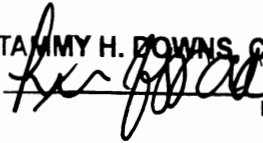


**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

JUL 19 2023

TAMMY H. DOWNS, CLERK  
By:  DEP CLERK

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

LAURA LYNN HAMMETT, an )  
individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PORTFOLIO RECOVERY )  
ASSOCIATES, LLC, a Limited )  
Liability Company; DOES 1-99 )  
 )  
Defendants )  
 )  
 )  
\_\_\_\_\_ )

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

RESPONSE AND OBJECTIONS TO [240] DEFENDANT’S MOTION FOR  
TAXABLE COSTS, [241] BILL OF COSTS, [242] BRIEF IN SUPPORT

1. Defendant Portfolio Recovery Associates, LLC (“PRA” or “defendant”) filed a Bill of Costs on June 29, 2023. (Dkt. No. 241)
2. The defendant filed concurrently a “Motion for Taxable Costs” (“PRA Motion”) and brief in support (“BIS”). (Dkt. No. 240 and 242, respectively)
3. Plaintiff reserves her right to file a bill of costs dependent on the outcome of the appeal.
4. PRA should take nothing for costs, for these reasons:
  - a) The Court’s erroneous agreement with PRA that Hammett owed \$2,297.63 to Capital One or PRA as its successor, means plaintiff prevailed.
  - b) 28 U.S.C. 1920 and FRCP Rule 54 was preempted by 15 U.S.C. 1692(k) and does not apply.
  - c) FRCP Rule 68 is unconstitutional on its face and as applied.
  - d) FRCP Rule 68 does not apply to judgments in favor of the defendant.
  - e) PRA multiplied the costs of litigation for all involved.
  - f) The prohibition for pro se electronic filing is unconstitutional on its face and the Court multiplied the costs for Hammett by its imposition.
  - g) Hammett is on the brink of section 7 bankruptcy due to no fault of her own and any writ of judgment against her will be the tipping point.
  - h) Should the Court decide to award costs to PRA, the amount of costs should be adjusted to exclude most of the copy fees to Pivot.

- i) An award of costs is inequitable under the circumstances of this case.

**Section a. Plaintiff prevailed, according to the opinion of the Court.**

5. PRA claims it is prevailing party, while claiming it “waived” \$2,297.63 “in light of the litigation”. Plaintiff is appealing the conclusion that PRA waived the debt, because no debt was owed. But, if the conclusion is upheld on appeal, then Plaintiff prevailed.

6. “A ‘prevailing party’ is one that obtains a judicially sanctioned, material alteration of the legal relationship of the parties. *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Resources*, 532 U.S. 598, 601, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001).” *Coates v. Powell*, 639 F.3d 471 (2011) “[O]nce plaintiff has won success on single substantial claim, he qualifies as prevailing party. 42 U.S.C.A. §§ 1983, 1988.” *Oldham v. Ehrlich*, 617 F.2d 163 (1980).

7. While the Federal Courts in the Eastern District of Arkansas do not consider a non-judicially sanctioned settlement a plaintiff prevailing, this alleged monetary concession was not by settlement and was in response to Plaintiff filing suit, and it was erroneously sanctioned by the Court. [173] at 20 and f.n. 196

8. Plaintiff made these allegations in [1] the Complaint. “She was extremely worried then that PRA was trying to collect on a non-existent debt.” ¶ 89. “During

the conversation Hammett said she had no debt. She repeated emphatically ‘I have no debt’.” ¶ 113.

9. PRA admittedly sent its first letter indicating its investigation was complete and it was closing the account in response to the complaint. Hammett obtained her first litigation objective. [173] at 20

10. A reasonable juror might agree with Hammett that setting the balance to zero was an admission and not a waiver, and she gained nothing by it. But, as here, when the Court errantly decides there is no genuine dispute to the claim of waiver, the Court, to be consistent, must view the plaintiff as prevailing party. The defendant cannot unilaterally waive the debt and be considered prevailing party. That is like an alleged thief returning stolen property then claiming he never stole the property but returned it “in light of the criminal charges”.

11. It is notable that PRA filed a response to Hammett’s complaint to the CFPB on July 17, 2023 that contradicts PRA’s statements to this Court. “In response to [Hammett’s] dispute, we closed the PRA account ending in 6049 and ceased all communications regarding collection of the PRA account unless otherwise permitted or required by applicable law.” (Aff. ¶ 2, Exhibit A)

12. PRA told this Court the account was closed in response to the litigation, not in response to the dispute. PRA told this court it responded to the dispute by sending the fraud / identity theft letter that still showed a balance of \$2,297.63.

13. Because the Court believed the lie PRA told it, the Court must also believe that Hammett gained value an an alteration of the legal relationship in her favor, i.e. prevailed, by the waiver of \$2,297.63.

**Section b. 28 U.S.C. 1920 and FRCP Rule 54 were preempted by 15 U.S.C. 1692(k) and do not apply.**

14. Congress singled out the circumstance of an alleged FDCPA violation as a case where application of cost shifting at the discretion of the Court should only be used when the plaintiff brought the action in bad faith and for the purpose of harassment. (15 U.S.C. §1692(k)) There was no bad faith on the plaintiff's part. (Aff. ¶ 3)

15. A district court has substantial discretion in awarding costs to prevailing parties under Fed.R.Civ.P. 54(d)(1) and 28 U.S.C. § 1920. *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (2006). The discretionary authority found in Rule 54(d) is not a power to award beyond what is statutorily allowed. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 442 (1987). "Rather, it is solely a power to decline to tax, as costs, the items enumerated in § 1920." *Id.* (as per order in *Anderson v. Family Dollar Stores of Arkansas, Inc.*, ARE Case No. 3:07-CV-00110-JMM)

16. "[W]here the antagonists are very unevenly matched in size, resources, and stability, it would be unfortunate to use the possible taxation of costs as a sword of



Damocles....” *Boas Box Co. v. Proper Folding Box Corp.*, 55 F.R.D. 79, 81 (E.D.N.Y.1971), cited in *Pittari v. American Eagle Airlines*, 243 F.R.D. 317, USDC W.D. Arkansas (denying costs under Rule 54(d))

17. A lawsuit between Plaintiff and PRA is like David taking on 1,000 Goliaths. (Aff. ¶¶ 4, 5)

**Section c. FRCP Rule 68 is unconstitutional on its face and as applied.**

18. Forcing a Plaintiff to settle a claim without offering any discovery beforehand violates the right to due process guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution. There is no way Plaintiff could have known that Defendant would alter its business records, lie about when it started calling the plaintiff’s cell phone, withhold documents that were requested and produce the single account statement eight months after the OOJs were made. There was also no indication that PRA would assert that it “waived” the alleged debt. And there was certainly no indication that the Court would ignore the defendant’s blatant misconduct, misquote plaintiff in favor of the defendant, and fail to assess the evidence accurately. (Aff. ¶ 7)

19. Plaintiff knew the amount and character of the debt PRA attempted to collect was a misrepresentation and knew filing a lawsuit would make PRA cease its collection efforts permanently but could not know what a jury of her peers would consider just compensation for the emotional distress and invasion of

privacy PRA caused. Plaintiff could not know if the jury would find punitive damages to be \$1,000,000 or \$82,000,000 as in *Mejia*. Therefore, she opted to continue to trial or until PRA offered an amount closer to the lower expected punitive damages, or at least the actual damages comparable to actual damages for emotional distress in *Mejia*. (Hammett suffered quite a bit more than Mejia, as Mejia had representation and Hammett had to face the Goliath company on her own.) (Aff. ¶ 8)

20. Plaintiff knew she might lose by being “out-lawyered”, (see [19] FRCP Rule 5.1 Constitutional Challenge to Rule 68 Offer of Judgment: Equal Access to Justice and [20] Notice of Motion that is a FRCP Rule 5.1 Constitutional Challenge to Rule 68 Offer of Judgment: Equal Access to Justice). The Court ordered [43] that the challenge was not ripe. Plaintiff was told to wait until her fears were realized before asking the Attorney General for his opinion and assistance.

21. These proceedings verified an affirmative response to the Constitutional questions asked:

22. Does FRCP Rule 68 infringe on the rights of the economic classes other than the wealthy to Due Process and Equal Protection Under the Law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution? Yes.

23. Do attorney fees awards that shift fees only to those who can afford an attorney up front violate the Equal Protection of the lower economic classes guaranteed by the Fourteenth Amendment to the United States Constitution? Yes.

24. "No person shall ... be deprived of life, liberty, or property, without due process of law." V.

25. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." XIV

26. "On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." (emphasis added) (15 U.S.C. § 1692k(a)(3))

27. Rule 68 provides for costs, even if the action is not brought in bad faith. "Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made." (FRCP Rule 68(d))

28. The legislature recognized the bullying that debt collectors like the Defendant do. "Abusive practices -There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.



Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." (15 U.S.C. § 1692(a)(a))

29. The legislature recognized the inadequacy of existing laws including FRCP Rule 68. "Existing laws and procedures for redressing these injuries are inadequate to protect consumers." (15 U.S.C. § 1692(a)(b))

30. The FDCPA was amended in 2010. "As amended by Public Law 111-203, title X, 124 Stat. 2092 (2010)". FRCP Rule 68 was amended in 2009. "Amended[] March 26, 2009, effective December 1, 2009." (Fed. R. Civ. P. 68) Therefore, the FDCPA supersedes FRCP Rule 68.

31. "One of the purposes of discovery is to eliminate unfair surprise." Doe v. Young, 664 F.3d 727 (8th Cir.2011) As of the OOJ, Portfolio Recovery Associates, LLC had not provided any evidence supporting a factual or reasonable defense for their actions to Plaintiff and Plaintiff has found several instances in which the defendant had paid settlements and verdicts that far exceeded the OOJ. It would be unjust to let PRA ambush Plaintiff into paying the debt buyer's costs, by presenting evidence after the OOJ costs began to accrue.

**Section d. FRCP Rule 68 does not apply to judgments in favor of the defendant.**

32. In *Delta Air Lines*, the Supreme Court held that Rule 68 does not apply to judgments in favor of the defendant. 450 U.S. at 352, 101 S. Ct. at 1150 (explaining that Rule 68 “applies only to offers made by the defendant and only to judgments obtained by the plaintiff” and not to cases where “it was the defendant that obtained the judgment”); see also *Marx v. Gen. Revenue Corp.*, 668 F.3d 1174, 1182 (10th Cir. 2011) (“Rule 68 applies only where the district court enters judgment in favor of a plaintiff for an amount less than the defendant’s settlement offer.” (citation omitted)(As per order in *Sims v. State Farm Mutual Automobile Insurance Company*, ARE Case No. 4:13-CV-00371-JLH) “The United States Supreme Court has held that ‘it is clear that [Rule 68] applies only to offers made by the defendant and only to judgments obtained by the plaintiff,’ and ‘does not apply to judgments in favor of the defendant.’” *Pittari*.

33. PRA’s attorneys know or should know that asking for costs for a judgment in favor of defendant based on Rule 68 was a waste of time and it was only done to increase Plaintiff’s anxiety.

**Section e. PRA multiplied the costs of litigation for all involved.**

34. Instead of letting the case go to jury, PRA rolled out the lies and deceit.

35. This Court’s order on Plaintiff’s Motion under Rule 11 shows that the Court is not the least bit concerned that PRA lied. That is an error.

36. “Neither witness immunity nor litigation immunity barred Fair Debt Collection Practices Act (FDCPA) claims based on the alleged falsity of statements made [by creditors], as the common law doctrines of witness immunity and litigation immunity were abrogated by the FDCPA. *Fair Debt Collection Practices Act*, § 807, 15 U.S.C.A. § 1692e.” *Eckert v. LVNV Funding LLC*, 647 F.Supp.2d 1096 (2009)

37. “Under the Fair Debt Collection Practices Act (FDCPA), if an attorney can be liable for litigation activities, which include filing an affidavit containing misrepresentations, then certainly the debt collector is subject to the same liability. *Fair Debt Collection Practices Act*, § 807, 15 U.S.C.A. § 1692e.” *id.*

38. The need to file this suit and go through the proceedings, and the emotional distress and physical toll it took on Plaintiff are all damages that arise from PRA’s violation of the FDCPA. (Aff. ¶ 9) PRA’s duty to tell the truth about the account and its collection activity did not end when the suit was filed.

39. PRA altered business documents. The business documents are contradictory on their face and where employees from PRA and Capital One said otherwise on a recorded line.

40. PRA said it did not call the -6000 number in the months leading up to November 18, 2020. [164] Exhibit 12 redacted. The reasonable explanation for telling this lie is that PRA did not want to play the recordings of Hammett begging

and pleading with the representatives to identify who they worked for and to stop calling. Whose version of the events is true is a matter for the jury to decide.

41. There is no reasonable explanation for why Hammett would take a full minute to set up a recorder had she not received numerous calls prior to November 18, 2020. (Aff. ¶ 10)

42. Hammett received no debt collector calls since February 18, 2021, except one to a person named Laura Lynn whose birthday is August 19, 1962 and one to a person named Liz Lynn, the same name as Hammett's former daughter-in-law who received a debt collection notice from Capital One Bank at Hammett's mailing address on Garnett in San Diego. (Aff. ¶ 11)

43. Ten calls that PRA admitted to making on its self-generated call record but marked as going to voicemail registered on Hammett's Verizon records. Other calls that PRA said went to voicemail did not show on the Verizon records. PRA spoiled the recordings of these ten calls, which carries the inference that what was said on the calls would hurt PRA's case.

44. During Plaintiff's deposition, when Plaintiff started giving specifics about telephone calls, PRA called a break. Upon returning, PRA demanded to change the subject completely and not let Plaintiff talk about the calls logged and transcribed. [164] at page 59 and 60.

45. The data load document generated by PRA shows an interest rate of “00.000” but the one statement provided shows an interest rate of 29.40%.

46. PRA paid Dr. Sanjay Adhia to lie about what was said in a defense medical exam and make a diagnosis that contradicted the diagnosis of Hammett’s procession of competent healthcare providers over the course of a decade, based on a five-hour interview in which the doctor fell asleep! PRA is wholly responsible for the multiplication of the proceedings. (Aff. ¶ 12)

47. PRA made a personal attack on Hammett by inventing illegal online gambling activity that ended in losses for Hammett. Hammett published a book subtitled “What it Takes to Play Poker Without Losing Your Assets” and PRA’s impertinent claims tend to undermine Hammett’s credibility. (Aff. ¶ 13)

48. Note that in a case cited by PRA, *Concord Boat Corp. v. Brunswick Corp.*, 309 F.3d 494, 498 (8th Cir. 2002), Rose Law Firm represented Concord. Concord prevailed at the District Court (ARE). The judgment was reversed on appeal. The District Court said the case “was arguably the most extensive pre-trial phase in the history of litigation in the Eastern District of Arkansas. Rose Law Firm is no stranger to long drawn-out litigation. The difference is that this case is not at all complex.

49. The Mejia case against PRA shows a pattern and practice of refusing to make disclosures, filing false affidavits, and making extortionist threats to disclose



irrelevant facts about the consumer if the consumer does not accept a nominal settlement. (Aff. ¶ 14)

50. Had PRA told the truth and let a jury decide what the damages were based on the truth, this case would be as simple as going to small claims court.

51. Had PRA provided a copy of the credit card contract, there would probably be an arbitration clause. Arbitration would have saved costs for all.

**Section f. The Court multiplied the costs for Hammett by denying electronic filing.**

52. “A person not represented by an attorney is generally not allowed to electronically file and must submit paper for filing. Electronic filing is only permitted by court order.” L.R. 5.1, Adopted on December 1, 2018 and amended Nov. 5, 2020.

53. General Order 53 adopting the CV manual was signed Dec. 1, 2018.

54. The CV Manual requires a revision to be in compliance with L.R. 5.1.

55. “The application of local rules is a matter peculiarly within the district court’s province.” *Chrysler Credit Corp. v. Cathey*, 977 F.2d 447, 449 (8th Cir. 1992)

56. The Court had authority to allow Plaintiff to use electronic filing per her motion, BIS and affidavit [7], [8], and [9] and denied permission. [18]

57. This increased Hammett's costs by approximately \$8,000. Had Hammett saved that \$8,000, she could have afforded to hold a pre-trial deposition of Meryl Dreano (though PRA did not disclose the names of potential witnesses until it would be too late to compel a deposition); and Hammett could have hired more clerical help. (Though paralegals are not allowed to work without attorney supervision, so the clerical help would not be up to par.) (Aff. ¶ 15)

58. It also created scheduling difficulties for driving to Little Rock. For example, the response to PRA's MSJ was due on the afternoon of the day PRA scheduled the early morning defense medical exam. This forced Hammett to have her response ready by morning. (Aff. ¶ 15)

**Section g. Hammett is on the brink of section 7 bankruptcy.**

59. Courts have discretion to deny costs because a plaintiff is poor or for other good reasons. *Poe v. John Deere Co.*, 695 F.2d 1103 (8th Cir.1982). (*Anderson*)

60. "Award of costs to employer that prevailed in employee's disability discrimination suit was not warranted, where employee was of modest means. Fed.Rules Civ.Proc.Rule 54(d)(1), 28 U.S.C.A." *Pittari*

61. Defendant made several claims that Plaintiff has significant assets. This is not true. Defendant misuses the fact that Plaintiff did not apply for in forma pauperis status to contend that Plaintiff has significant assets. The in forma pauperis application requires Plaintiff to disclose personal financial information of

her husband and include his assets in consideration of eligibility. He is a private person and will not authorize such an invasion into his privacy. Plaintiff and her spouse file taxes separately and have no common ownership of assets. Forcing Plaintiff's husband to disclose his personal finances will cause discord in the marriage. A search of public records shows that Plaintiff's husband had a non-judicial foreclosure, writ of assistance and a repossession during his divorce from his former spouse. He made no appearances and did not contest the divorce. James Hammett joined Laura on a suit that was settled by Home Depot, because Mr. Hammett paid for the faulty HVAC from which the case arose. The non-settling defendants altered business records using Adobe Acrobat or similar, and that Court still dismissed the case against those defendants. Mr. Hammett has also observed Laura Hammett's health deteriorate dramatically since getting involved with the courts. Therefore, it is reasonable to assume James Hammett distrusts the courts. (Aff. ¶ 16)

62. Hammett would rather file for bankruptcy than to cause discord in her marriage. (Aff. ¶ 17) Therefore, she did not fill out the in forma pauperis application. She did qualify for legal aid. (Aff. ¶ 18) She also qualified for Medicaid. (Aff. ¶ 19)

63. PRA lied with numbers, trying to support a claim that it knows cannot be supported with evidence, that Plaintiff is financially capable of settling their costs.

[242] the BIS, ¶ 20. PRA misquoted and misinterpreted the SAC “Dkt. No. 174 ¶¶ 92, 94”. From reading the Sherman case and Plaintiff’s blog, PRA knows the \$575,000 Plaintiff invested in the stock market was not her only assets at the time. (Hammett liquidated a good share of her remaining assets to support herself or had her other assets taken from her in the past two years.) The citation includes these sentences. “When her portfolio value fell to what she owed to the margin account plus \$75,000, Hammett sold everything. That was March 16, 2020. Half her net worth was wiped out.” There is nothing that says, as PRA claimed, that Plaintiff “has stated that she has approximately \$325,000 invested in the stock market”, then subtracted \$250,000 that PRA invented that Hammett “stated” that she lost “due to poor investments.) This is as false or worse than the lies about Hammett losing money in illegal poker online. The citation says “When her portfolio value fell to what she owed to the margin account plus \$75,000, Hammett sold everything. That was March 16, 2020. Half her net worth was wiped out.” Simple math. Hammett said she had \$575,000 of her own money in the stock market and sold everything when the value of the account fell to \$75,000. That is a \$500,000 loss.  $\$500,000 \neq \$250,000$ . ( $\$2,297.63 \neq \$0.00$ , either.) (Aff. ¶ 23)

64. As Plaintiff wrote, she invested in only companies whose products she used herself, such as American Airlines, Boeing, and Dollar Tree ...And Hammett did not have a crystal ball telling her that the COVID-Crash would end the day she

liquidated. Hammett was on margin and had to sell; two more days of \$60,000 losses would have forced Hammett to liquidate her real estate or settle her lawsuit against the other shareholders in her LLC who are still refusing to release Hammett's equity to her or even let her see the books and records. The remaining balance on her capital account is about \$70,000. (Aff. ¶ 24)

65. PRA knows from reading Hammett's blog that Hammett had her Witts Spring property rights seized even after being dismissed with prejudice in a lawsuit asking to transfer her property rights. That case is on appeal. (Aff. ¶ 25)

66. PRA knows from reading Hammett's blog that she was ordered to pay an attorney fee award of almost \$100,000 in the Sherman case that is on appeal. In Sherman, the attorney defendants filed an anti-SLAPP suit instead of treating a derivative legal malpractice claim filed by a non-attorney as void. (Aff. ¶ 26)

67. As the Court noted in his combined order on motions for summary judgment, Hammett did not depose any opposing party. This was because Hammett could not afford the cost. Contrary to the Court's implication, depositions are not mandatory. Hammett had enough evidence to withstand a motion for summary judgment without taking any depositions, had the Court not ruled in error. (Aff. ¶ 27)

68. Should Hammett win on her two appeals and somehow manage to collect from her adversaries who have made fraudulent transfers, she will have about



\$270,000. Hammett is plaintiff in two other cases, but they both are presided over by the same judge that seized Hammett's rights to real estate after dismissing her with prejudice. As of now, Hammett's only income is a \$630 per month pension, the work she succeeded at in the past takes too much energy for her, especially while trying to fight injustice in court, and her assets can all be protected in a Chapter 7 bankruptcy using the federal exemptions. (Aff. ¶¶ 20-22, 28)

69. Hammett's home is owned by her husband. Hammett borrowed \$30,000 from her husband over the past two years and was able to generate enough revenue during the stay of proceedings in this case and a lull in her other cases. Mr. Hammett wants to use his remaining liquid assets to improve his house. (Aff. ¶ 29)

70. Hammett intends to generate revenue by writing books about her experiences in court, but does not have the time. (Aff. ¶ 30)

**Section h. The cost request for the Pivot production is too high.**

71. Costs for Pivot Copy Service that were presented by the defendant were higher than necessary. (Dkt. No. 242-3) PRA refused to inspect the documents requested before copying, therefore Hammett was compelled to provide much more evidence than PRA used. In fact, PRA did not look at the evidence or chose to ignore it. This is consistent with the defendants sending a subpoena duces tecum ordering Dr. Josie Owens to appear for a deposition, then not deposing the doctor when she took off a day of treating patients to appear. (Aff. ¶ 31)

**Section i. An award of costs is inequitable under the circumstances of this case.**

72. Application of 28 U.S.C. §1920 is permissive, not mandatory.

73. Any failure of the plaintiff to get to a jury to decide the dollar amount of the damages was not due to a lack of merit of the case. As discussed thoroughly in the sections above, the failure was caused by 1) the defendant's common practice of misconduct, including in discovery, and 2) the Court's errors and misinterpretations. In addition, PRA invested inordinate resources into the case, considering that by its Offer of Judgments, it claimed a judgment in plaintiff's favor would not exceed \$5,000 plus costs.

74. In *Concord Boat*, Brunswick was awarded attorney fees and costs, but appealed the amount. The 8th Circuit noted, the "district court also penalized Brunswick for the comparatively large size of its legal team, but as plaintiffs' counsel admitted at oral argument, Brunswick had more at risk in the litigation." The jury award for Concord that was overturned was \$44,371,761 in 1998, which the court trebled to \$133,115,283.

75. PRA treated this case as if there was a potential of a multi-million-dollar award. It retained two premiere law firms, hired an expensive out-of-state expert, held about eight hours of a deposition, and purchased transcripts of several days of

hearings. All against a layperson who has major anxiety issues and a plethora of physical ailments and is living off her dwindling savings.

76. PRA demanded the production of hundreds of thousands of documents for copying, without accepting Plaintiff's offer to let PRA inspect the documents in Plaintiff's home office to limit the documents first. [242 at 67]. Plaintiff limited the overbroad production to under 4,500 pages. PRA referred to few pages until filing BIS, Exhibit F. It then misused even that one document. PRA claimed that the document showed "Plaintiff is financially capable". [242 at 7]. The quotations were historical. That money is spent. (Aff. ¶ 32)

77. PRA, in violation of the parties' confidentiality agreement, a contract, stated that it "attempt[ed] to reach a reasonable settlement" at the mediation. Not only did PRA violate the confidentiality, but misstated what took place at the settlement charade. Hammett, growing tired of waiting for the mediator to return from her supposed private discussion with PRA counsel, started carrying boxes out to her car. She peered into an open door to a conference room and saw the mediator chatting with an administrative assistant. There were no attorneys present and the audio visual screen for remote meetings was off. (Aff. ¶ 33)

78. The numerous other settlement offers made by the plaintiff throughout were far less than the punitive portion of the previous two settlements with the CFPB regarding the same conduct Plaintiff complained about and far less than the jury

awarded in the similar case of Guadalupe Mejia. Hopefully the CFPB opens an investigation into the strong arm tactics used by Portfolio Recovery Associates, LLC to force settlements that make it cost effective to continue PRA's bad conduct rather than acting as a deterrence. (Aff. ¶ 34)

79. The Court has high academic intelligence. It should not have misinterpreted Hammett's sentence that meant all her credit cards were used to purchase consumer goods exclusively, not that she incurred an unpaid debt to Capital One. (Aff. ¶ 35)

80. The Court failed to mention that its previous employer, Walmart, was in a symbiotic relationship with Portfolio Recovery Associates, LLC, in which PRA attempted to collect alleged debts on GE Capital/ Walmart credit cards. (see the identity theft/fraud letter filed in PRA v. Lorretta Burks and Lorretta Burks v. PRA, another FDCPA case. Exhibit F to Affidavit)

81. Plaintiff's lack of proficiency in discovery and the monumental effort required for a single non-attorney with poor health to respond to an army of attorneys were factors in the failure to prevail, but for the defendant's misconduct would have been surmountable.

82. PRA refused to answer interrogatories and requests for production of documents. Hammett believed she would prevail at trial by asking the same questions and others there. It was the late production of the alleged closing

statement that caused Hammett a need to depose (in writing) a Capital One representative and Meryl Dreano. The Court refused to extend discovery. (Aff. ¶ 36)

83. Plaintiff's complaint in March 2021 enumerated some conduct that was also covered in the CFPB Complaint filed March 23, 2023, entitled Consumer Financial Protection Bureau, Plaintiff, v. Portfolio Recovery Associates, LLC, Defendant.

84. The "2023 Complaint" referred to the, "2015 Order", the administrative order the Bureau issued against Portfolio Recovery Associates, LLC on September 9, 2015, entitled In re Portfolio Recovery Associates, LLC, 2015-CFPB-0023 (Sept. 9, 2015). The Order required PRA to abide by certain conduct provisions.

85. PRA collected on a \$2,297.63 alleged debt ("the Debt") that Hammett disputed (saying explicitly, "I do not owe a debt") even though PRA did not take the required steps to substantiate the accuracy of that debt. As PRA argued and the Court adopted, the dispute was not made until after the 2015 Order expired. But, it was outrageous that PRA went right back to the same conduct for which it paid \$8 million in punitive damages.

86. PRA claimed and the Court adopted the argument that the Fraud/Identity Theft letter it sent to Hammett was "NOT" an attempt to collect a debt. That was a false statement. The questionnaire was "in furtherance of obtaining payment for a Debt."



87. PRA claimed the purpose of the Fraud/Identity Theft letter was to “help” Hammett. There was no explanation of how it might help Hammett. PRA did not produce any documentation nor tell Hammett where the charged money was spent before giving her the Fraud/Identity Theft letter. So, Hammett could not possibly know who committed the fraud with enough accuracy to make accusations without witness immunity afforded by a court proceeding. Especially since one suspect, Timothy Lynn, who forced Hammett’s then teenage son to steal her credit card account files, had filed several restraining orders against Hammett based on Hammett making complaints about him. (Hammett deposition, [164] Vol II, exhibit 5, under seal) (Aff. ¶ 37)

88. Plaintiff attempted to close the equity gap between the Defendant, who has access to \$2.6 Billion in credit and herself, a 60-year-old woman in ill health living on a \$639 per month pension that has no cost of living increase. Had the Court granted plaintiff’s motion for partial summary judgment expeditiously, legal aid would have represented plaintiff and there is a chance another attorney would take the case on contingency. Instead, legal aid rejected the case based on the Court granting summary judgment to the defendant. (Aff. ¶ 39)

89. For these reasons, the Court should deny the defendant’s motion for costs.

90. Should the Court decide to award costs to the defendant, Plaintiff asks that enforcement of the judgment be stayed until after the appeal. Our sister court in the

8<sup>th</sup> Circuit routinely suspends the taxing of costs until after an appeal is decided. “If an appeal is filed following the filing of a verified bill of costs, the taxing of such costs shall be suspended until the issuance of the mandate by the Court of Appeals.” (Order in *Gregory v. Dillard’s Inc.*, W.D. of Mo. Case No. 02-4157-CV-C-SOW)

Respectfully submitted,

July 19, 2023



Laura Lynn Hammett  
16 Gold Lake Club Road  
Conway, Arkansas 72032  
760-966-6000  
thenext55years@gmail.com  
Plaintiff Pro Se

**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2023, a true and exact copy of the foregoing was filed with the Clerk of the Court for entry on the electronic filing system which will cause service upon all counsel of record via email.

A handwritten signature in cursive script that reads "Laura Hammett". The signature is written in black ink and is positioned above a horizontal line.

Laura Lynn Hammett  
16 Gold Lake Club Road  
Conway, Arkansas 72032  
760-966-6000  
thenext55years@gmail.com  
Plaintiff Pro Se