

In The  
UNITED STATES COURT OF APPEALS  
For The Eighth Circuit

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No. 23-2638, No. 23-3093 and No. 23-3432  
Civil

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LAURA LYNN HAMMETT, an individual  
Plaintiff-Appellant

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a Limited Liability Company;  
Does 1-99  
Defendant-Appellees

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Appeal from the United States District Court for the  
Eastern District of Arkansas

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APPELLANT'S BRIEF

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Laura Lynn Hammett  
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Conway, Arkansas 72032  
(760) 966-6000  
Bohemian\_books@yahoo.com  
Plaintiff/ Appellant in Pro Se

## **Summary of the Case and Willingness to Participate in Oral Argument**

Debt Collector Portfolio Recovery Associates' willful and wanton violation of the *FDCPA* and a *Consent Order* injured me. The Court shrugged.

No justice against PRA's extortionist enterprise was attained. The Court failed.

PRA intruded upon my seclusion, annoyed, and harassed me. Adverse verdicts and settlements against PRA total over \$130,000,000 for similar conduct. PRA's spoliation of evidence shows it knew its pattern and practice was unacceptable.

I sent its calls to voicemail, blocked them, begged these strangers to stop and finally, in November 2020, acquiesced to answering questions on a recorded line. It didn't help. My only option was to pay an invalid debt or file a lawsuit. I filed.

PRA sent a letter saying it "has concluded its investigation of your dispute and is closing your account" with a balance of zero. Eight months later, for the first time, PRA said the debt had been "waived". But PRA chose not to issue a form 1099-C.

PRA was allowed to subpoena my entire physical and mental health record, despite the irrelevance, and published false, defamatory accusations against me.

The Court granted summary judgment based on insufficient discovery, PRA's inadmissible evidence, and disregard of my evidence. The grant of summary judgment is reserved for exceptional cases, emphasizing the court's preference for full trials and thorough examination of evidence. Please grant me a jury trial.

If it pleases this Court, I will attend oral argument for rebuttal and questions.

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*Whittington v. Tyson Foods, Inc.*, 21 F.4th 997, 1000 (8th Cir. 2021).

## **Statutes**

*California Penal Code § 632*

*Equal Protection Clause of the United States Constitution*

*First Amendment of the United States Constitution*

*F.R.C.P. Rule 11*

*Fed.R.Civ.P. 15(a)*

*Fed. R. Civ. P. 56(a)*

*15 U.S.C. §1692 [AKA FDCPA]*

*15 U.S.C. §1692a(5)*

*15 U.S.C. 1692e*

*15 U.S.C. 1692k*

*26 U.S.C.A. § 61(a)(12)*

*26 CFR Section 1.6050P-1(a)&(b)(2)(C or G)*

*28 U.S.C. § 455(a)*

*28 U.S.C. § 1291*

*28 U.S.C. 1331*

*28 U.S.C. § 1332*

*28 U.S.C. § 1367*

*28 U.S.C. 1927*

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*In the Matter of Portfolio Recovery Associates, LLC, ADMINISTRATIVE PROCEEDING* File No. 2015-CFPB-0023 [AKA Consent Order] **2**

## Jurisdictional Statement

The district court’s jurisdiction was pursuant to 28 *U.S.C.* § 1332, because this is a civil action in which Laura Lynn Hammett (“Hammett”) is a citizen of and residing in Arkansas; Defendant Portfolio Recovery Associates, LLC (“PRA”) is a Delaware Limited Liability Company and is not registered with the Arkansas Secretary of State; and the amount in controversy exceeds \$75,000 exclusive of interest and costs; 28 *U.S.C.* 1331, because it involves federal questions raised by 15 *U.S.C.* §1692; and supplemental jurisdiction over the state claims pursuant to 28 *U.S.C.* § 1367.

The court of appeals has jurisdiction pursuant to 28 *U.S.C.* § 1291. It is from a final judgment and post-judgment orders that dispose of all parties’ claims.

NOA filed July 14, 2023 on Final Judgment entered June 15, 2023. (R. Doc. 249, 238.)<sup>1</sup>

NOA filed September 14, 2023 on Order for Costs entered August 23, 2023. (R. Doc. 271, 263.)

September 19, 2023, PRA responded to Hammett’s Motion to Settle the Record, including a speculative footnote regarding a fictionalized transcript in *Pietrczak*<sup>2</sup>.

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<sup>1</sup> Multiple references grouped together are in the order mentioned.

<sup>2</sup> *Pietrczak v. Lynn, et al.*, Circuit Court of Searcy County Arkansas, 65-CV-21-20.

(R. Doc. 267 – 269, 276, f.n. at 6.) Before the presumptive day of non-electronic filing notification of the response, September 21<sup>st</sup>, Hammett filed a motion to revive a subpoena of exculpatory evidence that proves the Pietrczak record was falsified; and Notice of Supplemental Authorities supporting. (R. Doc. 277, 278.) The Court<sup>3</sup> denied Hammett’s Motion to Settle that same day, “[f]or the reasons Defendant sets forth in its Response”. (R. Doc. 279, at 2.) Because the Court did not wait for PRA’s response to Hammett’s Motion to Revive the Subpoena, filed October 5, 2023, (R. Doc. 280,) the Court turned the Motion to Revive into a Motion for Reconsideration. The Court denied the Motion for Reconsideration on October 6, 2023, “for each of the reasons set forth in 280 PRA's Response in Opposition”, which included “the Court has already ruled on Plaintiff’s Motion to Settle Record.” (R. Doc. 280, at 2.) (Catch 22?)

Hammett filed a separate Motion to Settle the Record and Revive the Subpoena at the Eighth Circuit on October 18, 2023, within 30 days of both the district court orders concerning the falsification of the transcript. PRA challenged the jurisdiction of the Eighth Circuit to decide the issues by motion instead of appeal. Hammett filed a Notice of Appeal on both orders on November 1, 2023, within 30 days of the Order on Motion to Revive/Reconsideration.

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<sup>3</sup> The Honorable Lee P. Rudofsky.



## Statement of Issues<sup>4</sup>

**I. The Court erred by denying Hammett’s motion for partial summary judgment and granting PRA’s motions for summary judgment. Hammett presented genuine disputes of material facts for a jury to decide. The fact that PRA misrepresented the amount or character of a debt is indisputable.**

*Whittington v. Tyson Foods, Inc.*, 21 F.4th 997, 1000 (8th Cir. 2021).

*CBM of Cent. Ark. v. Bemel*, 274 Ark. 223, 623 S.W.2d 518 (1981)

*Fed. R. Civ. P. 56(a)*.

*26 CFR Section 1.6050P-1(a)&(b)(2)(C or G)*

**II. The Court erred by denying Reconsideration based on manifest injustice.**

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<sup>4</sup> Definitions in 15 U.S.C. 1692a and Consent Order, R. Doc. 39-5, at 3 – 7 apply throughout. “The Debt” refers to the alleged \$2,297.63 deficiency on a Capital One originated account ending in -6049 PRA attributed to Hammett.

**III. The Court failed to disclose a conflict of interest for which his impartiality might reasonably be questioned, and which would cause Hammett to ask for the Court’s recusal.**

*Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 663 (8th Cir. 2003)

*U.S. v. Melton*, 738 F.3d 903 (8<sup>th</sup> Cir. 2013)

28 U.S.C. § 455(a)

**IV. The Court’s denial of access to electronic filing was abuse of discretion; the rule the Court relied on is unconstitutional and was superseded.**

*R.A.D. Services LLC v. State Farm Fire & Casualty Company*, 60 F.4th 408 (8<sup>th</sup> Cir. 2023)

*Equal Protection Clause of the United States Constitution*

**V. The Court erred by denying Hammett’s pleas to extend discovery and ignoring PRA’s spoliation of evidence.**

*U.S.A. v. Taleb Jawher*, No. 22-2844 (8<sup>th</sup> Cir. 2023)

*Interlocutory Appeal of JFF Cecilia LLC v. Weiner Ventures, LLC*, S.Ct. of Massachusetts, Suffolk County, 2020 WL 4464584, 1984CV03317, January 30, 2023. Salinger, J.

**VI. The Court awarding costs to PRA, despite manifest injustice, conflicts with the Court's stance that Hammett had a \$2,297.63 victory.**

*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).

**VII. Denying Hammett leave to amend contradicts the well-established precedent of granting leave liberally. Amendment is not futile.**

*Friedman v. Farmer*, 788 F.3d 862 (8<sup>th</sup> Cir. 2015)

*Fed.R.Civ.P. 15(a)*

**VIII. The Court erred by denying Hammett’s motion for Rule 11 Sanctions.**

*Portfolio Recovery Associates, LLC v. Guadelupe Mejia*, 2016 WL 3460177

(Mo.App. W.D.) Appeal No. WD79175

*F.R.C.P. Rule 11*

**IX. The Court erred by denying public access to documents PRA designated “confidential” and filed under seal without showing a particularized need.**

*Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306 (1978)

*IDT Corp. v. eBay*, 709 F.3d 1220 (8<sup>th</sup> Cir. 2013)

**X. An accurate record is the keystone of justice. The abuse of discretion to deny access to audio of hearings to *pro se* litigants, while allowing the class who can afford attorneys that advantage is unconstitutional.**

*Brief of Amici Curiae of the Reporters Committee for Freedom of the Press and 35 Media Organizations in Support of Intervenor-Appellee KQED, Inc. Urging Affirmance, Perry v. Schwarzenegger, et al., 9th Cir. No. 18-15292*

*First Amendment of the United States Constitution*

## **Statement of the Case**

### **Facts**

This brief is by example, not all inclusive.

Portfolio Recovery Associates, LLC stipulated to a “*Consent Order*” issued by the CFPB effective September 9, 2015. (R. Doc. 39-5, at 2)

“PRA” was “permanently restrained and prohibited from [m]aking any representation, expressly or by implication, that [Hammett] owes a Debt to [PRA] or as to the amount of [the] Debt unless, **at the time of making the representation**, [PRA could] substantiate the representation. Without limiting the foregoing” and because “the claimed amount is higher than the Charge-off Balance” PRA was required to “review (i) Original Account-Level Documentation reflecting the Charge-Off Balance or judgment balance and (ii) an explanation of

how the claimed amount was calculated and why such increase [was] authorized by the agreement creating the Debt or permitted by law” when Hammett “disputed orally or in writing, the accuracy or validity of the Debt.” (id., at 29 – 30.) This did not require the representation be made “in connection with” or in a communication whose “animating purpose” was collection of a debt.

The “Consent Order will terminate [] 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent.” (id., at 59) The CFPB “made civil investigative demands and advised [PRA Group, Inc. and subsidiaries]<sup>5</sup> of the CFPB’s belief that we may have violated certain provisions of the Consent Order and applicable law” in 2020. (<https://annualreport2020.pragroup.com/download/PRA-Annual-Report-2020.pdf> at 28)

“[The duly elected and acting Board of Directors of Respondent's parent company, PRA Group, Inc.] will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with applicable Federal consumer financial law and this Consent Order.” (R. Doc. 39-5, at 4, 45.)

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<sup>5</sup> The Annual Report for 2020 defined “PRA Group, Inc. and subsidiaries” as “the Company” at <https://annualreport2020.pragroup.com/download/PRA-Annual-Report-2020.pdf> page 56.

A 2020 CID resulted in the “CFPB Complaint” filed in March 2023, and “Stipulated Judgment”. (Case 2:23-cv-00110, U.S.D.C. Eastern District of Virginia, R. Doc. 225, at 12, 37.) “PRA collected millions of dollars using illegal debt-collection practices [] that have impacted at least hundreds of thousands of consumers.” (id., at 12). “Since the [Consent] Order went into effect, PRA's debt-collection practices have violated numerous [Consent] Order provisions, along with the CFPA and the FDCPA<sup>6</sup>. PRA collected on at least tens of thousands of debts that consumers disputed even though PRA did not take the required steps to substantiate the accuracy and validity of those debts.” (id., at 13.)

PRA “instigat[ed] profuse communications” to Hammett; “made incessant, obnoxious phone calls to [Hammett] with the intent of inflicting extreme emotional distress; a goal that was achieved.” (R. Doc. 76, Exhibit D, Verified “Complaint”, R. Doc. 1, at 5.)<sup>78</sup>

Hammett was sick and stressed. (R. Doc. 1, at 6 – 10, R. Doc. 68-CD, at 1770.)

“It was difficult [for Hammett] to fall asleep, and when she did, it was for only a few hours.” (R. Doc. 1, at 10)

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<sup>6</sup> Federal Debt Collection Practices Act

<sup>7</sup> Hammett verified her original Complaint. (R. Doc. 1, at 34) Subsequent amendments did not invalidate the verification. All the documents signed by Hammett are certified under FRCP Rule 11.

<sup>8</sup> Documents under seal are underlined.

PRA woke Hammett from cherished naps. (id., at 15-16)

“The abusive behavior was meant and did in fact coerce Plaintiff to be recorded against her will and share private information”. (id., at 5.)

“Hammett realized that the annoying telephone calls were not going to stop unless she spoke to the callers on a recorded line against her will.” (id., at 12.)

Hammett was concerned about misuse of the recordings. (id., at 5.)

“Every encounter in court is extremely stressful to Hammett.” (R. Doc. 1, at 6, R. Doc. 68, at 1754, 1755, 1758, etc.)

Hammett learned in discovery that the pattern of calls she noticed in 2020 started in 2013. (R. Doc. 1, at 11, R. Doc. 68, at 2-7, R. Doc 164, at 124)

Hammett received professional stress management counselling for diagnosed PTSD from March 19, 2020 to August 18, 2020. Without professional help, Hammett found the calls unbearable. “Around November 2020 she got Adhesive Capsulitis”. (R. Doc. 1, at 8.) She resumed counselling March 4, 2021. (R. Doc. 68-CD, at 1772, 1828, 1832.)

Hammett “estimate[d] having received 120 calls from PRA” September to February. (R. Doc. 1, at 12) This only included answered calls. The Court accepted PRA’s self-generated call log as undeniable evidence. (R. Doc. 173, at 44.) PRA omitted calls Hammett sent to voicemail. Hammett knows PRA initiated the earlier



calls, as no similarly scripted calls occurred after February 18, 2021. (R. Doc. 164, at 124)

Hammett's intent to include PRA Group, Inc. was stated in the Complaint. "DOES 1-99 are [] shareholders of PRA", and PRA Group, Inc. is the sole shareholder. (R. Doc. 1, at 4)

Hammett expected PRA to reveal its phone service provider so she could subpoena precise phone records. That did not happen. (R. Doc. 164, at 53)

PRA made contradictory lies. "Plaintiff acknowledged, before even filing her Complaint, that she considered her actual damages to be \$5,000. (See Dkt. No. 72 at 9.)" (R. Doc. 204, at 12.) The quote cited: "When I filed my complaint, I thought emotional distress damages would be about \$5,000." Hammett considered her actual damages to include other miscellaneous and \$10,000,000 for intrusion on seclusion. (R. Doc. 1, at 33.)

To justify broad subpoenas, PRA falsely asserted "Plaintiff stated [her medical records] would provide testimony to support her claim for one million dollars." (R. Doc. 29, at 4). This was deceptive, as emotional distress damages comprised only \$5,000 of the total damages. PRA's intrusive discovery increased Hammett's emotional distress significantly.

In response to Hammett's MPSJ, PRA claimed the Debt was waived. PRA sought to inflict economic harm on Hammett by proposing a settlement wherein

she conceded the debt's cancellation. This renewed allegation of the debt was made to Hammett and was in bad faith.

Because the Court adopted PRA's unsubstantiated misrepresentations, Hammett incurred the costs, monetary, physical, and emotional, of multiplied litigation, including this appeal and an adverse judgment of \$8,356.18 for costs. (R. Doc. 263, at 5)

The Court directed PRA to file a reply in support of its motion for taxable costs. (R. Doc. 255, TEO) This is Hammett's first opportunity to dispute some false "facts" on which the order is based.

In support of their claim that Hammett would suffer no hardship, PRA and the Court agreed that Hammett has "about \$70,000" in a capital account in a tightly held LLC. (R. Doc. 259, at 5; R. Doc. 263, at 4.)

PRA RFP had 85 requests. No. 22 demanded any and all documents in any way pertaining to any other civil actions involving Hammett, as a plaintiff or defendant.

Hammett produced the entire paper file of *Hammett v. Sherman*, et al., USDC CASD, 3:19-cv-00605-LL-AHG, because PRA reneged on its FRCP Rule 26(f) conference agreement to have its IT person help Hammett transfer electronic files.

Hammett summarized the case in opposition to the motion for costs cited by the Court. (R. Doc. 253, at 11 – 12) Sherman has barred Hammett from LLC records since 2014, resisting company dissolution after selling its main asset in 2017.

Hammett, ordered to pay \$100,000 in legal fees, had her requests for record access and dissolution denied by the trial court; all orders are under appeal. Hammett's capital recovery seems improbable.

Hammett never participated in a “real estate trust” and never said she did, as PRA claimed. (R. Doc. 259, at 6) Her asset worth “\$516,839 in 2015 [citing Dkt. No. 242 ¶ 20]” was liquidated in 2017. PRA lied. The *Sherman* complaint attached as an exhibit shows Hammett claimed her sisters counter-offered \$218,000 for her shares in an LLC that were valued at about \$1,500,000 sixteen months later. (R. Doc. 242, at 85.) Hammett’s assets were spent, taxed, gifted tax-exempt, transferred to Hammett’s exes through courts or lost in the COVID-Crash.

Hammett couldn't protect her interest in a trust-held Witts Spring property, a common-interest-defendant in *Pietrczak*. Lawyers refused employment due to potential retaliation from the judge. Despite Hammett's dismissal with prejudice, the trust lost a default judgment over \$200,000, now under appeal.

In 2019, Hammett intended to gift property to her husband, motivating him to cease back-breaking work. However, she couldn't transfer title until conclusively dismissed from *Pietrczak*. She designated Mr. Hammett as the exclusive beneficiary of the Hammett Family Living Trust. On March 18, 2022, assisted by legal counsel, the title to the Lake property was successfully transferred from the

trust to Mr. Hammett. PRA referenced this transfer, insinuating Hammett's involvement in a fraudulent conveyance. (R. Doc. 259-3, 259, at 5.)

PRA proposes that Hammett violate the IRC prohibition on revoking a tax-exempt gift and use the unmortgaged asset to pay for the litigation that caused PRA to treat the Debt as fraudulent pursuant to the IRC. Ironic. In 2020, Hammett was debt-free, but PRA seeks to change that.

A reasonable juror could concur that Hammett's stress surged in November 2020 upon discovering the incessant calls came from a debt collector. PRA's unethical and potentially unlawful legal tactics exacerbated the harm significantly.

## **Procedural History**

3/10/21 – Hammett filed the verified “Complaint” – R. Doc. 1

3/31/21 – PRA changed the account number and name on the account to “Laura Lyman”. (R. Doc. 6, at 42; R. Doc. 59, disc “Tynedra” recording 4/12/21)

4/1/21 – Hammett received “Laura Lyman Letter” backdated 3/18/21 stating investigation complete, account closed with zero balance. (R. Doc. 6, at 36 – 37)

4/10/21 – Hammett offered arbitration. (R. Doc. 199-1)

4/14/21 – Hammett moved for Electronic Filing. (R. Doc. 7, 8, 9)

8/20/21 – Honorable Kristine G. Baker, citing a "possible recusal issue" due to her son's prior summer internship at opposing counsel's firm, resulted in the case being reassigned to Honorable Lee P. Rudofsky. (R. Doc. 14, 15)

9/1/21 – Electronic filing denied. (R. Doc. 18)

8/23/23 – Order on electronic filing reiterated. (R. Doc. 263, at 4.)

9/13/21 – Initial disclosures due. (R. Doc. 21, at 1.)

9/20/21 – Hammett moved to Compel PRA to Comply Substantially with FRCP 26(a) initial disclosures. (R. Doc. 24)

10/4/21 – PRA moved for its first Protective Order. (R. Doc. 27)

PRA also opposed the Motion to Compel initial disclosures. (R. Doc. 28)

11/15/21 – Hammett moved to Amend the FAC. (R. Doc. 33)

11/22/21 – Hammett moved for Partial Summary Judgment. (R. Doc. 37 – 39 )

12/9/21, 1/4/22, 3/18/2022 – Hearing on MPSJ continued until 4/26/2022. (R.Doc. 48 TEO, 67 TEO, 126 TEO)

11/23/21 – After PRA rejected numerous invitations from Hammett to review records at her home office, mostly ESI that could be downloaded, Hammett offered to copy 4,482 papers at Rose Law Firm. PRA refused. PRA hired Pivot Copy Service the following week.

12/1/21 – PRA’s first production of documents due. 200 pages disclosed: 72 were Hammett’s initial court filing.

12/8/21 – After reviewing Hammett’s document production, PRA served “Confidential” documents, including the self-generated phone log and account record, omitting calls made before Hammett began documenting, and including no account statements. Bates No. PRA\_HAMMETT\_000201-2098. (R. Doc. 68.)

12/13/21 – PRA’s response to MPSJ. (R. Doc. 52, 53.) No mention of charge-off “Statement”.

1/5/22 –Hammett moved to lift the privacy designations from PRA’s “confidential” document production. As an alternative or additional relief, Plaintiff requested a stay of the proceedings until the resolution of her motion for partial summary judgment. (R. Doc. 68, at 1, 4)

3/17/22 – All substantive relief denied. (R. Doc. 112)

1/28/22 – PRA’s MSJ, Brief and Motion filed Under Seal without a Statement of Undisputed Material Facts (“SUMF”). (R. Doc. 75, 76, 74.) Hammett advised PRA by email that it omitted the SUMF.

PRA first disclosed the only credit card “Statement” associated with the account in second supplement to first set of Hammett’s RFPs, Bates No.

PRA\_HAMMETT\_002110, and the MSJ, Exhibit J (R. Doc. 76-16).

1/31/22 – PRA filed a Motion to File Under Seal and SUMF (R. Doc. 77, 78, 121). Paragraphs 36 – 41 were redacted. The policy and practice described in paragraphs 37 and 38 was not followed.

2/2/22 – Hammett moved for Extension of Discovery and Time to Reply to the 398 pages of MSJ documents (R. Doc. 80.)

2/10/22 – Order entered, inter alia, “[ ] Part of Ms. Hammett's formal summary judgment response may request deferral of summary judgment under Rule 56(d) [ ].” (R. Doc. 84, TEO.)

3/1/22 – Hammett opposed MSJ, and moved to Extend or Compel Discovery or Sanctions. (R. Doc. 99, 100.)

4/25/22 – Despite PRA's discovery ambush, Hammett's third discovery motion was denied as untimely. (R. Doc. 140.) PRA received notification 4/25/22. Hammett received notification during the 4/26/22 hearing, another ambush. (R. Doc. 167-1, at 84, line 10.)

4/26/22 – Hearing on MPSJ, leave to amend and MSJ. (R. Doc. 167-1) Court ordered “The fact record for summary judgment is closed.” (at 115) He said he was still considering the “56(d) request”. He allowed PRA to hold a DME on May 6 and file a report May 16, but did not decide the earlier motion to exclude the expert report. (at 116) He asked the parties to refrain from filing any more motions.



5/16/22 – PRA filed motion to file under seal, R. Doc. 147, that says PRA is filing expert report under seal “March 16, 2022”. The report was not filed until 6/2/22. (R. Doc. 151.)

8/29/22 – Hammett moved to Compel Production of the credit card Contract or Reconsideration of Motions for Summary Judgment. Supplemented 3/27/23. (R. Doc. 194, 221)

09/19/2022 – PRA includes Hammett’s irrelevant and highly prejudicial blog posts in Reply to SMSJ. (R. Doc. 204)

10/26/22 – Joint motion to stay. Hammett agreed, because of health issues. This delayed tolled the safe harbor period on Hammett’s Motion for Rule 11 Sanctions. (R. Doc. 211)

### **Rulings Presented for Review**

The Court’s failure to timely disclosure bias renders all rulings suspect.

## Miscellaneous

Final Judgment. (R. Doc. 238)

Permission for Hammett to participate in electronic filing denied. (R. Doc. 18)

Stipulated Protective Order, granted. (R. Doc. 46)

MSJ granted, MPSJ denied, leave to amend the FAC denied. (R. Doc. 173, re: 75, 37, 33.)

Motion to compel production of contract or reconsideration denied. (R. Doc. 230, 237, re: 194, 221.)

PRA's SMSJ granted. (R. Doc. 231, re: 188)

Motion to quash subpoena deemed moot; reversal should revive it. (R. Doc. 232, re: 133)

Motion to Exclude Dr. Adhia report deemed moot; is not moot upon reversal. (R. Doc. 233, re: 70)

Motion for costs granted. (R. Doc. 263, re: 240)

## **Secrecy**

Leave to seal PRA's Response to MPSJ granted. (R. Doc. 51, re: 50)

Reconsideration of Order 51 denied. (R. Doc. 90, re: 54)

Leave to seal PRA's motion to strike Hammett's Reply to MPSJ granted. (R. Doc. 110, re: 62)

Leave to seal PRA's MSJ granted. (R. Doc. 114, re: 74)

Confidentiality and revision of the Protective Order denied. (R. Doc. 112, re: 68)

Leave to seal response to PRA's MSJ TEMPORARILY, granted. (R. Doc. 118, re: 96)

Leave to seal reply to MSJ with redacted public copy granted. (R. Doc. 119, re: 105)

Redaction of Transcript of 4/26/2022 hearing held in open court granted. (R. Doc. 192, re: 176, 167, 157)

### **Discovery**

Motion to compel substantial compliance with FRCP 26(a) filed 9/20/2021 denied. (R. Doc. 88, re: 24)

Extension of discovery filed 02/02/2022 denied. (R. Doc. 84, re: 80)

Motion for extension and compel discovery filed 3/1/2022 denied. (R. Doc. 140, re: 97, 100)

### **Summary of the Argument**

A reasonable juror can find Hammett sustained injuries from PRA's violation of the FDCPA and intrusion on Hammett's seclusion.

The Court's bias caused him to rule in a way that causes "the citizenry [to] lose faith in the substance of the system and the procedures [used] to administer it".

*Moore v. Price*, 914 S.W. 2d 318, 323 (Ark. 1996), Mayfield, J., dissenting.

## **Argument**

**I. The Court erred by denying Hammett's motion for partial summary judgment and granting PRA's motions for summary judgment. Hammett presented genuine disputes of material facts for a jury to decide. The fact that PRA misrepresented the amount or character of a debt is indisputable.**

The Eighth Circuit reviews "the grant of summary judgment de novo, 'viewing the evidence and drawing all reasonable inferences in the light most favorable to ... the nonmoving party.' *Main v. Ozark Health, Inc.*, 959 F.3d 319, 323 (8th Cir. 2020)" *Heinz v. Carrington Mortg. Servs.*, 3 F.4th 1107, 1111 (8th Cir. 2021). "Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' *Fed. R. Civ. P. 56(a).*" *Mobley v. St Luke Health System Inc*, No. 21-2417

(8<sup>th</sup> Cir. 2022) The Eighth Circuit reviews the district court's partial grant of summary judgment de novo, viewing the evidence in the light most favorable to the non-moving party. *Barry v. Barry*, 78 F.3d 375, 379 (8th Cir. 1996) (citing *Michalski v. Bank of America Ariz.*, 66 F.3d 993, 995 (8th Cir. 1995))

**PRA caused damages that gave Hammett Article III standing.**

PRA woke Hammett, an insomniac with sleep apnea, from rare naps. Contrary to the Court’s opinion, this is a physical injury.

Hammett had Adhesive Capsulitis (Frozen Shoulder). Sleep was her only respite from the excruciating pain. Feeling the pain is a physical injury.

PRA interrupted other conversations.

PRA caused anxiety, especially after Hammett learned the calls were coming from a debt collector.

Hammett feared a debt was created by the program glitch on her stock market account on March 16, 2020.

Hammett ruminated on who might have used her card fraudulently.

PRA never provided Original Account-Level Documentation (“OALD”) that would narrow down who the fraudster might be.

Hammett felt anger that PRA lied.

Hammett felt resentment that PRA woke her, interrupted her and lied to her.

Hammett paid to send documentation to the CRA to obtain her credit report.

Hammett did not pass the online verification, because she did not recognize addresses like 5757 Erlanger. There were other addresses and names on the verification Hammett did not recognize.

Hammett paid to mail the three initial certified letters to PRA.

Hammett kept a private UPS box for PRA communications.

Hammett paid \$800 per month for a Westlaw subscription to learn the FDCPA and related law. (She can no longer afford Westlaw and relies on libraries. Travel is a lower cost.)

Hammett's anxiety, insomnia, fatigue, and physical ailments were more severe than most people feel when annoyed. After the amendment deadline, Hammett was diagnosed with Hashimoto's Disease, allergies to all but about 20 foods, post-menopausal lack of hormones and vitamin D deficiency. (R. Doc. 253-2, at 2.) Hashimoto's top symptoms are fatigue and brain fog. Hammett mistook her foggy mind as a side effect of anti-anxiety medication. (R. Doc. 98, at 35)

The Court opined, "[o]bviously, there's no monetary injury here", and filing a lawsuit was "Hammett's choice." (R. Doc. 261, at 102.)

Despite continuous protests since 2013, PRA persisted in collections. PRA ignored Mr. Williams' pleas. (R. Doc. 1, at 21 – 23.) Hammett blocked calls, sent

calls to voicemail, hung up, and probably yelled and cursed in unreleased recordings. (R. Doc. 157, at 93) She pleaded, informed PRA that the -6000 number was a business line and demanded cessation. Filing the lawsuit proved to be the only effective recourse.

PRA admitted closing the account “in light of the litigation.” (R. Doc. 52, at 1, 20; R. Doc. 76, exhibit 1, ¶ 17.) PRA caused Hammett to initiate proceedings before it ceased collections, then continued to falsely defame Hammett under the cloak of absolute immunity. PRA painted Hammett as a degenerate criminal, causing Hammett reputational harm.

Hammett asked PRA to go to arbitration on April 10, 2021, before filing the FAC. (R. Doc. 199-1) PRA did not respond to Hammett’s arbitration request, and did not produce a contract, so Hammett could not invoke an arbitration clause. (R. Doc. 199, at 4) PRA admits it prefers litigation to arbitration. (R. Doc. 194, at 16.) Litigation was extraordinarily taxing on Hammett.

By making overbroad requests for production, PRA drove up costs. (R. Doc. 107-5) PRA will collect \$8,356.18 of its costs from Hammett, more than Hammett’s yearly pension. The need for Hammett to file for bankruptcy is imminent. (R. Doc. 253, at 9, 10, 13, 16.)

PRA misused litigation to further intrude on Hammett's privacy and cause both physical and emotional harm.



Despite Hammett's request for an expedited order to limit a subpoena by October 19, 2021, the Court delayed addressing it until December 1, 2021. Consequently, PRA acquired irrelevant records concerning third parties and Hammett's sexuality, extending well beyond the scope defined by Hammett. (R. Doc. 26, at 3, 7; R. Doc. 44, TEO)

The Court and PRA know they violated Hammett's psychotherapist-patient privilege. *Jaffee v. Redmond* (95-266), 518 U.S. 1 (1996) "District court was required to weigh privacy interests [] as to those documents which were not absolutely protected by federal psychotherapist privilege". (*In re Sealed Case* (Medical Records), C.A.D.C.2004, 381 F.3d 1205, 363 U.S.App.D.C. 214.)

Because litigation was the only effective remedy for PRA's intrusion upon Hammett's seclusion, the costs of litigation are damages. This comports with *15 U.S.C. 1692k*.

A reasonable juror can infer from PRA's litigation tactics that the collection activity was willful, wanton, or malicious.

PRA made a settlement offer August 25, 2022, inter alia, "PRA has waived Plaintiff's debt (a Capital One Bank (USA) NA account ending in -6049), and as such, will not sell or assign this debt to anyone else." This was a communication to Hammett, not to the Court, thereby extending damages under *15 U.S.C. 1692e*, misrepresentation of the amount or character of a debt to the post filing conduct.

Hammett’s injuries are “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical’”. (*Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992))

**As a matter of law, the Debt was not cancelled. Hammett’s MPSJ must be granted.**

The Court opined, “[o]n March 11, 2021, PRA, LLC closed Ms. Hammett’s account and waived it ‘in light of the ongoing litigation’ brought by Ms. Hammett. [R. Doc. 121, ¶ 17] Ms. Hammett denies this but fails to offer any evidence to raise a genuine dispute of material fact on whether PRA, LLC waived the debt.” (R. Doc. 173, at 20, note 196.)

PRA first made the argument in its response. (R. Doc. 52, at 1 – 2.)

PRA can legally declare the balance as zero without a 1099-C only if it acknowledges the debt was fraudulent. PRA's 1099-C policy aligns with the Internal Revenue Code. (R. Doc. 68-CD, at 138.)

The I.R.S. instructions on cancellation of debt: <https://www.irs.gov/pub/irs-pdf/i1099ac.pdf>, at 3.

“! CAUTION Do not file Form 1099-C when fraudulent debt is canceled due to identity theft. Form 1099-C is to be used only for cancellations of debts for which the debtor actually incurred the underlying debt.”

*Applying 26 CFR Section 1.6050P-1(a),(b)(2)(C, or G):*

Any time PRA “discharges an indebtedness of [Hammett] of at least \$600 during a calendar year [PRA] must file an information return on Form 1099–C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, a discharge of indebtedness is deemed to have occurred, [with an exception that does not apply], if and only if there has occurred an identifiable event” including a (C), “cancellation or extinguishment of an indebtedness upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding; or (G), “discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt.”

PRA stated that C and G are both true. Yet PRA chose not to issue a 1099-C to Hammett. Apparently PRA is comfortable beating up on Hammett in court, but is not quite as willing to take on the Commissioner of the IRS.

“For tax purposes, cancelled debt creates income that is usually equal to face value of that debt minus any amount paid to satisfy it. Taxpayer has to recognize

income resulting from discharge of indebtedness in year debt is canceled. In order to warrant application of exemption from general rule that income includes income from discharge of indebtedness, applicable to [exemption], burden is on taxpayers to prove [the exemption].” (*Patacsil v. Commissioner of Internal Revenue*, T.C. Memo. 2023-8 (2023) citing 26 U.S.C.A. § 61(a)(12).)

Zeroing a debt on the creditor's books doesn't extinguish it; otherwise, Capital One couldn't sell such debt to PRA after zeroing and charging it off.

**The Court erred by granting summary judgment on the claim of intrusion upon seclusion.**

“Based on plaintiff debtor's testimony that an agency made repeated calls to her at her home and place of employment, the jury could have found a wrongful invasion of privacy” (*Ark. Model Jury Instr., Civil AMI 420* citing *CBM of Cent. Ark. v. Bemel*, 274 Ark. 223, 623 S.W.2d 518 (1981))

The number of calls made to Hammett’s numbers is disputed, but PRA admits it is higher than in *Bemel*. In *Bemel*, as here, the “defendant's witnesses admitted having sent letters and having made calls to [plaintiff], but their records, purportedly complete, indicated that the letters and calls were comparatively infrequent.” (*Bemel*, at \*225.)

PRA argued that calls to Hammett were not harassing and annoying. (R. Doc. 145, at 3) PRA withheld recordings, which carries a reasonable inference that there were things on those recordings PRA did not want heard. Hammett's tone in the recordings produced carry a reasonable inference she felt annoyed and harassed.

The calls show Hammett does not normally speak with people she does not recognize and does not want to be recorded by strangers. PRA offered no reason Hammett purportedly changed her policy on November 18, 2020.

The only reason Hammett spoke to PRA was because her other efforts to stop the calls did not work.

Similar to Bemel' s flashbacks, PRA forced Hammett to open old psychological wounds by digging deep into her traumatic past. Hammett's health conditions and how PRA's conduct affected it are facts for a jury to decide. Hammett's expert rebuttal witness provided credible evidence that there "is a clear connection between PRA's conduct, triggering trauma symptoms from previous traumatic experiences and the dramatic increase in Mrs. Hammett's intrusive thoughts." (R. Doc. 235, at 10/10.) The Court did not mention Hammett's medical records, the expert reports or rebuttal in his opinion, R. Doc. 173.

If the jury believes Hammett, *Bemel* applies. Bemel recalled only her son's suicide attempt, while Hammett reopened decades of PTSD inducing trauma.

Hammett, having quit therapy in October 2020, felt "healed" until PRA's calls reignited intrusive memories. (R. Doc. 68-CD, at 1770, et seq., R. Doc. 235, at 10.)

After subpoenaing Hammett's extensive medical record that reflected the facts she wrote in the FAC, PRA's hired gun expert elicited memories of traumas Hammett did not share with even her therapists. The expert lied about what was said. The psychiatrist dismissed the termination of parental rights without due process as non-traumatic. (Hammett's custody case resulted in disciplinary action against the court commissioner and action by the United Nation's Office of the High Commissioner.)

Bemel didn't contest the debt, while Hammett raised a "good faith" dispute. This distinction makes the PRA case more severe than Bemel's. (*Bemel*, at \*224.)

PRA distinguished *Bemel* by asserting CBM's actions may be criminal, while PRA's actions were not. (R. Doc. 145, at 2.) *California Penal Code* § 632 bans recording private conversations without the consent of all involved parties, unless everyone is aware of the recording. PRA claimed it thought Hammett was in California. Hammett specified that it was a felony and demanded the tape be erased on April 6, 2017 and December 16, 2020. PRA refused to comply. (R. Doc. 164, at 418, 438; R. Doc. 107-6, at 5, 28.)

Communications regarding debt are confidential. (15 U.S.C. 1692c(b))

PRA persistently called on a recorded line, coercing Hammett into being recorded against her wishes. Hammett did not want PRA to use her likeness. PRA is sloppy about protecting its “customers”’ privacy. (see f.n. 11)

The Court opined that the 4<sup>th</sup> Amendment “only constrains the government.” (R. Doc. 261, at 107)

Technically the Court is correct. But, by condoning PRA’s demands for identification and verification that would be a violation of the 4<sup>th</sup> Amendment if demanded by the police, the Court is setting a dangerous precedent that will embolden scammers.

Allow a jury to determine if PRA had a legitimate purpose for calling Hammett. Considering the Consent Order, awareness of unreliable accounts purchased from Capital One, and the absence of OALD, there's a reasonable inference that PRA was substantially certain it lacked legal authority or valid consent for the communications. (AMI 420)

### **The purpose of PRA’s communications.**

The Court referred to *Carrington* in the Consolidated Order to support that the “Eighth Circuit uses the ‘animating purpose test’ to determine whether ‘certain

statements or conduct are in connection with the collection of a debt.” (R. Doc. 173, at 40.)

This case is disambiguated because in *Carrington*, “[the allegedly offending] statements were in response to debtor's inquiry regarding balance statement, not as part of a strategy from debt collector to make payment on debt more likely”. *Carrington*, at 1114.

Every phone call made by PRA served as a strategic effort to increase the likelihood of payment on the Debt.

The debt dispute letter, Laura Lyman Letter and first correction formed part of a strategy aimed at eventual debt collection.

The Court accepted PRA's reasoning for the successive account closing letters, an inference against Hammett. (R. Doc. 173, at 41.)

The reasonable inference in Hammett’s favor is that the letters were a ruse.

PRA's intentional omission of the Laura Lyman Letter from its narrative underscores the existence of a nefarious plan. (R. Doc. 52, exhibit 2, especially ¶¶ 10, 11)

The Court opined that the affidavit provided a way to avoid the debt. (R. Doc. 173, at 41.) It did not.

The fraud affidavit was a collection tool.



PRA routinely instructs victims to complete these affidavits. Compliance doesn't impact investigations. Mejia did not comply. PRA dismissed its claim against her. Burks complied. PRA obtained a default judgment. (*Portfolio Recovery Associates, LLC v. Loretta Burks*, CWCV-13-423, document filed April 12, 2016, ¶ 3 and R. Doc. 253-6). Hammett refused to comply. Her account was closed, but PRA later said the debt was valid. The fraud affidavit seeks information, as do PRA's other collection techniques (R. Doc. 68-CD, at 51, 58).

Reasonable jurors might see all PRA's communications as an indirect means of collection.

**Hammett raised genuine disputes of material facts timely. PRA's MSJ and SMSJ should be denied.**

There were other reasonable inferences favoring Hammett on the waiver issue.

PRA's attorney certified: "When debt is waived, there is something called a contested liability doctrine, which essentially says if a debtor contests the existence of a debt in good faith, no 1099 be issued." (R. Doc. 98, at 29:16-21) PRA's admission carries a reasonable inference that Hammett's contestation of the debt created a good faith dispute over a material fact.

PRA typically resolves lawsuits by providing account credits, even when the debt is verified and uncontested. Giving up a genuine debt is not a strategy they employ. (see Settlement in *Pollak v. Portfolio Recovery Associates, LLC*, USDC ARED NO. 3:15-cv-4025, exhibit, R. Doc. 68-1, at 17, 18)

PRA did not use any form of the word “waived” or “cancelled” in its Rule 26(a)(1) disclosures, any account level documentation, any discovery response, nor any response to several emails to PRA disputes department and counsel inquiring about the wording of the closing letters, prior to filing its response to the MPSJ on December 13, 2021. (R. Doc. 24-1, at 4 – 8; R. Doc. 52, at 20; R. Doc. 167-1, at 48; R. Doc. 68, at 8 – 20.)

PRA refused to acknowledge the first of three letters in the Meryl Dreano affidavit. Dreano discussed “two” letters, the truncated second letter and the third letter that used the exact language as the Laura Lyman Letter, that PRA “has concluded its investigation of your dispute and is closing your account.”<sup>9</sup> (R. Doc. 52, at 18-20, ¶¶ 10, 11; 32.)

Hammett expressed her confusion caused by the account closing letters by deposition and exhibit. (R. Doc. 164, at 69 – 73, 395.)

Ms. Dreano’s narrative fails to explain how or why PRA populated a letter to Laura Lynn with Laura Lyman’s name and account number; and why after

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<sup>9</sup> The letter arrived at Hammett’s P.O. Box on May 3, 2021.

Hammett requested a corrected letter, “has concluded its investigation of your dispute” was removed.

The ambiguity in the three letters creates a genuine dispute of material fact.

The Court erred by claiming “on this record, it does not appear to be genuinely disputed that Ms. Hammett owed PRA, LLC \$2,297.63.” (R. Doc. 173, at 71, f.n. 463, R. Doc. 237, at 3:1.)

The Court truncated a sentence from Hammett’s Affidavit, R. Doc. 39, at 2, ¶ 2. “I am a consumer in respect to any debt incurred by me on a credit card issued by Capital One Bank (USA) in or about 2001, as I used any credit card to purchase household items, food and other consumer items.”

The sentence meant Hammett was a consumer according to the FDCPA. The Court’s misquotation meant Hammett agreed she had owed the debt.

“I am a consumer in respect to any debt incurred by me on a credit card issued by Capital One Bank (USA) in or about 2001.” (R. Doc. 173, at 71.)

In the June 14, 2023 hearing, the Court admitted to making this misquotation. Then added, “if [correcting] it does anything, it hurts her”. (R. Doc. 261, at 97, 98.)

Using the FDCPA definition of "debt", alleged obligation, ChatGPT AI interprets the sentence as, it “makes it clear that you are not admitting to owing the debt and that you may be disputing its validity or accuracy.” (15 U.S.C. §1692a(5), chat.openai.com.)

The Court misinterpreted the sentence following by taking it out of context. “I have no documentary evidence because the purchases were made 10 to 20 years ago.”

The Court: “Hammett admits that she made purchases on the Capital One account. [Affidavit] (Doc. 39) ¶ 3.” (R. Doc. 173, at 72.)

The paragraph alleged Hammett’s credit cards were all used for consumer goods, not business.

Hammett said she “DENIES that she opened an account ending in -6049” under penalty of perjury. See CUF (R. Doc. 198<sup>10</sup>, at 2.)

The Court took another Hammett phrase out of context, truncating to fit his narrative. “Ms. Hammett concedes that she ‘probably’ opened a Capital One account in 2001. Hammett Dep. Vol. I (Doc. 164) at 80:4–12, 81:15–18, 82:10”. (R. Doc. 173, at 71)

Hammett said, in the first citation, “I have no evidence of it anywhere. I’ve looked through every piece of paper that I have and I’ve looked through all my e-mails. There’s not a single one from Capital One.” (R. Doc. 164, at 80:7 – 11); two sentences after the second citation, “[opening an account] might have even been earlier than [2001], but, you know, around then, probably more like 1998.” (R.

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<sup>10</sup> PRA incorporated its SUMF into PRA’s Supplemental MSJ, so Hammett redacted and filed the identical CUF in response and will cite R. Doc. 198 instead of 99.

Doc. 164, at 81:20 – 22,); three lines before the third citation, “I don't deny having a Capital One account, but don't twist that into being this account.” (R. Doc. 164, at 82:6 – 7); immediately after the third citation, “My son gave me this key chain [showing a key lanyard]. It says ‘Capital One’ on it. So, I mean, everybody has a Capital one -- he has a Capital One account. He gave me this thing from it. And his ex-wife, [Liz Lynn], had a Capital One statement sent to the [Garnett] address and I asked him about it and he said, oh, just throw it out.” (id. at 82:11 – 17.)

Hammett said, “no matter how many times PRA says that I agree that there was that particular debt, I never have.” (R. Doc. 167-1, at 42:23-24.)

“Hammett said she probably had a Capital One account opened about 2001 but did not state her Capital One account had an account number ending in -6049 in Dkt. No. 37 ¶ 19 nor Dkt. No. 39 ¶ 2.” (R. Doc. 198, at 2.)

The Court’s error is material because the Consolidated Order is based on the “fact” that Hammett provided no evidence that she did not owe the Debt.

Hammett raised genuine disputes of material fact that PRA called Hammett’s - 6000 before November 18, 2020, in contradiction to PRA’s falsified business records and affidavits.

“Finally, around November 18, 2020, Hammett realized that the annoying telephone calls were not going to stop” provides a reasonable inference that Hammett received similar calls in September and October, 2020. (R. Doc. 1, at 12)

**PRA intended to annoy Hammett.**

Hammett’s policy, “if I don't believe that I owe somebody money, I'm not just going to hand them cash.” The Court concurred. “Generally a good rule in life.” (R. Doc. 167-1, at 43) (Later the Court declared, “Belief is not fact.” (R. Doc. 173, at 72.)

PRA disclosed no OALD.

PRA had no expectation that Hammett would change her belief without OALD. (R. Doc. 68, at 357) PRA intended to annoy Hammett to coerce payment. (R. Doc. 68, at 55, search “going away”.)

The Court rationalized that ignoring verbal C&Ds was acceptable.

“PRA, LLC didn’t know who was telling it to stop calling.” (R. Doc. 173, at 37.)

Hammett verified her identity during the November 18, 2020 call. (R. Doc. 164, at 431; R. Doc. 99, at 13 – 14; R. Doc. 107-6, at 18:22 (“You verified it.”))

The FDCPA “uses the phrase ‘any person’ rather than ‘consumer’ in other parts of the Act. See 15 U.S.C. § 1692d (‘A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.’). *Richmond v. Higgins*, 435

F.3d 825, 828 (8th Cir.2006).” (*James Dunham v. Portfolio Recovery Associates, LLC*, No. 11-1553, (8<sup>th</sup> Cir. 2011))

Unwanted calls may warrant a restraining order; the Consent Order and Stipulated Judgment are essentially restraining orders. (R. Doc. 39-5, 225)

Before Regulation F was enacted, C&Ds to a debt collector had to be written under FDCPA. Without knowing the callers were debt collectors, Hammett couldn't know the FDCPA controlled. The absence of a written C&D didn't lessen the intrusion.

PRA's claim of believing Hammett was in California, excusing late calls in the Central Time Zone, meant PRA was thwarting California's two-party-consent law for call recordings.

California Penal Code § 632, prohibits recording confidential communications including collection calls without the consent of all parties, except if all parties know the person is recording. Hammett warned PRA taping was a felony and demanded the tape be erased on April 6, 2017 and December 16, 2020. PRA refused to comply. (R. Doc. 164, at 418, 438. R. Doc. 107-6, at 5, 28.)

If speaking on a recorded line is implied consent, hanging up 100 times is implied refusal.

PRA kept calling on a recorded line until it coerced Hammett to be recorded against her will.

**The Court’s acceptance of PRA’s documentation was a clear and prejudicial abuse of discretion.**

“A district court enjoys wide discretion in ruling on the admissibility of proffered evidence, and evidentiary rulings should only be overturned if there was a clear and prejudicial abuse of discretion.” (*Bady v. Murphy-Kjos*, 628 F.3d 1000, 1002 (8<sup>th</sup> Cir. 2011)) (quoting *Quigley v. Winter*, 598 F.3d at 946). The district court had “discretion to admit the evidence if [it] found it to be sufficiently trustworthy.” *In re King Enterprises, Inc.*, 678 F.2d at 77 (citing *United States v. Goins*, 593 F.2d 88, 91–92 (8th Cir. 1979)).

The Court erred by ruling the Consent Order, CFPB Complaint, Stipulated Judgment and *Mejia* were not relevant. These cases and the numerous cases brought against PRA by Attorney Generals are relevant to the trustworthiness of PRA’s OALD, business records and affidavits. (R. Doc. 98, at 5:5 – 8:19; R. Doc. 225)

PRA’s documents were truncated, redacted and edited, and were therefore not compliant with Federal Rules of Evidence 106. The Court refused to strike the documents, compel production or extend discovery. (R. Doc. 98, at 12:4 – 13:9)



The Court strung Hammett along, neglecting to rule on the motion to compel initial disclosures until the discovery deadline passed.

“Capital One did not make any assurance of the accuracy of the ‘load data’ and the ‘-6049 Account’ was not mentioned in the Capital One affidavit and bill of sale.” (R. Doc. 198, at 2.)

The Load Data shows the account was never deficient from 2001 to 2010. The “last payment” in 2010 was \$0.00, so there was no balance at the “last payment”. The last payment was plausibly invented to extend the SOL to collect. The interest rate was 0%. (R. Doc. 76-5.) PRA’s evidence is not credible.

PRA completed its investigation after the Complaint was filed. It claimed no OALD: No statements for the Account, (see Procedural History 1/28/21); no credit Contract (R. Doc. 199, at 4); no bill of sale or affidavit of sale with the Account number on it (R. Doc. 76-3); no “Laura Lynn” signature on a sales slip or bill of sale, “nothing that showed what I purchased supposedly to get into that debt.” (R. Doc. 164, at 89, 294.)

PRA and the Court lamented that Hammett knows nothing about what happened to the Account. PRA claims to know little more.

“‘The verification requirement demands more than that the debt collector merely repeat its assertion that a debt is due.’ *Norton v. Wilshire Credit Corp.*, Civ. No. 95-3223, 1997 U.S. Dist. LEXIS 23360, at \*22 (D.N.J. Jul. 14, 1997). The debt

collector must provide the debtor with meaningful information to inform him of the source of his debt. See *id.* (finding that a debt collector failed to properly verify a debt when it did not provide the debtor with [], the original charge, [], or any other information that would let the debtor know when he incurred the debt and to whom). Otherwise, a debtor has no way of knowing what the outstanding debt is from and if it is in fact still owed.” (*James Dunham v. Portfolio Recovery Associates, LLC*, No. 4:09-CV-00086-JLH, USDC ARED, 2009.)

The Account was purchased before the Consent Order. A reasonable inference is that it is from a portfolio that was riddled with errors.

It was an abuse of discretion to judge the Business Records Affidavit of Capital One Bank, LLC (inexplicably under seal) (R. Doc. 107-2) sufficiently trustworthy. Capital One said it transferred all documentation to PRA upon sale and retained none in a recorded call produced to PRA. PRA issued no subpoena to Capital One. Therefore, paragraph 3(ii) is a falsehood under penalty of perjury and the affidavit and business records attached are not trustworthy.

The Laura Lyman snafu illustrates the untrustworthiness of all PRA’s records.

PRA’s data is contradictory. The interest rate on the Data Load is 0%. (R. Doc. 121.) The interest rate on the statement was 29.40%. (R. Doc. 76-16.)

“Capital One did not make any assurance of the accuracy of the ‘load data’ and the “-6049 Account” was not mentioned in the Capital One affidavit and bill of sale.” (R. Doc. 198, at 2.)

The PRANet record and the self-generated phone log are inconsistent.

Where the defendant spoliates evidence and abuses litigation to bully, defame and intimidate the plaintiff, and has a pattern of similar conduct, an inference favoring the plaintiff is appropriate. (*Portfolio Recovery Associates, LLC v. Guadelupe Mejia*, 2016 WL 3460177 (Mo.App. W.D.) Appeal No. WD79175 and *Cecilia*, 2020 WL 4464584.)

Instead, the Court found no inferences in Hammett’s favor.

**PRA did not meet its burden of proving a bona fide time zone error.**

PRA lacked proper procedures to avoid calling Hammett outside allowed hours. (R. Doc. 145, at 2.)

PRA claimed it thought Hammett was in California despite calling only the Arkansas landline from 3/13/2017 to 11/17/2020 (which is two lies wrapped into one). (R. Doc. 76, Exhibit 1D)

PRA learned that Laura Lynn would be at the Arkansas landline September 11, 2017. (R. Doc. 107-6, at 7)

PRA conducted a soft credit inquiry on Hammett, revealing five Arkansas addresses, including one business. (R. Doc. 56-2, at 42)

PRA failed to clarify the circumstances behind two calls made outside the designated safe time, indicating a lack of reasonable procedures to prevent such violations.

**The Court erred by dismissing the remaining FDCPA claims Due to a Sentence not being corrected.**

The Court decided Hammett waived a bevy of claims due to the “implicit waiver argument”. (R. Doc. 173, at 51, reiterating PRA, R. Doc. 107, at 2) The Court acknowledged that Hammett informed it that she ran out of time writing her brief but addressed each claim specifically in the CUF, R. Doc. 99.

The Court did not acknowledge that Hammett was able to finish the narrative in the brief.

A genuine dispute was made to 15 U.S.C. §§ 1692e(11). PRA did not disclose in the first written communication Hammett received, the fraud affidavit, nor any telephone call, that PRA was attempting to collect a debt and that any information obtained would be used for that purpose. Two call recordings PRA produced were to Evan Jackson, a stranger to Hammett. PRA told Jackson, “This is an attempt to

collect a debt by a debt collector. Any information obtained could be used for that purpose.” (R. Doc. 107-6, at 62.)<sup>11</sup> The Court excused PRA from its obligation because, supposedly, Hammett did not give PRA the opportunity. PRA and Hammett engaged in numerous recorded conversations without PRA making the required disclosure.

PRA sought information from Hammett before disclosing the call's purpose, falsely citing the need for additional identity verification. However, referring to the script on R. Doc. 68-CD, at 61, this disclosure is made to anyone who picks up the message, whether they share the same name or simply wish to listen. Regardless of her lack of familiarity with 5757 Erlanger, PRA continued to engage Hammett.

**The Court ignored documents most favorable to Hammett.**

The Court failed to cite any of Hammett’s reply to her MPSJ, affidavit and exhibits including the video recordings of three key calls. (R. Doc. 58.) PRA made a motion to strike Hammett’s reply, which was denied correctly. (R. Doc. 63, R. Doc. 111, TEO.) PRA filed no notice of appeal. But the Court treated Hammett’s

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<sup>11</sup> Evidence of PRA’s willful disregard for the proprieties, it filed the transcription publicly in this FD CPA case, without redacting the debtor’s name and address.

reply as if it was stricken, failing to reference it in the Consolidated Order. (R. Doc. 173.)

The Court failed to cite Hammett’s compelling deposition cross-examination, Vol. II, at 146 – 172. (R. Doc. 164, at 286 – 312.)

The Court failed to cite Hammett’s medical record with its clear indication of PTSD, sleep disorders, and economic stressors. (R. Doc. 68, at 1671 – 1871.)

## **II. The Court erred by denying Reconsideration based on manifest injustice.**

Hammett was not claiming new evidence, though the CFPB Complaint and Stipulated Judgment are compelling new evidence. ((R. Doc. 39-5, 225)

Hammett’s additional affidavits and exhibits made her case stronger, but reiterated what was already in the record prior to the decision. (See R. Doc. 194, at 17 – 20.)

## **III. The Court failed to disclose a conflict of interest for which his impartiality might reasonably be questioned, and which would cause Hammett to ask for the Court’s recusal.**

The Eighth Circuit reviews recusal claims first raised on appeal for plain error. *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 663 (8th Cir. 2003). “The recusal

statute sets forth an objective standard for assessing a judge's duty to recuse: the question is whether the judge's impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case. 28 U.S.C.A. § 455(a)." *U.S. v. Melton*, 738 F.3d 903 (8<sup>th</sup> Cir. 2013)

**There is enough evidence of bias to meet the substantial burden of raising the issue of recusal for the first time at appeal.**

**The Court should have disclosed his prior position as Walmart Inc. in-house counsel. Walmart partners with credit card companies that sell portfolios to PRA, including Capital One Bank.**

Judge Rudofsky's conflict was greater and more personal than Judge Baker's son working as a runner at Rose Law Firm during under-graduate summer break. Judge Rudofsky chose to remain silent.

Hammett sought recusal of Judge Baker, based on her disclosure of her son's previous summer "runner" position at Rose Law Firm. Judge Rudofsky was high-level counsel for Walmart. Capital One issues Walmart branded credit and sells non-performing accounts to PRA. Hammett would ask for Judge Rudofsky's recusal had he disclosed the connection timely.

The undisclosed relationship appears to create an extra-judicial bias.

**The Court's capacity for impartial judgment was compromised by a dogmatic ideology.**

According to a report by the Alliance for Justice, the Court “worked on a 2016 article titled 'The CFPB’s unconstitutional power grab' a labeling that ‘raises serious concerns’” for his ability to judge fairly.

(<https://www.afj.org/document/lee-rudofsky-background-report/>)

The Eighth Circuit finds the FTC’s opinions persuasive.

**The Court consistently shows disdain for FDCPA plaintiffs.**

Of the three other FDCPA cases presided over by the Court published on Westlaw, the Court repeated that the FDCPA plaintiffs did not consider it victory enough after prevailing on state court collection cases.



In *Millwood*<sup>12</sup> the Court wrote: “Ultimately, Ms. Millwood did not have to pay any deficiency under the financing contract”. The Court was implying Millwood owed a debt. Inspection of the underlying case<sup>13</sup> shows otherwise.

Millwood denied a deficiency in her Answer. Cannon, via Adams, voluntarily dismissed the case "without prejudice" three days later, similar to PRA's tactic with Hammett's account. Millwood had a genuine dispute, but Judge Rudofsky ignored it.

The Court: “The state court lawsuit could therefore be described as a victory for Ms. Millwood. But she does not see it that way.” 2021 WL 4466309, at \*3.

The Court repeated the errant opinion that collection cessation on a disputed debt, even if temporarily, means the prevailing debtor was made whole. He calls an FDCPA case a “victory lap”. Ending harassment is not a complete victory, according to Congress.

The Court’s clear bias against FDCPA plaintiffs and the CFPB contributed to his appearance of bias.

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<sup>12</sup> *Millwood v. Adams*, U.S.D.C. ARED, Case No.: 4:20-cv-01035-LPR, 2021 WL 4466309

<sup>13</sup> *Cannon Finance v. Millwood*, Garland County, Arkansas District Court Case No. HTC-19-1364, August 29, 2019

**Overlooking the overwhelming evidence to claim Hammett did not have a genuine dispute about the Debt creates an appearance of judicial bias. (see section I.)**

**The Court's failure to recuse impacted Hammett's substantial right to a fair jury trial negatively.**

The Court's conduct was particularly insidious because his errors prior to the Consolidated Order looked honest. (R. Doc. 136, at 8, 9) The Court's tendentious misjudgments foretold the Court's disregard for compelling evidence presented by Hammett, and acceptance of PRA's assertions as unquestionable truth, undermined the essence of a fair and impartial legal process.

**IV. The Court abused his discretion to deny electronic filing; the rule the Court relied on is unconstitutional and was superseded.**

There are two local rules controlling access to electronic filing, *L.R. 5.1* and Section I.B of the CM/ECF Administrative Policies and Procedures Manual for Civil Filings<sup>14</sup>. “The district court has considerable discretion in applying its local

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<sup>14</sup> <https://www.are.uscourts.gov/sites/are/files/cvmanual.pdf>

rules.’ *Buffets, Inc. v. Leischow*, 732 F.3d 889, 895 (8th Cir. 2013).” *R.A.D. Services*, 60 F.4th 408 (2023)

But the rules themselves must be examined for Constitutionality. That standard is strict scrutiny. Denial of electronic filing creates burdens on pro se litigants that are not imposed on the class of moneyed elites who can afford attorneys.

### **The Court applied the wrong standard for Constitutionality.**

There is a well settled, fundamental right to equal protection. (14th Amendment of the United States Constitution, R. Doc. 8, at 1.)

The Court errantly concluded that rational basis scrutiny applies. (Doc. 263-0, at 4.)

“Unfortunately, most citizens are in the class of people who cannot afford to hire an attorney. Plaintiff is a member of this class.” (R. Doc. 8, at 2.)

The court reasoned attorneys are “officers of the court and members of the bar and pro se parties [] are not”. (Parenthesis omitted. R. Doc. 263-0, at 4.)

Arguendo, attorneys are presumed honest and competent, the same presumption should apply to non-attorneys. The Court needs an objective test for non-attorneys to challenge the label of 'incompetent and dishonest' linked to their economic class.

PRA's attorneys demonstrated incompetence and dishonesty by improperly filing Hammett's "CONFIDENTIAL" credit report on PACER (R. Doc. 56-2, at 30–48). Despite requests for correction, PRA failed to do so as of November 9, 2023. Additionally, PRA filed its SUMF three days after its MSJ, only after Hammett pointed out the error. PRA entered its MSJ reply as a "response" (R. Doc. 107).

"While safeguards to the electronic filing system are understandable, Plaintiff is experienced with the system, has a PACER account in good standing and is willing to adhere to all the rules equally with the Defendants' counsel. (See Affidavit of Laura Lynn Hammett ("Aff.") ¶¶ 1 to 7)" (R. Doc. 8, at 2 referring to R. Doc. 9)

**The Court abused its discretion by refusing to exercise it.**

"Local Rule 5.1 prohibits self-represented litigants such as the Plaintiff from using the electronic filing system unless first obtaining a court order." (R. Doc. 8, at 2.)

The Court reasoned in full, sua sponte, "[the administrative policy] prohibits pro se parties from participating in electronic filing." (R. Doc. 18, at 1.) General Order 53<sup>15</sup>, adopting the CM/ECF Administrative Policies and Procedures

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<sup>15</sup> <https://www.are.uscourts.gov/sites/are/files/general-ordes/GO53.pdf>

Manuals, was enacted December 1, 2018. L.R. 5.1 was adopted and effective December 1, 2018 also, but was amended November 5, 2020, superseding G.O. 53.<sup>16</sup>

**The error was material.**

Denial of electronic filing caused Hammett significant harm: ambush in hearings, health risks, financial strain, and unfair filing deadlines.

“I did not receive the order [R. Doc. 140] that you -- it sounds like you made an order that [PRA] received yesterday, but because I was denied the access to eFlex, I don't hear about things timely.” (R. Doc. 167-1, at 84:10.) The Court gave Hammett a couple minutes to read the order if she wanted to, but in the courtroom, there was no opportunity to research for understanding.

The TEO issued November 3, 2023 (R. Doc. 287) notification to Hammett was postmarked November 6, 2023. Though causing no material damage this highlights the potential for harm.

Hashimoto's Disease made travel to the clerk's office difficult and exposed the immune compromised 60-year-old to COVID and other viruses.

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<sup>16</sup> [https://www.are.uscourts.gov/sites/are/files/local\\_rules/5.1.pdf](https://www.are.uscourts.gov/sites/are/files/local_rules/5.1.pdf)

Assets Hammett initially budgeted to take depositions and serve subpoenas had to be redirected to the additional filing costs. “It's really almost a hundred dollars for every document that I file because of the mileage, the copying, parking, everything.” (R. Doc. 167-1, at 23)

The Court ordered both parties to file due on the same day. For example, Order, R. Doc 260, entered August 15, 2023 was postmarked August 16, 2023. The Order set a schedule for notice of intent to file a redaction request for August 22, 2023 and redaction requests for September 5, 2023. PRA had seven days to file the first document and Hammett had no more than five days, assuming the mail arrived in one day. This violated FRCP 6(d).

**V. The Court erred by denying Hammett’s pleas to extend discovery and ignoring PRA’s spoliation of evidence.**

“A district court has wide latitude to determine the scope of discovery ... [and] abuses its discretion only when the discovery is so limited as to affect a party’s substantial rights.’)(internal quotations and citations omitted), *cert. denied*” (*Burgess v. Town of Wallingford, Not Reported in F.Supp.2d (2012)* citing *In re Agent Orange Prod. Liab. Litig.*, 517 F.3d 76, 103 (2d Cir.2008).

**The Court anticipated this issue.**

“I am not going to change the discovery deadline. I am not changing the expert disclosure deadline or rebuttal expert disclosure deadline. We can all fight about that at a later time.” (R. Doc. 124, at 52)

**PRA knew Hammett intended to move for extension of discovery.**

Hammett made numerous email efforts to meet and confer and expressed intent to file a discovery motion on January 4, 2022. (R. Doc. 259-1, at 2) Hammett did not calculate the response time into the deadline for filing discovery motions.

Considering that Hammett had discovery motions pending, it was harsh for the Court to deny a meritorious motion because of Hammett’s inadvertence and mistake.

**PRA’s initial disclosures were worthless.**

PRA’s initial disclosures inadequately identified documents the Court allowed PRA to use on summary judgment. (R. Doc. 98, at 5:5 – 8:19)

Hammett provided the Court with PRA’s initial disclosures that basically said, “we’re [not]<sup>17</sup> going to give you our business records, but we’re going to use our business records.” (R. Doc. 98, at 7:17-21.)

**PRA failed to produce documents timely that it used as evidence.**

(R. Doc. 98, at 5:5 – 8:19)

In particular, “[PRA] still ha[s] not provided the name or account information, anything that I could use on a subpoena to subpoena their telephone records from a third party.” (R. Doc. 98, at 6:10)

“[T]he late disclosure of a basic verification document and the late expert witness report caused a need for extension of discovery.” (R. Doc. 136, at 3)

**The Court allowed PRA to withhold discovery.**

Party is not entitled to any absolute privilege from disclosure of its relevant business records. (*Penthouse Intern., Ltd. v. Playboy Enterprises, Inc.*, C.A.2 (N.Y.) 1981, 663 F.2d 371.) The Court accepted PRA’s excuse for denying Hammett access to her PRANet electronic file.

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<sup>17</sup> This appears to be another omission by the Court Reporter.



## **Hammett proved PRA's Spoliation of Evidence.**

A spoliation sanction is warranted as PRA redacted numerous PRANet entries. For example, the March 31, 2021 entry detailing the change to Laura Lyman. (R. Doc. 120, exhibit 1E at 9, R. Doc. 59, disc "Tynedra" recording April 12, 2021.)

PRA representative Risa Gore told Hammett there was an entry that said Hammett filed for bankruptcy. (R. Doc. 164, at 294 and exhibit 3, thumb drive, at 39 and 40:30) That entry is not on the record produced.

Referring to thumb drive exhibit 3, "At about 43:20, I asked if notes are made for every call. And at 44:55 or 45:00, she said, 'Anytime we dial a number, our system documents it.' [] At 48:00, she says, 'Our system documents every number whether we're calling out or someone is calling in.'" (R. Doc. 164, at 295) There are many calls I know were made, some in September and October 2020, that do not appear on PRANet, including over a hundred PRA documented on the call log, and some for which recordings were produced.

PRA produced no credit contract.

The bill of sale is redacted.

The forward flow agreement showing the -6049 account was withheld.

PRA purged all the telephone numbers it admitted to calling Hammett from along with the numbers it didn't admit to calling from. (R. Doc. 164, at 34, 46, 55, 56.)

PRA admitted it changed the name and account number on the account to Laura Lyman. Hammett should be allowed discovery to determine if the alteration was intentional.

**There is persuasive, non-frivolous argument that spoliation sanctions should be extended to the destruction of the original creditor's records, even before lawsuits in connection with collection of the debts is instigated.**

In JFF Cecilia LLC, defendants lost or destroyed messages and emails related to a business dispute post a pre-suit letter from plaintiffs' counsel. Plaintiffs later sued, seeking sanctions for alleged spoliation.

Initially, the trial court denied the motion, as the defendants didn't consider a lawsuit "very likely" when losing or destroying the evidence.

The appeals court ordered the trial court to reconsider, assessing whether the defendants should have anticipated "possible" litigation instead of "likely." Applying the broader standard, the trial court granted the plaintiffs' motion, allowing the jury to consider evidence of spoliation and infer that the

unavailable materials favored the plaintiffs. (*JFF Cecilia LLC v. Weiner Ventures, LLC*, S.Ct. of Massachusetts, Suffolk County, 2020 WL 4464584, 1984CV03317, January 30, 2023. Salinger, J.)

More recently, the Eighth Circuit opined that “the fact that he purposefully committed fraud in an effort to obtain legal status indicates an understanding that he lacked legal status.” (*U.S.A. v. Taleb Jawher*, No. 22-2844 (8<sup>th</sup> Cir. 2023)) Likewise, PRA’s fabrication of business records exemplifies knowledge that the authentic evidence is adverse to PRA.

**VI. The Court awarding costs to PRA, despite manifest injustice, conflicts with the Court's stance that Hammett had a \$2,297.63 victory.**

The Court of Appeals reviews legal issues about the award of costs de novo, but reviews the actual award of costs for an abuse of discretion. *Reece v. Bank of New York Mellon*, 760 F.3d 771, 779 (8th Cir. 2014)

**This issue should be mooted by reversal of the MSJ or order on leave to amend.**

**Hammett was the prevailing party.**

PRA claimed Hammett is “categorically not a prevailing party” because she did not obtain “a court-ordered decree entered altering the parties’ legal relationship”. (R. Doc. 259, at 3.) There was such a decree.

Summary judgment rested on the notion that Hammett had a \$2,297.63 debt and that PRA forgave it. The Court sanctioned altering the legal dynamic—nullifying what the Court deemed an obligation on Hammett to pay PRA. Despite Hammett's strong objection to this opinion, the Consolidated Order stands as a legal ruling until overturned on appeal.

"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. [citation omitted]" *Oldham v. Ehrlich*, 617 F.2d 163 (1980).

PRA claimed it “waived” Hammett’s debt “in light of the litigation.” PRA did not resume collection after the 30-day verification period. According to the Court’s ruling in *Millwood*, Hammett attained a victory.

PRA can’t have it both ways: We waived Hammett’s debt, but Hammett was a complete loser. Hammett wins both ways. Either PRA waived the debt or PRA misrepresented the debt and has to stand trial.

**VII. Denying Hammett leave to amend contradicts the well-established precedent of granting leave liberally. Amendment is not futile.**

“[The Eighth Circuit] normally review[s] the denial of a motion to amend a complaint for abuse of discretion; but because the court denied the motion on the basis of futility, the court’s legal conclusions are reviewed de novo. *See Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir.2010). A district court “should freely give leave [to amend] when justice so requires.” *Fed.R.Civ.P. 15(a)*.” (*Friedman v. Farmer*, 788 F.3d 862 (8<sup>th</sup> Cir. 2015))

**Substituting PRA Group, Inc. as Doe 1 causes no prejudice to PRA, LLC.**

The two legal entities file a consolidated statement and share a Chief Risk Manager and Compliance Officer, Laura White. (R. Doc. 167-1, at 8:12-13, 9:7-10) From 2015 to 2020, PRA Group, Inc. accepted responsibility for compliance with the Consent Order. PRA, LLC produced no third-party communications between itself and PRA Group, Inc. in response to Hammett’s first RFP No. 11 propounded. If PRA Group, Inc. is a distinct entity, then all attorney communications of PRA, LLC shared with a third party must be produced in

accordance with the discovery request. Sharing attorney-client communications with a third party constitutes a waiver of privilege. The SEC mandates the wholly owned subsidiary to disclose all legal matters to PRA Group, Inc. for inclusion in annual reports. PRA, LLC supplemented the response on December 8, 2021 with third party communication with Capital One, but no others. (Those did not include transmittal letters of the PRANet documents and bill of sale that PRA shared with Capital One.)

There is no prejudice or surprise.

The Eighth Circuit affirmed the Friedman order denying leave to amend because “the amended complaint added new allegations regarding different equipment located on a different piece of land (Plant Two) and owned by a different entity (Arkat Land).” (*Friedman* at \*869) “The new facts alleged are not relevant to those asserted in the original complaint (regarding Plant One and Arkat Nutrition); instead they relate to a separate entity not mentioned in the original complaint. *See* Fed.R.Civ.P. 15(c)(1)(C) (allowing relation back if new party was related to claim set out in original complaint and had notice of the action or should have known about the action but for the naming mistake).” *Id.*

**Negligence is a viable alternative claim to Outrage.**

The Court opined that a claim of negligence must fail because it “does not allege facts to plausibly assert that Ms. Hammett suffered a physical injury”. (R. Doc. 173, at 67.) The Court then declared that being woken from sleep is not physical injury.

Hammett had insomnia and sleep apnea, and the precious sleep she got was her only respite from the excruciating pain of adhesive capsulitis. (R. Doc. 164, at 113:15-19.)

### **VIII. The Court erred by denying Hammett’s motion for Rule 11 Sanctions.**

The Court’s factual findings are clearly erroneous.

The Court abused his discretion by denying sanctions.

PRA lacked a valid defense, so it attacked Hammett's character baselessly. Despite filing 3,000 lawsuits weekly, PRA called Hammett a "vexatious, serial litigant." PRA falsely claimed Hammett's retirement account was depleted by "online poker" and "gambling losses" (R. Doc. 204, at 10, 12). This falsehood was especially harmful as Hammett had won a World Series of Poker event in January 2020 and co-authored a book on poker in 2023.

Hammett followed procedure, offering PRA a safe harbor to correct their lies before filing for sanctions (R. Doc. 222). The Court, however, failed to admonish

PRA, instead accusing Hammett of unspecified misconduct (R. Doc. 243, TEO, incorporating PRA opposition R. Doc. 239, ¶¶ 15, 16). The Court's adopted reasoning portrayed Hammett's legal gambling activities as evidence of illegal online wagering and dismissed attacks on her reputation as a "minor, inconsequential issue."

PRA's malicious intent is evident in submitting the defamatory document to Westlaw for publication.

Hammett maintained professionalism and civility throughout the proceedings. In denying sanctions, the Court likely projected Hammett's journalistic persona onto her litigation persona, exposing the falsity behind his TEO Order 219.

**An appropriate sanction is a jury instruction that PRA intentionally inflicted emotional distress on Hammett by abusing "absolute privilege".**

*Mejia and Cecilia.*

Consider sanctions pursuant to 28 U.S.C. 1927.

**IX. The Court erred by denying public access to documents PRA designated "confidential" and filed under seal without showing a particularized need.**



The Eighth Circuit reviews a district court’s determination of whether there were sufficient grounds to override the common-law right of access to judicial records to justify sealing documents for abuse of discretion. (*IDT Corp. v. eBay*, 709 F.3d 1220 (8<sup>th</sup> Cir. 2013))

**This issue is appropriate to hear by motion.**

This is a collateral 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.

Hammett’s Eighth Circuit Motion should suffice for this court to order unsealing. For caution, the basic arguments are reiterated here.

**The public right of access to record portions relied on for dispositive orders should outweigh all but the most compelling private interests. The burden of demonstrating a specific need for secrecy rests on the party desiring secrecy.**

Documents revealing PRA's non-compliance with its policies and records specific to the Account, demonstrating errors in the Court's opinions, should be

accessible to the public. When identical forms are in public records or conveyed to individuals contacted by PRA, withholding these documents implies an intent to conceal lies and deceit.

“Common-law right of access to judicial records provides a measure of accountability to the public at large, which pays for the courts.” (*Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)) “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*. 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 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*, acknowledged that mental health may also be affected by receiving annoying or harassing phone calls. Policies aiding consumers in stopping calls should be publicized. The obligation to issue a 1099-C or not should also be common knowledge.

“*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)

“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). [citation omitted] (‘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.*

See R. Doc. 54, 65, 66, 79, 168, 176

**Hammett’s medical records should be redacted of irrelevant material.**

**The Court is responsible for protecting the right of public access, even when all litigants desire confidentiality.**

**Because the Court gave a legal opinion that caused Hammett to stipulate to the protective order, the protective order should not be binding.**

The Harvard trained judge convinced Hammett to stipulate a contract of adhesion, contrary to her written opposition. Then his persuasion was omitted from the transcript.

**The proceedings' secrecy prejudiced Hammett. Concealing the public record served as an opportunity for misrepresentations of arguments and evidence.**

**X. An accurate record is the keystone of justice. The abuse of discretion to deny access to audio of hearings to *pro se* litigants, while allowing the class who can afford attorneys that advantage is unconstitutional.**

**This issue is appropriate to hear by motion.**

The Constitutionality of a rule should be reviewed De Novo.

“[E]very court of record has power to amend its records, so as to make them conform to and exhibit the truth. Ordinarily, there must be something to amend by;

but that may be the judge’s minutes or notes, not themselves records, or any thing that satisfactorily shows what the truth was.” (*Aetna Ins. Co. v. Boon*, 95 U.S. 117, 126 (1877))

**The Common-law right to access to public records is burdensome to overcome.**

“The common law right of access applies to the recording. Disclosure, moreover, would advance the purposes that underlie both the common law and First Amendment rights of access: encouraging fair judicial proceedings and fostering informed civic engagement on matters of public importance. [] Though transcripts are available, the recordings provide the best and most accurate depiction of the [hearing]. Disclosure of the recordings would allow for more accurate reporting and provide a safeguard against inaccurate or misleading portrayals of the [hearing].” (Cited in Statement of Issues)

**Hammett memorialized the December 1, 2021 dialogue omitted from the transcript several times before the transcript was prepared.**

“Judge Rudofsky conveyed the idea to me that things that are already public information cannot be made confidential.” (email, August 19, 2022, R. Doc. 204-2, at 1)

## **Conclusion**

Hammett begs the Eighth Circuit for the following relief:

Issue an Order to Show Cause why the Honorable Judge Lee P. Rudofsky should not recuse for the appearance of bias.

Remand with instructions to reverse all orders on review, not limited to:

Hammett’s Motion for Partial Summary Judgment;

PRA’s Motion for Summary Judgment and Supplemental Motion for Summary Judgment;

PRA’s motion for costs;

Hammett's Motion for Leave to File Electronically;

Hammett's motion for leave to amend, allowing further amendment to comport with evidence produced by PRA or disclosed by Hammett to date;

Hammett's Motion for Rule 11 Sanctions against PRA's attorneys and their firms; award appropriate sanctions and sanctions pursuant to 28 U.S.C. § 1927.

Compel PRA to produce meaningful discovery responses.

Exclude any report or testimony by Dr. Sanjay Adhia, except the initial report and discussion of the initial report.

Remove PRA's privacy designations and require showing of a particularized need for each document it requests to be confidential or under seal.

Allow Hammett to redact her medical records and file R. Doc. 68, 99, 100, jump drive with recordings, compact discs with recordings publicly.

Allow the case to be heard by a jury of Hammett's peers.

Respectfully submitted,

November 27, 2023

s// Laura Lynn Hammett

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(s)Laura Lynn Hammett

Attorney for Plaintiff / Appellant in pro se

Dated: November 27, 2023

### **Certification Pursuant to Local Rule 28A(h)(2)**

I, Laura Lynn Hammett, certify that the brief and addendum have been scanned for viruses and that the brief is virus-free.

### **Certificate of Service**

I hereby certify that on November 27, 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.

(s)Laura Lynn Hammett

Attorney for Plaintiff / Appellant in pro se

Dated: November 27, 2023