAMMETT: Yes; they started about 2017? I think
5 about 2017, I'm guessing.

6 THE COURT: Okay.

7 MS. HAMMETT: I didn't know that the calls to the
8 870 number were from them. I pretty much just hit the delete
9 button, because they would go to my -- I had a landline just
10 for emergency use up in this little mountain town, and when I
11 got home, if it was blinking I would just, you know, play the
12 messages and delete, delete, delete, delete. If I had known
13 it was them, I would say that was annoying that they called so
14 often. I might have just thought that it was Mr. Petrazak
15 (phonetic).

16 One of the times that they have a recording of, they
17 called that 870 number, and someone who, I'm not certain it
18 was her, but I think it was a young lady who I allowed to stay
19 in my home for a week or so, and she said, she -- she'll be
20 back on September 11th. So they knew that I lived there or
21 that I would be back there for some reason, and that was I
22 think in 2017, around there.

23 They talk about the bona fide error. If a bona fide
24 error releases liability to all errors, then there's nothing
25 that's ever going to be a violation. And they're saying they

1 didn't know that I lived in Arkansas, but they did have my 870
2 number, and --

3 THE COURT: And just to be clear, that 870 number,
4 is that a cellphone or a landline?

5 MS. HAMMETT: That's a landline.

6 THE COURT: Okay.

7 MS. HAMMETT: And I obtained that landline in 2015,
8 and they found out about it. So they must have done an
9 inquiry sometime after 2015 to find the 870 phone number. And
10 at that time, they would have also seen the two addresses in
11 Arkansas. One was my P.O. box in Wood Springs, and the other
12 was the house number of where I was living.

13 THE COURT: And I understand your argument about the
14 young lady that answered the phone, but in the 870 calls in
15 2017 or 2018, did they ever reach you?

16 MS. HAMMETT: I don't know. And it's just a matter
17 of I don't have enough time to do everything, but I --

18 THE COURT: But there's no evidence -- you haven't
19 test -- I guess my question is you haven't testified that they
20 reached you on that 870 number, correct?

21 MS. HAMMETT: I just don't know the answer off the
22 top of my head, but there is -- they have provided about 47
23 recordings, and so I have to go crosscheck.

24 THE COURT: Okay.

25 MS. HAMMETT: Yeah.

1 THE COURT: I appreciate it. Go ahead.

2 MS. HAMMETT: Okay. About annoyance. So my voice
3 shows annoyance on the recordings. And, really, I'll just
4 tell them, you know, my whole opening statement. It's just
5 playing these recordings for the jurors, and I think that
6 the -- a reasonable juror is going to say that they were
7 annoying me. And, you know, I'm polite, but it's very -- you
8 know, I wear my emotions on my sleeve. And actually I was
9 completely surprised that I didn't hear me cussing at them,
10 but I know I felt like it, and I might have done it when, you
11 know, they weren't on the line. I hung up on them over and
12 over. That shows annoyance. You said I know it when I see
13 it. They should know it when they hear it.

14 One of the main things is I had a California phone
15 number, and so they're using that to say we thought she was in
16 California. Well, if they thought I was in California, then
17 they definitely were not allowed to call me on the recorded
18 line. And there is a little glitch, like what do you do, you
19 know, if you want to call somebody on a recorded line.

20 I remember having a conversation where an insurance
21 company called and wanted to take my statement when I lived in
22 California, and I distinctly remember, and this was about 20
23 years ago, but I distinctly remember them saying, okay, we're
24 going to record this call, if that's okay with you, and I
25 said, sure, so then they turned on the recorder. But they

1 weren't giving me that option. They were just calling and
2 saying, we're calling you on a recorded line, now talk to us.

3 And I don't know if you've had an opportunity. I
4 presented a letter at the end of the deposition on the second
5 day that was written by my son, and he mentioned in it that
6 his dad made him break into my house and steal my account
7 numbers and tax records and things like that, and there's
8 other incidents like that I -- if I need to go into more at
9 the trial. But basically I had stalkers and, you know, my
10 husband, my ex-husband's family, they would, I'm told, call a
11 doctor's office and say that they were me. So they're just
12 very intrusive, and that's what I thought it was.

13 So, and then they've said, and I'm quoting, by
14 delinquent consumer, so, of course, a delinquent consumer is
15 not going to -- is going to be annoyed if we call. Well, I
16 was not a delinquent consumer. They have not made any
17 validation that that debt existed. And so I don't think that
18 they should be doing this to anybody, but especially if they
19 can't validate the debt, then it makes it even more annoying,
20 like, and not identifying who they are. So even if I owed a
21 debt and they wouldn't tell me that they were a debt
22 collector, they're annoying me. And then their argument is,
23 well, we have to follow the third-party rule. But the third-
24 party rule they could use the bona fide defense on if, you
25 know, like I had told them, and it's in the recordings where I

1 say, yeah, this is Laura, you've got her, yeah, that's me, and
2 they continued to not tell me who they were. But, so to me,
3 that was extremely annoying and harassing.

4 And I think I put in my papers, if someone had done
5 that to me that knew me and kept calling me, I would
6 definitely have gotten a restraining order on them, but I
7 couldn't get a restraining order on PRA because I didn't know
8 who they were.

9 I asked my therapist, and it's not in her notes
10 that -- you know, because she doesn't make, like, notes about
11 everything that I say, but I asked her what she would do if
12 she was getting these calls, and she said she would actually
13 take a day off of work to make them stop, because she can't
14 have that kind of interruption, you know. And she -- I think
15 that she gets that, like every once in a while she would get a
16 phone call, you know, I would hear her phone beep or
17 something.

18 So the 15 calls -- and I did find in the deposition
19 that I had wrote one of the numbers wrong and it didn't make
20 sense, but I haven't had a chance to go back and find out, you
21 know, where my error was, but I think it's just some kind of a
22 typo. So there were 14 or 15 calls. They were in two months,
23 not in six months, because the six months covered before and
24 after November 18th. But whatever number of calls showed up
25 on the Verizon record you can multiply by three, because the

1 hang-ups or the voicemail calls don't show up on the Verizon
2 record. That's what Verizon told me.

3 So, and, you know, one of the issues apparently that
4 I'm going to have is proving that they made as many phone
5 calls as I say they did, where their own records that they've
6 generated and that we're supposed to take as the gospel is
7 different than my memory. And by watching the deposition and
8 maybe just speaking with me in here, you probably see that I
9 have an extraordinary memory, and I know how many calls I got.
10 There were a lot of them. And the reason that I --

11 THE COURT: How many calls are you saying you got?

12 MS. HAMMETT: I think that before November 18th, I'm
13 going to guess really easily 45, but that includes when I
14 didn't answer or if it went to voicemail, which is the same
15 thing.

16 THE COURT: And when you say before November 18 ...

17 MS. HAMMETT: That's only in the period that I was
18 being irritated, you know, and knew that it was them.

19 THE COURT: So I guess that's what I'm asking. When
20 would that start?

21 MS. HAMMETT: You know, I'm thinking that it was
22 probably just like a couple of months. Like that's why I only
23 got two months, you know, because when it started to bother
24 me, I noticed that it was just a couple months.

25 THE COURT: So ...

1 MS. HAMMETT: So like I didn't notice the calls in
2 2017, 2018. I didn't notice those ones going to the house up
3 in Wood Springs, but I very well noticed the ones, because I
4 was sick, I was stressed out completely, and I noticed that
5 when I started noticing the calls more was after I had quit
6 going to therapy.

7 THE COURT: And when would that have been?

8 MS. HAMMETT: That was in October of 2021. And so I
9 think that maybe the fact that I had -- and there is a
10 notation in my medical record where the therapist said, Laura
11 is not going to come see me anymore. I told her if she needs
12 to, come on back, so ...

13 THE COURT: Let me stop you just so I can get this
14 clear, because this may be my fault. I may be thinking about
15 something unclearly.

16 MS. HAMMETT: Okay.

17 THE COURT: I thought I heard you say, and maybe I
18 didn't, but I thought I heard you say that before November
19 2018 you got 45 calls. Is that wrong?

20 MS. HAMMETT: That's wrong.

21 THE COURT: Is it November 2021?

22 MS. HAMMETT: Yes.

23 THE COURT: November 2021?

24 MS. HAMMETT: Yes.

25 THE COURT: Okay. So hold on. Let me just ask some

1 questions.

2 So is what your -- I want to make sure. What you're
3 saying is that between the beginning of September 2021 and the
4 end of November, or November 18, 2021, you think you got 45
5 calls?

6 MS. HAMMETT: Yes.

7 THE COURT: Okay. Then what about after
8 November 2021?

9 MS. HAMMETT: I think that I got more calls than
10 they're fessing to. So I would guess about --

11 THE COURT: Do you know how many?

12 MS. HAMMETT: I would guess about a hundred is ...

13 THE COURT: And what time period is that in?

14 MS. HAMMETT: That was from November 18th until
15 February, I think it was February 18th when I finally had the
16 call that made them stop calling me.

17 THE COURT: Okay. Okay. I appreciate that. That
18 helps me.

19 MS. HAMMETT: So three months.

20 THE COURT: Okay.

21 MS. HAMMETT: So, yeah, I would say, you know, if it
22 was three months, it was probably, I'm overestimating in the
23 hundred. I would say it's probably about 80, because it
24 wasn't necessarily every day, but it was close to that.

25 THE COURT: Okay.

1 MS. HAMMETT: And the thing about the timing on it,
2 you know, the phone calls, and I told them that there was a
3 pattern, and that's how I knew it was them. So one reason I
4 know it was them is because after the February 18th call, when
5 they agreed not to call me anymore, I haven't gotten a single
6 call like that, or maybe one, but that -- you know, that was
7 like the end of it. So just by process of elimination.

8 And also the pattern. And they tried in the
9 deposition to figure out what I meant by the pattern, and
10 since that time I figured it out.

11 So I play poker a lot, and I play on my phone. And
12 so you can't see people bluffing, but a common thing -- well,
13 I just discussed this with my son yesterday, because he plays
14 well, too. And he said that what I figured out is actually a
15 tell that all the other good poker players know about, which
16 is that if you change up the pattern of the timing, then that
17 makes people think that you have something in your hand or
18 you're nervous, right?

19 And so I notice timing really well, and I use that.
20 I didn't know that other people were doing this, but I use it
21 to bluff by, I'll just pause. Like if I have not the best
22 hand, I'll make a long pause like I'm thinking about it, and
23 then I'll call them, and then they'll push all in and I win
24 the hand. So I'm very attuned to patterns, and it's just like
25 anyone who's good with music.

1 And so I heard them -- and that showed you're too
2 young to know about Name That Tune. Do you know it?

3 THE COURT: Well, I'm too young by about 10 years.

4 MS. HAMMETT: Okay. So that is how I knew that it
5 was them, because Name That Tune, it takes me like two words
6 and I could tell you who's calling me, and it was them every
7 time. I'm sure of it.

8 But, and then there's the fact that they dumped
9 their numbers. Because when I went to check the Verizon
10 numbers I didn't just check the ones that were from
11 November 18th, I checked the numbers afterwards, and the
12 numbers that they admitted to calling have been disconnected.
13 So all of a sudden every number that I can't identify has been
14 disconnected.

15 So the thing about the LiveVox, I just didn't know.
16 And so that's going to be on me, but ...

17 THE COURT: And when you say you didn't know, you
18 mean you acknowledge that they provided you that information,
19 you just hadn't looked through it to figure that out. Is that
20 right, or no?

21 MS. HAMMETT: No.

22 THE COURT: Okay.

23 MS. HAMMETT: It's that what they provided to me was
24 like their LiveVox manual, and honestly my eyes were glazing
25 over and I was falling asleep, and it was all technical, but I

1 didn't realize that was a telephone service provider. I
2 thought that was technology of how they answer and make the
3 calls. Like it talks about the one click or something, you
4 know. So, and that's why I just dropped the TCPA claims,
5 because even if I was right, I was dying the boredom, and I
6 think that the jurors would be, too.

7 So, but even without the full record from, you know,
8 what you and I think is going to be a telephone record, and
9 that I thought that would be provided, even without that, even
10 just taking the number of calls that they made, it's obvious,
11 I mean, from the number of times that they called the 870
12 number, that they are persistent. I mean, I have to say
13 they're probably more persistent and tenacious than I am, so
14 ...

15 Mr. Trefil, counsel said that there were lots of
16 calls hung up in the first minute. That's why the telephone
17 service providers didn't like them, because there's so many
18 calls hung up in the first minute. That goes back to the
19 pattern, and ...

20 THE COURT: I understand your point on the pattern.
21 I get it.

22 MS. HAMMETT: Okay. I'm just reading through my
23 list.

24 THE COURT: No, no, that's fine. I'm just telling
25 you I -- I'm not saying I agree with you, but I'm saying I

1 understand what pattern you're talking about.

2 MS. HAMMETT: Thank you.

3 So they talked about the letters being backdated
4 just being my imagination or something, but actually on
5 April 10th and 12th of 2022, I had conversations with PRA
6 representatives. I remember one of them was Risa Gore. The
7 other one I forget. I think her name was like Pashell
8 (phonetic) something. But they told me very explicitly that
9 those letters were sent out like two weeks after the date.
10 So, and one of them was the Laura Lyman letter, and they told
11 me in the phone call that they had made a notation on--- now,
12 I don't know if I'm going to get the dates right. I think it
13 was March 31st that they made a notation on PRANET that said
14 that they had made the mistake. And I didn't see that on the
15 PRANET record that they gave me, but they told me that it was
16 there.

17 And so, and that's the other reason that I don't
18 trust them, you know, because they're giving these PRANET;
19 that it doesn't talk about my bankruptcy, or my alleged
20 bankruptcy, but one of their representatives told me -- and I
21 asked her again to confirm, it says that I filed for
22 bankruptcy? Yeah, it says that you filed for bankruptcy. So,
23 you know, they probably just didn't want the people calling me
24 anymore, and whatever their reason, they put something false
25 into that record.

1 So, anyways, but on April 10th and April 12th, they
2 did tell me that those letters were backdated.

3 Oh, when he was discussing the case that we're going
4 to brief, he mentioned that the -- that it outdated the FDCPA,
5 and that makes me think that's why the FDCPA was created,
6 because they wanted to say, like, this is annoying, and
7 don't -- you know, don't make annoying calls, but ...

8 PRA's saying that when one accepts credit, one must
9 expect those kind of calls, and they're depending on the
10 alleged fact that I owed a debt, which they have inadequate
11 validation of.

12 THE COURT: Let me ask you this.

13 MS. HAMMETT: Yes.

14 THE COURT: Assume with me for a second -- and,
15 again, this is not necessarily going to be how it comes out,
16 but assume with me for a second that I conclude that they did
17 not violate the FDCPA in terms of annoying or harassing calls.
18 Just assume that for a second. Could you still win on your
19 invasion of privacy claim, or essentially are they tied
20 together because the invasion of privacy claim requires them
21 to be doing something they didn't have a legal right to do?

22 Now, I know you're saying, look, they didn't have a
23 legal right to do it; the FDCPA says they can't make annoying,
24 harassing calls. But if you lose on the FDCPA, do you
25 automatically lose on the invasion of privacy claim, as well,

1 or seclusion claim, as well?

2 MS. HAMMETT: I don't think I will lose on the
3 FDCPA, but --

4 THE COURT: That's a fair point.

5 MS. HAMMETT: Right. And for the summary judgment,
6 that's important, because I don't want you to decide what a
7 reasonable number of calls is, I want the jurors to decide.
8 And, but let's say that the jurors say, well, one call a day,
9 that's all right. I think I still have the outrage claim.

10 THE COURT: You may. The outrage claim may be
11 different. I'm talking really about the invasion of privacy
12 and seclusion claim.

13 MS. HAMMETT: Yes, I do think that I still have
14 invasion of privacy because they were recording me, and they
15 know that I did not want them to be recording me.

16 And one of them, one of the conversations that I did
17 have with them, I said, you know, you can't record me, and he
18 said, but we haven't verified who you are. Well, it doesn't
19 matter. If I'm some, you know, wrong number that they keep
20 calling and I'm not even Laura Lynn, then if I ask them to
21 stop calling me on a recorded line and not recording me, then
22 they have to stop recording me.

23 THE COURT: I understand your argument. I got it.

24 MS. HAMMETT: So I think that I've said way too
25 much.

1 THE COURT: I appreciate it.

2 I guess let me ask you this: Given the information
3 you've just been handed, and I understand it was recently, but
4 given the information you've just been handed by the
5 defendant, do you still think, in terms of your 56(d) request,
6 that you need extra time on this, or have you now sort of
7 gotten everything you're looking for?

8 MS. HAMMETT: I think I need extra time to look at
9 what was just handed to me. And I'm not good at technology,
10 and this is all new, and so, and I'm very nervous right now.
11 I'm not thinking on my feet. So I would like to look at it
12 and see what the relevance is.

13 A different question, though, is let's say that
14 there is no record. That's what it's boiling down to in my
15 head right now is that I'm not going to be able to find a
16 record of exactly how many calls were made. I think that a
17 jury will believe me, because everybody I've told this story
18 to does.

19 THE COURT: That's a different question, and I get
20 your point on that. I'm really more just trying to ask about
21 the 56(d) part, which is the, I shouldn't consider summary
22 judgment now, I should wait for you to do more discovery, and
23 the particular more discovery is what you've talked about in
24 your 56(d) request, which is the phone logs and potentially
25 the going to inspect their documents.

1 MS. HAMMETT: Okay. I think that -- and I'm very
2 confused about the whole, like, you denied the request for an
3 extension on discovery in general, but it is okay for the
4 56(d). So I'm going to have to go study and see.

5 I will say you could start thinking about this,
6 because like I was just saying, even if -- even if they only
7 had the 247 phone calls to me, I think that's enough to
8 withstand summary judgment.

9 THE COURT: Okay. Okay. I understand your answers.
10 I appreciate them.

11 Defendants, anything further?

12 MR. TREFIL: Two very minor points.

13 First, regarding the bona fide error issue, the
14 calls to the 870 number, the calls to the Wood Springs address
15 in Arkansas, neither one of them was outside time. The two
16 calls that came after 9:00 o'clock, both about 15 minutes
17 late, both went to a 760 phone number, which is California.

18 THE COURT: No, I get that.

19 I guess the question I have on that front, though,
20 is if you were calling at some point prior to these
21 9:00 o'clock calls, if you were calling the 870 number, which
22 is an Arkansas number, that would suggest perhaps you had some
23 reason to believe that she was in Arkansas. And so obviously
24 in today's world people take cellphones wherever they happen
25 to live. And so if you had some sense that she might be in

1 Arkansas, in order to call the 870 landline, why, when you
2 called the cellphone, wouldn't you have sort of put the two
3 restrictions, the central time zone and the western time zone
4 restrictions in?

5 MR. TREFIL: I mean, I don't think the bona fide
6 error defense requires that. I mean, in this particular
7 circumstance you had a California number with a California
8 address of record.

9 The other point that I would -- the other point that
10 I would make, again, Reg. F does not apply, but under the new
11 Reg. F safe harbor for this particular issue, this would
12 absolutely fall within the safe harbor. PRA's address of
13 record for the plaintiff was in California. The calls were
14 made within the correct timeframe for California. That would
15 bring it within the Reg. F safe harbor.

16 THE COURT: And when you say "address of record," is
17 that something you all come up with? I mean, how does
18 someone's address become an address of record?

19 MR. TREFIL: There -- from a collector's point of
20 view in this situation, when I'm referring to address of
21 record, PRA does its best to identify the address where they
22 think the plaintiff is, period. And that can -- you know,
23 that can be hearing from the plaintiff, that can be getting
24 correspondence from plaintiff with return address, that can be
25 changes in information that they receive from third-party

1 vendors, but it's often a mix of multiple different pieces of
2 information, and they have to do the best they can. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 THE COURT: And I guess that's what my concern is.
7 And, again, I know Rule F didn't retroactively cover this, but
8 let's assume Rule F was fairly good evidence of what was
9 required before Rule F in terms of the case law. I guess it's
10 a little strange to me that you all get this safe harbor if
11 you're calling the time zone for the address of record, but
12 you're all the one who -- but you're the ones who get to
13 determine what the address of record is, and there's no sort
14 of requirement that says the address of record has to be "X".
15 It's kinda, hey, you guys give it your best thought, and then
16 if you call that, we'll give you the safe harbor.

17 Do you see what concern I have?

18 MR. TREFIL: Well, my client would be very happy if
19 there were some, you know, centralized depository that had a
20 record of -- you know, a record that they could rely on and
21 say, this is it. They don't get to do that. They have to
22 work with a lot of different pieces of information and figure
23 out what makes -- what is the most likely phone number, what
24 is the most likely address, so that they can make contact --
25 you know, so that they can most efficiently reach the people

1 that they're trying to reach.

2 THE COURT: But would you agree, at least assuming
3 we apply Reg. F or what it sort of portended, would you agree
4 that you all, in order to get the safe harbor benefit, you all
5 would at least have had to make a reasonable decision as to
6 what the address of record is? Now, I'm not saying you
7 didn't. I'm just saying as a legal matter, would that
8 decision have had to have been a reasonable one for you to
9 gain the benefit of the safe harbor?

10 MR. TREFIL: And in terms of Reg. F, I think the
11 reasonableness is baked in. I mean, it doesn't make sense for
12 my client to consciously pick a wrong address. They're going
13 to try to find the right address. They're going to do
14 everything they can to figure out where they think these
15 consumers are. That's their business. That's what they do.

16 You know, if an account goes dormant for a long
17 time, like Ms. Hammett's did, they're not really actively
18 pursuing new addresses. They're not looking for new things.
19 And when you have a situation like in Ms. Hammett's case,
20 where she actively tried to conceal the fact that she was
21 moving to Arkansas, for stalkers or for whatever reason, but
22 it -- you know, it is completely understandable that PRA's
23 address for her would not have changed up until the time
24 Ms. Hammett herself told them.

25 THE COURT: And I get that some of this is a

1 function of sort of both bureaucracy and technology, not in a
2 bad sense, but both bureaucracy and technology, but I guess
3 let me tell you why I'm a little bit uncomfortable in terms of
4 the story it paints.

5 So you call California cellphone all the way back in
6 the day. Then there's a lull. And I'm painting in broad
7 strokes here. Then there's a lull. Then at some point, I
8 think we're talking about 2015, 2016, 2017, at some point you
9 start -- and maybe I'm wrong on my years, and if I am, just
10 tell me. At some point you start calling, among other
11 numbers, this 870 number, which is an Arkansas landline,
12 suggesting at that point you think she may be in Arkansas.

13 After that you say, well, at some point you say, you
14 know what, let's take a shot in the dark, let's try this
15 old -- this old number we had for her on the cellphone that's
16 from California. Given that people can bring cellphones
17 wherever they live, I guess what I'm trying to figure out is
18 if you thought she was in Arkansas for purposes of calling the
19 Arkansas landline, why wouldn't it be most reasonable to
20 assume that even if she has a cellphone, it's in Arkansas,
21 meaning not an Arkansas number, but she's physically in
22 Arkansas with it --

23 MR. TREFIL: Okay.

24 THE COURT: -- why wouldn't that be the requirement
25 for you to sort of get this bona fide exception?

1 MR. TREFIL: Well, because you're looking at it,
2 it's sort of you're looking at it from the result side, you
3 know, back. From PRA's perspective, they had a California
4 address and a California phone number. It's a cellphone
5 number admittedly. Now, they call more than one number for
6 many, many consumers, and just because they have an Arkansas
7 number doesn't mean they have any necessary idea that she is
8 located in Arkansas. In fact, they had no address for
9 Arkansas from her on their file at the time until Ms. Hammett
10 advised them of it. But they get a phone number, and they
11 think -- they get a phone number, and they think it's a
12 landline, but, you know, you're also not entirely sure.
13 They're getting information -- it's not like they can go to
14 the consumer and say, give me this, give me the phone number
15 and tell me exactly what it is. They're making their best
16 guess off of this information.

17 So they have an address and a cellphone number that
18 match California, and they have -- there's an Arkansas phone
19 number that might work. So they're calling that, too. All
20 right. They don't call the -- they know the Arkansas number's
21 a landline, so they don't call that one -- they call that one
22 within the appropriate Arkansas time. But as far as the
23 California numbers are concerned, they -- you know, PRA
24 thought she was still there. There was a possibility --

25 THE COURT: Were they calling them at the same time?

1 MR. TREFIL: Yes.

2 THE COURT: So, see, that's -- I guess this is --
3 that's part of my concern. If they're calling them at the
4 same time, it's hard for me to understand that they thought
5 she was in Arkansas and California at the same time.

6 Now, I -- what I'm getting the feeling of and what I
7 want you to push back on if it's wrong, is, look, this process
8 is all automated, so it's really not, you know, one person
9 talking to the other person and sort of deciding, you know,
10 well, they're in Arkansas, they're in California. The point
11 is if there's a California number, they're going to use the
12 California time. If there's an Arkansas number, they're going
13 to use the Arkansas time.

14 I guess what I'm trying to figure out is whether
15 that's good enough to take part in the bona fide exception or
16 to qualify for the bona fide exception. And it's a little bit
17 hard for me, I mean, right? It's sort of like particle versus
18 wave. It's a little bit hard for me to assume that it's okay
19 for PRA to say, we think you're in Arkansas and we think
20 you're in California at the same time. It's either one or the
21 other, or we're not sure. And if the answer is, we're not
22 sure, then why aren't both time restrictions put in?

23 MR. TREFIL: Well, they're -- put yourself in the
24 collector's shoes. You're going along and you have a
25 California number and a California address. Then all of a

1 sudden this number pops up from somebody. Some third-party
2 source gives you a phone number that happens to be a number in
3 Arkansas that you think is probably a landline. You don't
4 make any -- you don't make any contact with the plaintiff with
5 this number. You're calling it just because it's a possible
6 lead, but your best -- your best, I don't want to say guess,
7 your best assessment for the plaintiff's location based on the
8 information that you have is California, period, based on the
9 phone number and the address, and, you know, that's how you
10 set your time window for the calls.

11 THE COURT: Okay. Am I right, by the way, that
12 there is no evidence in the record that on the 870 number you
13 ever actually got ahold of the plaintiff?

14 MR. TREFIL: That's correct.

15 THE COURT: Or there's no record evidence of this
16 friend, that, you know, you got ahold of this friend, and the
17 friend said, she's coming back in September, or am I wrong
18 about that? And when I say record evidence, I include
19 testimony, you know, deposition testimony.

20 MR. TREFIL: Right.

21 Well, I believe there's no record evidence on the --
22 I -- we didn't get in touch with plaintiff through that
23 number. She didn't realize that the -- as she's testified,
24 she didn't realize those numbers came from us until we
25 actually gave her our call history.

1 In terms of this friend, I -- my apologies, I can't
2 speak to that.

3 THE COURT: I'll go back and look to the deposition,
4 but I take it that if it's going to be anywhere, it's going to
5 be in the deposition?

6 MR. TREFIL: It would be in the deposition.

7 THE COURT: Fine.

8 MR. TREFIL: And then the last point I want to make
9 is -- just has to do with an understanding of why PRANET keeps
10 as full and complete records as it does; why, from the get-go
11 I could have told you that PRANET call history was going to
12 contain every possible thing that's out there. And the reason
13 is this, you know. As the plaintiff continues to discuss,
14 and, you know, Your Honor and I discussed a bit, PRA is
15 subject to regulation by the CFPB. It's also subject to
16 regulation by 50 state attorneys general. These regulatory
17 agencies can knock on PRA's door at any time and say, show me
18 what you got. Give me the documents that show "X". Show me
19 how you're implementing Reg. F. Okay? That's a popular one
20 these days. But at any point in time they can ask for
21 documents about anything, and it is in PRA's major interest to
22 comply.

23 So PRA keeps the kinds of records it does because it
24 has to. Not because of any particular consumer or any
25 particular piece of litigation, but because it's a major

1 player in one of the most heavily regulated industries in the
2 country. All right? So, I mean, the thought that PRA would
3 alter its records for -- even if this were a \$2 million
4 case -- and it's not, but even if it were, that's nothing
5 compared with what would happen if the CFPB found record
6 evidence that PRA was manipulating evidence of that sort.

7 So I just wanted to get that point on the record.

8 THE COURT: Fair enough.

9 I appreciate everybody's argument today. It has
10 helped me significantly think about all of this stuff. Let me
11 say a couple of things.

12 Number one, as I said at the beginning, I will most
13 likely issue a consolidated order on these. It is going to
14 take me a while. I need to think about all of this. So don't
15 expect something tomorrow, next week, two weeks from now.
16 It's going to take a little while.

17 Number two, the record is closed. The fact record
18 for summary judgment is closed. Nobody is to provide any more
19 factual information. The way this works is obviously there
20 was discovery, there were summary judgment motions, there was
21 a response. At this point everything is submitted until I
22 decide all of these motions.

23 Now, part of that, of course, is my deciding the
24 56(d) request. And so if I decide that there needs to be more
25 discovery before I can decide the summary judgment motions, I

1 will let you all know, and then I will give you time to
2 provide me more facts after that discovery. But until I make
3 that decision, the record is closed.

4 Similarly, let me ask you all, while I cannot demand
5 it, let me ask you all to do me a huge favor and not file any
6 more legal motions. Obviously if they're filed, and if it's
7 something that I need to respond to, I will, but at this point
8 what I want to concentrate on are the pending motions in front
9 of me, and at the point where I get done with these pending
10 motions, depending on how I decide several of them, we will
11 either start moving forward, or we will be done, or I will ask
12 for more briefing, or I will ask for more facts.

13 So at this point I have what I need. I have what,
14 under the law, I can consider, and I do not need anything else
15 except for the three-page supplement that I have asked each
16 party to provide me.

17 Does that make sense, defendant?

18 MR. TREFIL: It does, Your Honor.

19 We do have -- the IME is scheduled for May 6th. Are
20 we allowed to proceed with that?

21 THE COURT: Yes. That, from my previous ruling,
22 that is something you will all proceed.

23 Now --

24 MR. TREFIL: You haven't ruled yet.

25 THE COURT: I -- what'd you say?

1 MR. TREFIL: You haven't ruled yet obviously on
2 whether that's admissible, but ...

3 THE COURT: I have not ruled yet on whether it's
4 admissible. I haven't ruled on the deadline issue, all of
5 that. But you all can proceed with that. My point is I don't
6 need any more stuff.

7 Does that all make sense?

8 MR. TREFIL: It does, Your Honor.

9 THE COURT: Does that make sense to you, plaintiff?

10 MS. HAMMETT: Yes.

11 THE COURT: Okay. Very good.

12 Anybody have any other, not substantive argument,
13 but questions for clarification or anything like that?

14 Defendant?

15 MR. TREFIL: No, Your Honor.

16 THE COURT: Plaintiff?

17 MS. HAMMETT: No, Your Honor.

18 THE COURT: Okay. We are adjourned. Thank you all
19 very much.

20 (Proceedings concluded at 1:39 p.m.)

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I N D E X

Motions Hearing 2

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E X H I B I T S

(None.)

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CERTIFICATE OF REPORTER

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter.

Dated this 19th day of JULY, 2022.

/s/Stephen W. Franklin

Stephen W. Franklin, RMR, CRR