IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

LAURA LYNN HAMMETT, an individual, Plaintiff-Appellant, vs. PORTFOLIO RECOVERY ASSOCIATES, LLC, a Limited Liability Company; DOES 1-99 Defendant-Appellees	)	Case Nos.: 23-2638 and 23-3093

Laura Lynn Hammett's Reply in Support of Motion for Public Access to the Record

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I. Summary of Reply to New Issues Raised in PRA's Opposition

The Appellate Court may correct the privacy designations by an order on motion, petition for writ of mandate or on appeal, contrary to Appellate Doc. Entry ID: 5326414, ("Opposition") at 10 – 14.

There are two reasons for the common-law right of access to judicial documents. One is to build the paying public's trust in the integrity of the court. The other is to disclose issues that may have a negative impact on public health and safety. PRA must overcome the burden of proving its salutary interests outweigh the public's rights. PRA failed to do that in the Opposition and the documents it refers to in one sweeping, generalized citation. (Opposition at 21)

The Court was responsible for guarding the common-law right of access by denying the motion to order the entry of a stipulated protective order that the Court knew was overbroad, burdensome and oppressive, contrary to PRA's effort to shift the entirety of the responsibility to the lone pro se plaintiff. (Opposition at 14 – 22.)

The Court must weigh the benefit to the designator of privacy against the rights of the public.

Despite PRA calling the stipulated protective order "standard" six times in Opposition, at 5, 6, 6, 14, 15, and 16, it was not. A standard order postpones the need to prove necessity until the designation is challenged, but the burden of

proving whether the designator's salutary interests outweigh the public's right to access is not shifted. PRA did not give any caselaw or examples of a standard order.

The Opposition and the record are devoid of a compelling reason for filing the pertinent account records and written policies under seal. The effect of filing these documents under seal is to cloak in secrecy the fact that the evidence does not support the judgment.

II. Appeal is Not the Only Procedure for Lifting Privacy Designations

In its Opposition, PRA attacked my motion to Remove Designation of "Confidential" from PRA_HAMMETT_000201 to PRA_HAMMETT_002098 and Revise the Protective Order R. Doc. 68, filed twenty-two days after PRA's confidential production. (Opposition, at 8.)

Over two months later, the Court denied my motion in full, other than ordering what I hoped to be temporary filing under seal. R. Doc. 112 adopting the oral order from the March 16, 2022 hearing, R. Doc. 124, at 16 – 17.

An interlocutory appeal might have been appropriate. It was also my prerogative to ask the District Court to give the public appropriate access to the judicial records each time those documents were needed to prove a dispositive issue.

The "district court would not have considered the terminated motion [to unseal] and corresponding briefs in determining the litigants' substantive rights on the merits of the underlying issues." *Steele v. City of Burlington, Iowa*, 334 F.Supp.3d 972 (2018), 46 Media L. Rep. 2165, hn7. The motions to unseal are collateral to appeal.

The purpose of this motion is to allow the appellate brief to be filed publicly in full. The appellate brief must be filed under seal provisionally because this motion was referred to the panel for consideration contemporaneously with the appeal on the merits; still, it makes sense to have the request to unseal as a stand-alone document.

III. The Public's Interests Outweigh PRA's Salutary Interest in Privacy

"This right of access bolsters public confidence in the judicial system by allowing citizens to evaluate the reasonableness and fairness of judicial proceedings, *Leucadia, Inc. v. Applied Extrusion Techs., Inc*., 998 F.2d 157, 161 (3d Cir.1993), and "to keep a watchful eye on the workings of public agencies." *Nixon*, 435 U.S. at 598, 98 S.Ct. 1306. It also provides a measure of accountability to the public at large, which pays for the courts. See *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co*., 178 F.3d 943, 945 (7th Cir.1999). *IDT Corp*., 709 F.3d at 1222." *Scott v. City of Sioux City, Iowa*, 96 F.Supp.3d 898, 903 (2015)

The public should be allowed access to the original documents when the Court's veracity in the opinion that states what is allegedly said in the sealed documents is reasonably challenged, as it is here.

The second purpose for public disclosure is to protect health and safety. *Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304 (11th Cir. 2001)*. This is not only physical health. Congress, by the FDCPA and Regulation F, acknowledged that mental health may also be affected by receiving annoying and harassing phone calls. Policies that help consumers to stop the calls, and that inform the alleged debtor of the reason a balance is set to zero based on whether a 1099-C cancellation of debt form is issued, should be made public.

The CFPB's agreement to keep all documentation obtained in its civil investigations confidential creates a need for individual litigants against PRA to be allowed to share with other potential litigants which portfolios are riddled with errors, how many calls by PRA are too many calls and which affiants for PRA have been caught committing perjury on other cases. This information is allowable to use when determining a punitive damage award.

"*IDT Corporation* formalizes the balancing of interests described in *Nixon* into a 'test,' in which the court must first decide if the document in question is a 'judicial record,' and if it is, consider whether the party seeking to prevent disclosure has

overcome the common-law right of access that would otherwise apply to 'judicial records.'" (id., at 903 – 904)

"'The presumption of public access to judicial records may be overcome if the party seeking to keep the records under seal provides compelling reasons for doing so.' *Flynt*, 885 F.3d at 511 (citing *In re Neal*, 461 F.3d 1048, 1053 (8th Cir. 2006))." *Ball-Bey v. Chandler*, Slip Copy (2023)

"In providing a compelling interest, it is not sufficient for a party to point out that a document was designated 'confidential' pursuant to a protective order. *Blue Buffalo Co., Ltd. v. Wilbur-Ellis Co.*, No. 4:14-CV-859-RWS, 2020 WL 13560167, at *1 (E.D. Mo. June 18, 2020). See also E.D. Mo. L.R. 13.05(A)(3). ('The fact that certain information or material has been protected as confidential by parties in a case pursuant to a Protective Order is relevant to, but not dispositive of, whether this information or material will be sealed when filed with the Court.')." id.

The decision must show sound discretion. This District Court did not show sound discretion. Documents were allowed to be filed under seal pursuant to two paragraph motions that had conclusionary statements and no substance.

"[B]ecause neither party has offered any reasons whatsoever for the sealing of the [] Summary Judgment Opposition Documents, Plaintiff's request to withdraw its motion for leave to file those documents under seal should be granted, and those documents should be unsealed." Id.

IV. The Court Must Guard the Common-law right of Access

The district court **did** "abuse its discretion in entering a standard PO. Doc.46." Contrary to PRA's claim, Opposition at 14.

"All documents properly filed by a litigant seeking a judicial decision are judicial records and are entitled to a presumption of public access." *IDT Corp., 709 F.3d at 1224.* All documents filed for summary judgment in this case qualify.

"We believe that the weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts." *U.S. v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995). U.S. Const. art. 3.

"Transparency is crucial to maintaining public trust in the judiciary, for purposes of evaluating whether there is a compelling reason to keep information secret rather than comporting with the public's general common-law right of access to judicial records." Marden's Ark, Inc. v. UnitedHealth Group, Inc., 534 F.Supp.3d 1038 (2021) hn4.

"Where the public's interest in access to judicial records is strong, such as documents filed with dispositive motions, the presumption of access is difficult to overcome." Id. hn5. This District Court accepted weak arguments to grant privacy and ignored that the same forms were filed elsewhere in the public record.

"Legal arguments, and the documents underlying them, belong in the public domain, and when the parties are mutually interested in secrecy, the judge is its only champion." Id. hn9. This District Court could not rely on the inexperienced pro se Plaintiff to protect the public's right to access.

The need for the court to champion the public's right, which I advocate and PRA opposes, is pronounced because I could not find counsel to represent me on contingency. I filed an early motion for partial summary judgment well before discovery was complete and the Court waited until discovery ended and PRA's MSJ was fully briefed, before deciding the partial MSJ that would make it easier to obtain counsel on contingency.

A party's interest in sealing, on motions for summary judgment, "documents including written discovery, dates of phone calls to plaintiff, how it had obtained cell phone number called, and call logs, was not outweighed by public's right of access to judicial records; [the party] designated the information as proprietary and made bald assertions of competitive harm, but none of the information contained any proprietary or sensitive information that would place [the party] at a competitive disadvantage if it were unsealed." Id. hn12.

V. The Stipulated Protective Order was Not Standard

PRA confuses postponement with shifting the burden of proof, Opposition at 16, citing the out-of-circuit *Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1307 (11th Cir. 2001)*. (Opposition, at 16.)

While *Chicago Tribune* does delay the burden of giving a particularized reason for confidentiality, it does not shift the burden of proof to the party challenging the confidentiality.

Further, it does not give the party wanting privacy a blank check to designate anything and everything "Confidential" and worse, "Under Seal" when the designator knows the information or forms secreted already exist in the public domain. (FRCP Rule 11) "Unless there is a compelling reason to keep information secret, the public has a right to know what arguments and evidence have been presented to a court, so that the public can fully assess the court's exercise of its authority." Marden's, hn3

Chicago Tribune allowed each party "to designate particular documents as confidential and subject to protection [citation omitted[1]]. This method replaces the need to litigate the claim to protection document by document". This concession is not limited to the designating party.

[1] I find no Fed.R.Civ.P. 26(c)(7), as referred to in the passage, and no Note of amendment.

"As the district court noted, this allowed Bridgestone/Firestone, Inc. (Firestone) to **temporarily** enjoy the protection of Rule 26(c), making Firestone's documents presumptively confidential until challenged." (Bold added.)

Firestone did not abuse the privilege. "Of the nearly three hundred documents filed in the action, fifteen were placed under seal." PRA did abuse the privilege.

Of the 2,098 pages of PRA's initial production of documents, 1,898 pages were designated "Confidential", approximately 90%.

Once challenged, PRA has the burden of proving that each of the confidential designations is not conclusionary.

"Following discovery, Firestone moved for summary judgment. The district court denied the motion, and shortly thereafter the parties settled. In accordance with the terms of the protective order, the confidential documents remained sealed." (id) Firestone did not need to prove its designations were warranted at that point. Had the Firestone Court granted the dispositive motion, and as in Hammett v. PRA, misstated, misapplied and misquoted what was under seal, the plaintiff would be entitled to demand disclosure of the documents, and Firestone would then be required to defend its designations.

The Plaintiff in the underlying case was not a party to the motion to unseal or the resulting appeal. Hammett is both.

The order denying Firestone summary judgment does not demand the scrutiny of the order granting PRA summary judgment. Both parties in the underlying *Firestone* case had the option of allowing a jury to be the finder of fact. Hammett, barring reversal on appeal, will have no jury of her peers to analyze the evidence.[2]

VI. PRA Still Did Not Defend Its Abuse of Privacy Designations

PRA did not dispute that its "PRANet", call logs, and "Data Load" documents are in the public record on other cases.

PRA did not dispute that its 1099 policy is told to the public. (See PRA_HAMMETT_000338)

PRA did not offer any reason that its written policy on recording calls, at PRA_HAMMETT_000396, which differs from its conduct toward me, should be kept secret. In fact, had I known its policy was an option, the need for this litigation might have been avoided.

PRA said in open court that it gave me information that should have caused me to know whom its Telephone Service Provider was so I could subpoena its records;

[2] Immediately before confirmation, Judge Lee P. Rudofsky was an attorney representing Walmart, Inc. Walmart partners with credit card companies that sell non-performing alleged debts to PRA. (Burks Fraud/Identity theft affidavit, R. Doc. 253-6, at 6, "Name of Institution" in box, "GE Capital Walmart".) Capital One is a Walmart credit card partner (see Exhibit A), which gives the appearance that Judge Rudofsky might have a bias that is quite different from a jury of my peers, who are mostly not attorneys who represent mega-creditors.

but there is nowhere cited in the record where PRA specified who its primary TSP was, in a way that would give me a meaningful notice of who to subpoena for a third-party call log.

PRA did not dispute that there are material discrepancies between PRANet and the call log generated by PRA. It would not put PRA at a competitive disadvantage if other debt buyers knew PRA's policy about how often to make a business record of a telephone call. PRA's written policy is the common sense practice and it is different from PRA's actual practice.

PRA did not explain why it redacted the purchase price and name from the bill of sale allegedly associated with my account, even though the document was filed under seal. The Court did not compel disclosure of the whited out information and accepted the document as evidence in contradiction to FRE Rule 106.

By failing to address my contentions, PRA waived argument that the contentions are inaccurate.

For these reasons, PRA failed to make compelling argument against my motion to unseal PRA's records of the account in question and its business policies relied upon in the cross-motions for summary judgment and my motion to amend.

Respectfully submitted,

October 23, 2023 __/s/Laura Lynn Hammett

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CERTIFICATION OF WORD COUNT PURSUANT TO FRAP 32(G)

I, Appellant in pro se Laura Lynn Hammett, certify that this Reply to the Motion for Public Access to the Record is 2,426 words excluding the documents authorized by Rule 27(a)(2)(C) and FRAP Rule 32.1(f), which is in compliance with the 2,600 word limit in Rule 27.

October 23, 2023

/s/ Laura Lynn Hammett

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

_/s/Laura Lynn Hammett_____

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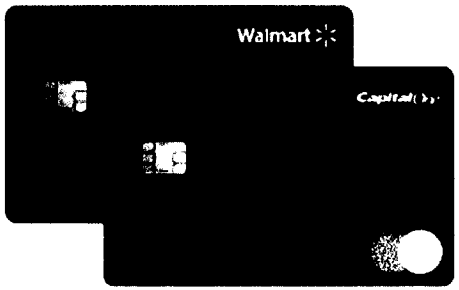
Exhibit A – Website Showing Partnership Between Judge Lee P. Rudofsky's Previous Employer, Walmart and Capital One, the Company that Originated the Data Purchased by Portfolio Recovery Associates, LLC

CapitalOne Walmart

Manage your account and redeem your rewards.



I have a Capital One online account

Sign In

I don't have a Capital One online account

Set Up My Account

Don't have a Capital One® Walmart Rewards® Card?

Earn 5% cash back on Walmart.com, including pickup & delivery, with a $0 annual fee