

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the

Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix A

Opinion of the Eighth Circuit and Denial of Rehearing En Banc

Laura Lynn Hammett
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Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

United States Court of Appeals
For the Eighth Circuit

No. 23-2638

Laura Hammett

Plaintiff - Appellant

v.

Portfolio Recovery Associates, LLC; Does, 1-99

Defendants - Appellees

No. 23-3093

Laura Hammett

Plaintiff - Appellant

v.

Portfolio Recovery Associates, LLC; Does, 1-99

Defendants - Appellees

No. 23-3432

Laura Hammett

Plaintiff - Appellant

v.

Portfolio Recovery Associates, LLC; Does, 1-99

Defendants - Appellees

Appeals from United States District Court
for the Eastern District of Arkansas - Central

Submitted: May 29, 2024

Filed: June 5, 2024

[Unpublished]

Before GRUENDER, ERICKSON, and STRAS, Circuit Judges.

PER CURIAM.

In these consolidated appeals, Laura Hammett appeals the district court's¹ adverse grant of summary judgment on her claims under state law and the Fair Debt Collection Practices Act, adverse grant of costs, and denial of her post-judgment motion to correct errors in a transcript.

We lack jurisdiction to review the denial of her post-judgment motion because the notice of appeal (NOA) as to that order was untimely. See Fed. R. App. P. 4(a)(1)(A) (NOA must be filed within 30 days after entry of order appealed); see also Dieser v. Cont'l Cas. Co., 440 F.3d 920, 923 (8th Cir. 2006) (timely NOA is

¹The Honorable Lee P. Rudofsky, United States District Judge for the Eastern District of Arkansas.

mandatory and jurisdictional). After careful review of the record and the parties' arguments on appeal in the other matters, we agree with the district court's thorough and well-reasoned analysis of Hammett's claims, see Kuntz v. Rodenburg LLP, 838 F.3d 923, 924 (8th Cir. 2016) (standard of review); and we discern no error in the grant of costs, see Dindinger v. Allsteel, Inc., 853 F.3d 414, 431 (8th Cir. 2017) (standard of review). As to Hammett's arguments challenging the district court's rulings on a host of other issues, we find no basis for reversal.

Accordingly, we dismiss the appeal of the denial of Hammett's post-judgment motion, and otherwise affirm. We also deny her pending motions.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-2638

Laura Hammett

Appellant

v.

Portfolio Recovery Associates, LLC and Does, 1-99

Appellees

No: 23-3093

Laura Hammett

Appellant

v.

Portfolio Recovery Associates, LLC and Does, 1-99

Appellees

No: 23-3432

Laura Hammett

Appellant

v.

Portfolio Recovery Associates, LLC and Does, 1-99

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:21-cv-00189-LPR)
(4:21-cv-00189-LPR)
(4:21-cv-00189-LPR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 09, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix B

PACER Docket for Text Entry Only Orders

Laura Lynn Hammett
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Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

U.S. District Court
Eastern District of Arkansas (Central Division)
CIVIL DOCKET FOR CASE #: 4:21-cv-00189-LPR

Hammett v. Portfolio Recovery Associates LLC et al
Assigned to: Judge Lee P. Rudofsky
Case in other court: USCA8, 23-02638
USCA8, 23-03093
USCA8, 23-03432
Cause: 47:227 Restrictions of Use of Telephone Equipment

Date Filed: 03/10/2021
Date Terminated: 06/15/2023
Jury Demand: Plaintiff
Nature of Suit: 485 Telephone Consumer Protection Act (TCPA)
Jurisdiction: Diversity

Date Filed	#	Docket Text
03/10/2021	<u>1</u>	COMPLAINT with Jury Demand against All Defendants, filed by Laura Lynn Hammett. Summons issued and returned to Plaintiff for service. (Fee of \$402 paid. Receipt Number LIT081193.) (Attachments: # <u>1</u> Civil Cover Sheet) (jdh) (Entered: 03/10/2021)
03/22/2021	<u>2</u>	SUMMONS Returned Executed by Laura Lynn Hammett. Portfolio Recovery Associates LLC served on 3/12/2021. (jap) (Entered: 03/22/2021)
04/02/2021	<u>3</u>	NOTICE of Appearance by David S. Mitchell, Jr on behalf of Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 04/02/2021)
04/02/2021	<u>4</u>	ANSWER to <u>1</u> Complaint by Portfolio Recovery Associates LLC.(Mitchell, David) (Entered: 04/02/2021)
04/02/2021	<u>5</u>	Corporate Disclosure Statement (Rule 7.1) by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 04/02/2021)
04/12/2021	<u>6</u>	FIRST AMENDED and Supplemental Complaint with Jury Demand against all Defendants filed by Laura Lynn Hammett. (jap) (Docket text modified on 4/13/2021 to indicate the document is filed against all Defendants.) (thd). (Entered: 04/12/2021)
04/13/2021		NOTICE OF DOCKET CORRECTION re <u>6</u> First Amended Complaint. CORRECTION: The docket text was modified to indicate the document is filed "against all Defendants". (thd) (Entered: 04/13/2021)
04/14/2021	<u>7</u>	MOTION for Leave to File Electronically filed by Laura Lynn Hammett. (fjg) (Entered: 04/14/2021)
04/14/2021	<u>8</u>	MEMORANDUM IN SUPPORT of <u>7</u> Motion for Leave to File Electronically filed by Laura Lynn Hammett. (fjg) (Entered: 04/14/2021)
04/14/2021	<u>9</u>	AFFIDAVIT in Support of <u>7</u> MOTION for Leave to File Electronically filed by Laura Lynn Hammett. (fjg) (Entered: 04/14/2021)
04/26/2021	<u>10</u>	ANSWER to <u>6</u> Amended Complaint and <i>Supplemented Complaint</i> by Portfolio Recovery Associates LLC.(Mitchell, David) (Entered: 04/26/2021)
05/20/2021	<u>11</u>	MOTION for Leave to Appear pro hac vice by James K. Trefil. Fee \$100 receipt number AAREDC-4014939. Filed by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit Exhibit 1)(Mitchell, David) (Entered: 05/20/2021)
05/25/2021	<u>12</u>	ORDER granting <u>11</u> motion to appear pro hac vice of James K. Trefil. Mr. Trefil shall appear as additional counsel of record for Portfolio Recovery Associates, LLC. Signed by Judge Kristine G. Baker on 5/25/2021. (jdh) (Entered: 05/25/2021)
06/30/2021	<u>13</u>	INITIAL SCHEDULING ORDER: Rule 26(f) Conference to occur by 8/30/2021; Rule 26(f) Report due by 9/13/2021; Jury Trial set for sometime during the week of 5/16/2022 at 09:00 AM in Little Rock Courtroom #4D before Judge Kristine G. Baker. Signed at the direction of the Court on 06/30/2021. (tmw) (Entered: 06/30/2021)
08/20/2021	<u>14</u>	ORDER regarding possible recusal issue. If all parties waive any conflict after consulting with counsel and considering the circumstances, I will keep the case. If

		<p>fewer than all parties waive, I will recuse, and the matter will be reassigned to another judge at random. Do not file any waiver on the docket or otherwise communicate your decision to me. Instead, write a letter directly to the Clerk of Court. In due course, the Clerk will inform me, without providing to me any details, whether all parties have waived the conflict. Each party has until Wednesday, 9/8/2021, to inform the Clerk about his, her, or its decision on waiver. In the meantime, because of the nature of this case, I will continue to decide administrative matters that do not touch the merits. Signed by Judge Kristine G. Baker on 8/20/2021. (jbh) (Entered: 08/20/2021)</p>
08/31/2021	<u>15</u>	ORDER OF REASSIGNMENT directing the Clerk's Office to issue a Notice of Reassignment. Signed at the Direction of the Court on 8/31/2021. (jbh) (Entered: 08/31/2021)
08/31/2021	<u>16</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE OF REASSIGNMENT. Based on <u>15</u> Order, the Clerk's office has reassigned the case to Judge Lee P. Rudofsky. (jak) (Entered: 08/31/2021)
08/31/2021	<u>17</u>	MOTION for Leave to Appear pro hac vice by John E. Komisin. Fee \$100 receipt number AAREDC-4087708. Filed by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit Exhibit)(Mitchell, David) (Entered: 08/31/2021)
09/01/2021	<u>18</u>	ORDER denying <u>7</u> motion for permission to participate in electronic filing; and granting <u>17</u> motion to appear pro hac vice. Signed by Judge Lee P. Rudofsky on 09/01/2021. (ajt) (Entered: 09/01/2021)
09/02/2021	<u>19</u>	MOTION for FRCP Rule 5.1 Constitutional Challenge to Rule 68 Offer of Judgment (Equal Access to Justice) filed by Laura Lynn Hammett. (fjg) (Entered: 09/02/2021)
09/02/2021	<u>20</u>	NOTICE of Motion that is a FRCP Rule 5.1 Constitutional Challenge to Rule 68 Offer of Judgment (Equal Access to Justice) by Laura Lynn Hammett re <u>19</u> . (jap) (Entered: 09/02/2021)
09/13/2021	<u>21</u>	REPORT of Rule 26(f) Planning Meeting by Portfolio Recovery Associates LLC. <i>JOINT</i> (Mitchell, David) (Entered: 09/13/2021)
09/15/2021	<u>22</u>	RESPONSE in Opposition re <u>19</u> MOTION for Order filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Mitchell, David) (Entered: 09/15/2021)
09/16/2021	<u>23</u>	FINAL SCHEDULING ORDER: Jury Trial set for 5/16/2022 at 9:30 AM in Little Rock, Arkansas Courtroom #2A before Judge Lee P. Rudofsky. Motions to Amend and Join Other Parties due by 11/22/2021; Discovery due by 3/2/2022; Motions due by 3/17/2022; Status Report due by 3/17/2022; and Pretrial Disclosure Sheet due by 4/25/2022. Signed at the Direction of the Court on 9/16/2021. (hml) (Entered: 09/16/2021)
09/20/2021	<u>24</u>	MOTION to Compel Substantial Compliance with FRCP 26(a); Equally Applicable as a Reply to the Response to the Motion for Constitutional Challenge of Rule 68 Offer of Judgment, filed by Laura Lynn Hammett. (Attachments: # <u>1</u> Exhibit A – Transmittal email and Defendant's Initial Disclosure, # <u>2</u> Exhibit B – Email Chain Asking for Meet and Confer, # <u>3</u> Exhibit C – Protective Order Proposed by Defendant) (jap) (Entered: 09/20/2021)
09/27/2021	<u>25</u>	STATEMENT of Agreement to Six (6) Member Jury filed by Laura Lynn Hammett. (fjg) (Entered: 09/27/2021)
09/30/2021	<u>26</u>	MOTION to Quash Subpoena and Brief in Support, MOTION to Shorten Time filed by Laura Lynn Hammett. (fjg) (Entered: 09/30/2021)
10/04/2021	<u>27</u>	MOTION for Protective Order by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Mitchell, David) (Entered: 10/04/2021)
10/04/2021	<u>28</u>	RESPONSE in Opposition re <u>24</u> MOTION to Compel filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Mitchell, David) (Entered: 10/04/2021)
10/14/2021	<u>29</u>	RESPONSE in Opposition re <u>26</u> MOTION to Quash Plaintiff Laura Lynn Hammett's 2nd Objections to Subpoenas and Request for Protective Order filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u>

		Exhibit)(Mitchell, David) (Entered: 10/14/2021)
10/14/2021	<u>30</u>	RESPONSE to <u>27</u> MOTION for Entry of a Protective Order filed by Laura Lynn Hammett. (fjg) (Entered: 10/14/2021)
11/10/2021	<u>31</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of TELEPHONE Hearing on <u>27</u> MOTION for Protective Order: Motion Hearing set for 11/17/2021 at 10:00 AM before Judge Lee P. Rudofsky. (hml) (Entered: 11/10/2021)
11/15/2021	<u>32</u>	MOTION for Leave to Appear pro hac vice by Miranda G. James. Fee \$100 receipt number AAREDC-4145494. Filed by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 11/15/2021)
11/15/2021	<u>33</u>	MOTION to Amend the First <u>6</u> Amended and Supplemented Complaint by Laura Lynn Hammett (Attachment: # <u>1</u> Exhibit 1: Proposed Second Amended Complaint) (jap) (Entered: 11/15/2021)
11/15/2021	<u>34</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>32</u> Motion to Appear Pro Hac Vice. Signed by Judge Lee P. Rudofsky on 11/15/2021. (mwr) (Entered: 11/15/2021)
11/15/2021	<u>35</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of TELEPHONE Hearing on <u>27</u> MOTION for Protective Order: Motion Hearing reset for 12/1/2021 at 9:00 AM before Judge Lee P. Rudofsky. (hml) (Entered: 11/15/2021)
11/16/2021	<u>36</u>	NOTICE of Errata to the Proposed Second Amended Complaint as Exhibit to <u>33</u> Motion to Amend the First Amended and Supplemented Complaint filed by Laura Lynn Hammett. (fjg) (Entered: 11/16/2021)
11/22/2021	<u>37</u>	MOTION for Partial Summary Judgment Requesting Attorney Fees Under FDCPA Section 807(2)(A); Brief in Support filed by Laura Lynn Hammett. (fjg) (Entered: 11/22/2021)
11/22/2021	<u>38</u>	STATEMENT OF Uncontroverted FACTS and Conclusions of Law in Support of <u>37</u> Motion for Partial Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 11/22/2021)
11/22/2021	<u>39</u>	AFFIDAVIT in Support of <u>37</u> MOTION for Partial Summary Judgment filed by Laura Lynn Hammett. (Attachments: # <u>1</u> Exhibit A – Letter with \$2,297.63 Debt Claimed, # <u>2</u> Exhibit B – Letter with \$0.00 Debt Admitted, # <u>3</u> Exhibit C – Letter Claiming Debt Was Owed, # <u>4</u> Exhibit D – Interrogatories Propounded by Defendant, # <u>5</u> Exhibit E – Consent Order)(fjg) (Entered: 11/22/2021)
11/23/2021	<u>40</u>	MOTION to Extend Time <i>Deadline to Respond to Plaintiff's Motion for Partial Summary Judgment</i> by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit A)(Mitchell, David) (Entered: 11/23/2021)
11/29/2021	<u>41</u>	RESPONSE in Opposition re <u>33</u> MOTION to Amend/Correct <u>6</u> Amended Complaint filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit)(Mitchell, David) (Entered: 11/29/2021)
12/01/2021	<u>42</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) CLERK'S MINUTES for proceedings held before Judge Lee P. Rudofsky: Telephone Conference held on 12/1/2021 to finalize the Proposed Protective Order and to discuss outstanding motions. (Plaintiff: Laura Lynn Hammett; Defendant: David S. Mitchell, Jr.; Court Reporter: Stephen Franklin.) (hml) (Entered: 12/01/2021)
12/01/2021	<u>43</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) In accordance with the Court's verbal ruling at today's Telephone Hearing, Plaintiff's <u>19</u> constitutional challenge to FRCP 68 (and to the fee-shifting statutes and precedents) is denied without prejudice to refiling. The challenge is not ripe for adjudication at this time. Signed by Judge Lee P. Rudofsky on 12/01/2021. (gvl) (Entered: 12/01/2021)

12/01/2021	<u>44</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) Pursuant to the parties' concessions during today's Telephone Hearing, Ms. Hammett's Motion to Quash Subpoena <u>26</u> is denied as moot. The entry of the (forthcoming) Protective Order and agreement to treat the medical records as confidential satisfies Ms. Hammett's concerns. Signed by Judge Lee P. Rudofsky on 12/01/2021. (gvl) (Entered: 12/01/2021)
12/01/2021	<u>45</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) In accordance with the Court's verbal ruling at today's Telephone Hearing, Defendant's Motion to Extend Deadline to Respond to Plaintiff's Partial Motion for Summary Judgment <u>40</u> is granted. Defendant has until December 13, 2021 to respond to Plaintiff's Motion. Signed by Judge Lee P. Rudofsky on 12/01/2021. (gvl) (Entered: 12/01/2021)
12/01/2021	<u>46</u>	STIPULATED PROTECTIVE ORDER. Signed by Judge Lee P. Rudofsky on 12/01/2021. (lg) (Entered: 12/01/2021)
12/06/2021	<u>47</u>	REPLY to Response to Motion re <u>33</u> MOTION to Amend/Correct <u>6</u> Amended Complaint filed by Laura Lynn Hammett. (kth) (Entered: 12/06/2021)
12/09/2021	<u>48</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Telephone Hearing on <u>24</u> MOTION to Compel, <u>33</u> MOTION to Amend/Correct <u>6</u> Amended Complaint, and <u>37</u> MOTION for Partial Summary Judgment: Telephone Status Conference on Motions set for 12/20/2021 at 9:30 AM before Judge Lee P. Rudofsky. (hml) (Entered: 12/09/2021)
12/13/2021	<u>49</u>	MOTION to Modify Subpoena to Exclude Text Messages and Electronic Mail filed by Laura Lynn Hammett. (fjg) (Entered: 12/13/2021)
12/13/2021	<u>50</u>	MOTION for Leave to File <i>UNDER SEAL</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 12/13/2021)
12/13/2021	<u>51</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>50</u> Motion for Leave to File Under Seal. Signed by Judge Lee P. Rudofsky on 12/13/2021. (hml) (Entered: 12/13/2021)
12/13/2021	<u>52</u>	SEALED Brief. (jap) (Entered: 12/14/2021)
12/13/2021	<u>53</u>	SEALED Response. (jap) (Entered: 12/14/2021)
12/14/2021	<u>54</u>	MOTION for Reconsideration of the <u>51</u> Order Filed December 13, 2021 Allowing Portfolio Recovery Associates, LLC Leave to File Three Documents Under Seal (Docket No. <u>51</u>) filed by Laura Lynn Hammett. (fjg) (Entered: 12/14/2021)
12/14/2021	<u>55</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER: Response to <u>49</u> MOTION to Modify Subpoena to Exclude Test Messages and Electronic Mail due by close of business on Friday, December 17, 2021. Signed by Judge Lee P. Rudofsky on 12/14/2021. (hml) (Entered: 12/14/2021)
12/17/2021	<u>56</u>	RESPONSE to Motion re <u>49</u> MOTION to Exclude <i>Text Messages and Electronic Mail</i> filed by Portfolio Recovery Associates LLC. (Attachments: # 1 Exhibit, # 2 Exhibit)(Mitchell, David) (Redacted version of main document and exhibits replaced as the main document on 3/18/2022 pursuant to 92 Order and pursuant to instruction from Chambers.)(cmn) (Entered: 12/17/2021)
12/20/2021	<u>57</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER directing the clerk to replace the <u>56</u> Response to Motion with the redacted version of the document provided by the party. Signed by Judge Lee P. Rudofsky on 12/20/2021. (hml) (Entered: 12/20/2021)
12/20/2021	<u>58</u>	REPLY to Response to <u>37</u> MOTION for Partial Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 12/20/2021)
12/20/2021	<u>59</u>	EXHIBITS – Exhibits F, I and K to <u>58</u> Reply to Response to Motion filed by Laura Lynn Hammett. Disc filed conventionally and maintained in the Clerk's office. (fjg) (Entered: 12/20/2021)
12/20/2021	<u>60</u>	MOTION for Order Redaction filed by Laura Lynn Hammett. (fjg) (Entered: 12/20/2021)

12/21/2021	<u>61</u>	MOTION to Amend/Correct <u>56</u> Response to Motion, by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 12/21/2021)
12/22/2021	<u>62</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 12/22/2021)
12/23/2021	<u>63</u>	MOTION to Strike <u>58</u> Reply to Response to Motion by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 12/23/2021)
12/23/2021	<u>64</u>	BRIEF IN SUPPORT re <u>63</u> Motion to Strike filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit A – TO BE FILED UNDER SEAL, # <u>2</u> Exhibit B – TO BE FILED UNDER SEAL, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F – TO BE FILED UNDER SEAL, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Mitchell, David) (Entered: 12/23/2021)
12/27/2021	<u>65</u>	RESPONSE in Opposition re <u>62</u> MOTION for Leave to File <i>Under Seal</i> filed by Laura Lynn Hammett. (kth) (Entered: 12/27/2021)
12/27/2021	<u>66</u>	RESPONSE in Opposition re <u>63</u> MOTION to Strike <u>58</u> Reply to Response to Motion and <u>64</u> BRIEF IN SUPPORT filed by Laura Lynn Hammett. (kth) (Entered: 12/27/2021)
01/04/2022	<u>67</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Telephone Hearing on <u>24</u> MOTION to Compel, <u>33</u> MOTION to Amend/Correct <u>6</u> Amended Complaint, and <u>37</u> MOTION for Partial Summary Judgment: Telephone Status Conference on Motions set for 2/18/2022 at 10:00 AM before Judge Lee P. Rudofsky. (hml) (Entered: 01/04/2022)
01/05/2022	<u>68</u>	MOTION to File Exhibit Under Seal and Motion to Remove Designation of Confidential and Revise the Protective Order by Laura Lynn Hammett.(Exhibit A filed under seal pursuant to instruction from Chambers.) (kth) (Additional attachment(s) added on 1/5/2022: # <u>1</u> Main Document – Correct) (jak). (Entered: 01/05/2022)
01/05/2022	<u>69</u>	NOTICE OF DOCKET CORRECTION re <u>68</u> MOTION. CORRECTION: The original document was attached in error (incorrect file mark date) due to a clerical mistake by the Clerk's office. The correct document was added to docket entry <u>68</u> and is attached hereto for review by the parties. (jak) (Entered: 01/05/2022)
01/14/2022	<u>70</u>	MOTION in Limine to Limit Opinion of Expert Witness Dr. Sanjay Adhia and Compel Testimony filed by Laura Lynn Hammett. (fjg) (Entered: 01/14/2022)
01/19/2022	<u>71</u>	RESPONSE in Opposition re <u>68</u> MOTION for Order on Plaintiff's Motion <i>Challenging Confidentiality and to Modify the Stipulated Protective Order</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit)(Mitchell, David) (Redacted # <u>13</u> Exhibit I replaced on 3/24/2022 pursuant to 130 Order.)(cmn) (Entered: 01/19/2022)
01/20/2022	<u>72</u>	MOTION to Compel Defendant Portfolio Recovery Associates, LLC to File Exhibit I to Response, Docket No. 71-9 Under Seal or Redact Names of Minors Involved in Juvenile Action, and Order of Protection Preventing Defendant from Contacting Plaintiff's Adult Children, filed by Laura Lynn Hammett. (jap) (Entered: 01/20/2022)
01/28/2022	<u>73</u>	RESPONSE to Motion re <u>70</u> MOTION in Limine filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit 1)(Mitchell, David) (Entered: 01/28/2022)
01/28/2022	<u>74</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 01/28/2022)
01/28/2022	<u>75</u>	MOTION for Summary Judgment by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 01/28/2022)
01/28/2022	<u>76</u>	BRIEF IN SUPPORT re <u>75</u> Motion for Summary Judgment <i>PUBLIC REDACTED</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Document BRIEF – TO BE FILED UNDER SEAL, # <u>2</u> Exhibit 1 – PUBLIC REDACTED, # <u>3</u> Exhibit 1 – TO BE FILED UNDER SEAL, # <u>4</u> Exhibit A – TO BE FILED UNDER SEAL, # <u>5</u> Exhibit B – TO BE FILED UNDER SEAL, # <u>6</u> Exhibit C – TO BE FILED UNDER SEAL, # <u>7</u> Exhibit D – TO BE FILED UNDER SEAL, # <u>8</u> Exhibit E – TO BE FILED UNDER SEAL, # <u>9</u> Exhibit F, # <u>10</u> Exhibit G, # <u>11</u> Exhibit H – TO BE FILED

		UNDER SEAL, # <u>12</u> Exhibit I – TO BE FILED UNDER SEAL, # <u>13</u> Exhibit J)(Mitchell, David) (Redacted # <u>14</u> Exhibit F, # <u>15</u> Exhibit G, # <u>16</u> Exhibit J replaced as exhibits on 3/18/2022 pursuant to 116 Order and pursuant to instruction from Chambers.) (cmn) (Entered: 01/28/2022)
01/31/2022	<u>77</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 01/31/2022)
01/31/2022	<u>78</u>	STATEMENT OF FACTS (Local Rule 56.1) re <u>76</u> Brief in Support,, <i>PUBLIC REDACTED</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Document Statement of Facts – SEALED, # <u>2</u> Exhibit 1 – PUCLIC REDACTED, # <u>3</u> Exhibit 1 – SEALED, # <u>4</u> Exhibit A – SEALED, # <u>5</u> Exhibit B – SEALED, # <u>6</u> Exhibit C – SEALED, # <u>7</u> Exhibit D – SEALED, # <u>8</u> Exhibit E – SEALED, # <u>9</u> Exhibit F, # <u>10</u> Exhibit G – SEALED, # <u>11</u> Exhibit H – SEALED, # <u>12</u> Exhibit I – SEALED, # <u>13</u> Exhibit J, # <u>14</u> Exhibit 2, # <u>15</u> Exhibit 3, # <u>16</u> Exhibit 4, # <u>17</u> Exhibit 5, # <u>18</u> Exhibit 6, # <u>19</u> Exhibit 7, # <u>20</u> Exhibit 8, # <u>21</u> Exhibit 9, # <u>22</u> Exhibit 10, # <u>23</u> Exhibit 11, # <u>24</u> Exhibit 12, # <u>25</u> Exhibit 13, # <u>26</u> Exhibit 14, # <u>27</u> Exhibit 15)(Mitchell, David) (Redacted # <u>28</u> Exhibit F, # <u>29</u> Exhibit G, # <u>30</u> Exhibit J replaced as exhibits on 3/18/2022 pursuant to 116 Order and pursuant to instruction from Chambers.)(cmn) (Entered: 01/31/2022)
02/02/2022	<u>79</u>	RESPONSE in Opposition re <u>77</u> MOTION for Leave to File <i>Under Seal</i> filed by Laura Lynn Hammett. (kth) (Entered: 02/02/2022)
02/02/2022	<u>80</u>	MOTION for Extension of Time to File Response/Reply to <u>75</u> Motion for Summary Judgment and Extension of Time for Discovery by Laura Lynn Hammett. (kth) (Entered: 02/02/2022)
02/03/2022	<u>81</u>	RESPONSE in Opposition re <u>72</u> MOTION to Compel MOTION for Order <i>Filing Under Seal and Request for a Protective Order</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Mitchell, David) (Entered: 02/03/2022)
02/04/2022	<u>82</u>	MOTION to Amend/Correct <u>78</u> Statement of Facts (Local Rule 56.1),, <u>76</u> Brief in Support,, by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Mitchell, David) (Entered: 02/04/2022)
02/09/2022	<u>83</u>	RESPONSE in Opposition re <u>80</u> MOTION for Extension of Time to File Response/Reply filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Mitchell, David) (Entered: 02/09/2022)
02/10/2022	<u>84</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting in part and denying in part <u>80</u> Motion for Extension of Time to File Response/Reply. Ms. Hammett's responsive summary judgment papers must be filed on or before Tuesday, February 22, 2022. With respect to her request for additional discovery, that request is denied without prejudice. Part of Ms. Hammett's formal summary judgment response may request deferral of summary judgment under Rule 56(d) of the Federal Rules of Civil Procedure so long as she complies with that Rule's requirements. However, Ms. Hammett's summary judgment response must also include all other reasons she believes the motion for summary judgment should be denied, in case the Court disagrees with her request to defer consideration of the summary judgment motion. Signed by Judge Lee P. Rudofsky on 2/10/2022. (hml) (Entered: 02/10/2022)
02/16/2022	<u>85</u>	MOTION for Medical Examination by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 02/16/2022)
02/16/2022	<u>86</u>	BRIEF IN SUPPORT re <u>85</u> Motion for Medical Examination filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Mitchell, David) (Entered: 02/16/2022)
02/18/2022	<u>87</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) CLERK'S MINUTES for proceedings held before Judge Lee P. Rudofsky:Telephone Motion Hearing held on 2/18/2022 re <u>24</u> MOTION to Compel, <u>49</u> MOTION to Exclude, <u>54</u> MOTION for Reconsideration re 51 Order on Motion for Leave to File, <u>60</u> MOTION for Order, <u>61</u> MOTION to Amend/Correct <u>56</u> Response to Motion, and

		<u>62</u> MOTION for Leave to File Under Seal. The Court heard arguments on these outstanding motions and orders will be entered under separate entries. (Plaintiff: Laura Lynn Hammett; Defendant: David S. Mitchell, Jr., James Trefil, and John Komisin; Court Reporter: Stephen Franklin.) (hml) (Entered: 02/18/2022)
02/18/2022	88	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>24</u> Motion to Compel. For the reasons stated at today's hearing, the Motion is denied. Signed by Judge Lee P. Rudofsky on 02/18/2022. (mwr) (Entered: 02/18/2022)
02/18/2022	89	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>49</u> Motion to Modify Subpoena to Exclude. For the reasons stated at today's hearing, the Motion is moot. Signed by Judge Lee P. Rudofsky on 02/18/2022. (mwr) (Entered: 02/18/2022)
02/18/2022	90	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>54</u> Motion for Reconsideration. For the reasons stated at today's hearing, the Motion is denied. Signed by Judge Lee P. Rudofsky on 02/18/2022. (mwr) (Entered: 02/18/2022)
02/18/2022	91	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>60</u> Motion for Order Redaction. For the reasons stated at today's hearing, the Motion is moot. Signed by Judge Lee P. Rudofsky on 02/18/2022. (mwr) (Docket text modified on 2/18/2022 to correct typographical error.)(cmn) (Entered: 02/18/2022)
02/18/2022	92	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>61</u> Motion to Amend/Correct. For the reasons stated at today's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 02/18/2022. (mwr) (Entered: 02/18/2022)
02/18/2022	93	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER: During today's hearing <u>87</u> the Plaintiff orally requested an extension of time to respond to <u>75</u> MOTION for Summary Judgment. The Court granted the request. The Plaintiff's response is due by March 1, 2022. Signed by Judge Lee P. Rudofsky on 2/18/2022. (hml) (Entered: 02/18/2022)
02/18/2022	94	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Telephone Hearing on <u>33</u> MOTION to Amend/Correct, <u>37</u> MOTION for Partial Summary Judgment, <u>62</u> MOTION for Leave to File Under Seal, <u>63</u> MOTION to Strike, <u>68</u> MOTION for Order, <u>70</u> MOTION in Limine, <u>72</u> MOTION to Compel and MOTION for Order, <u>74</u> MOTION for Leave to File Under Seal, <u>75</u> MOTION for Summary Judgment, <u>77</u> MOTION for Leave to File Under Seal, <u>82</u> MOTION to Amend/Correct, and <u>85</u> MOTION for Medical Examination: Motion Hearing set for 3/16/2022 at 1:00 PM before Judge Lee P. Rudofsky.(hml) (Entered: 02/18/2022)
02/22/2022	95	OPPOSITION and Brief in Support of Opposition to Defendant's <u>85</u> MOTION to Compel a Remote Defense Medical Exam filed by Laura Lynn Hammett. (fjg) (Entered: 02/22/2022)
03/01/2022	96	MOTION for Leave to File Under Seal: Brief, Affidavit and Exhibits 1 to 15 of Discovery Motion, Opposition to Defendant's Motion for Summary Judgment. by Laura Lynn Hammett. (jap) (Entered: 03/01/2022)
03/01/2022	97	MOTION to Extend and Compel Discovery or Sanctions Against Portfolio Recovery Associates, LLC () by Laura Lynn Hammett. (jap) (Entered: 03/01/2022)
03/01/2022	99	SEALED Document. (jap) (Entered: 03/03/2022)
03/01/2022	100	SEALED Document. (jap) (Entered: 03/03/2022)
03/02/2022	98	TRANSCRIPT of Telephonic Hearing held on 2/18/2022, before Judge Lee P. Rudofsky. Court Reporter Stephen Franklin. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. DEADLINES: Notice of Intent to Request Redaction due 3/9/2022. Redaction Request due 3/23/2022. Redacted Transcript Deadline set for 4/4/2022. Release of Transcript Restriction set for

		5/31/2022. (fcd) (Entered: 03/02/2022)
03/03/2022	<u>101</u>	MOTION for Extension of Time to File Response/Reply as to <u>96</u> MOTION for Leave to File <i>In Support of Motion for Summary Judgment</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 03/03/2022)
03/04/2022	<u>102</u>	RESPONSE to Motion re <u>101</u> MOTION for Extension of Time to Reply to <u>96</u> Motion for Summary Judgment filed by Laura Lynn Hammett. (jap) (Entered: 03/04/2022)
03/04/2022	103	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>101</u> Motion for Extension of Time to File Reply in Support of <u>75</u> Motion for Summary Judgment. Reply due by 3/15/2022. Signed by Judge Lee P. Rudofsky on 3/4/2022. (hml) (Entered: 03/04/2022)
03/09/2022	<u>104</u>	NOTICE of Intent to Request Redaction of <u>98</u> Electronic Transcript. by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 03/09/2022)
03/15/2022	<u>105</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 03/15/2022)
03/15/2022	<u>106</u>	NOTICE by Portfolio Recovery Associates LLC of <i>Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 03/15/2022)
03/15/2022	<u>107</u>	RESPONSE in Support re <u>75</u> MOTION for Summary Judgment filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Mitchell, David) (Entered: 03/15/2022)
03/15/2022	<u>108</u>	RESPONSE in Opposition re <u>97</u> MOTION to Extend Time MOTION to Compel <i>Discovery or Sanctions Against Portfolio Recovery Associates llc</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Mitchell, David) (Entered: 03/15/2022)
03/16/2022	109	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) CLERK'S MINUTES for proceedings held before Judge Lee P. Rudofsky: Telephone Motion Hearing held on 3/16/2022 re <u>63</u> MOTION to Strike, <u>68</u> MOTION for Order, <u>72</u> MOTION to Compel and MOTION for Order, <u>74</u> MOTION for Leave to File Under Seal, <u>77</u> MOTION for Leave to File Under Seal, <u>82</u> MOTION to Amend/Correct, <u>85</u> MOTION for Medical Examination, <u>96</u> MOTION for Leave to File, and <u>105</u> MOTION for Leave to File Under Seal. (Plaintiff: Laura Hammett; Defendants: David Mitchell, James Trefil, and John Komisin; Court Reporter: Teresa Hollingsworth.) (hml) (Entered: 03/16/2022)
03/17/2022	110	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>62</u> Motion for Leave to File Under Seal. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	111	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>63</u> Motion to Strike or File Under Seal. For the reasons stated at yesterday's hearing, the Motion is denied. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	112	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting in part and denying in part <u>68</u> Motion to File Exhibit Under Seal and Motion to Remove Designation of Confidential and Revise the Protective Order. For the reasons stated at yesterday's hearing: (1) exhibits to the Motion are to be filed under seal; (2) however, all the substantive relief requested by the Motion is denied. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	113	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting in part and denying in part <u>72</u> Motion to Compel Defendant to File Exhibit I [Doc. 71-9] Under Seal or Redact Names of Minors Involved in Juvenile Action and for Order of Protection Preventing Defendant from Contacting Plaintiff's Adult Children. For the reasons stated at yesterday's hearing, the Motion is granted in part and denied in part. The Court orders Defendant to file unredacted and redacted versions of Exhibit I [Doc. 71-9]. The unredacted version is to be filed under seal. The redacted version is to be filed publicly with all content redacted except the email sent on January 9, 2022, at 3:29 p.m. The relief requested regarding potential contact of

		Plaintiff's adult children is denied. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	114	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>74</u> Motion for Leave to File Under Seal. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	115	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>77</u> Motion for Leave to File Under Seal. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	116	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>82</u> Motion to Correct and Replace Filing. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	117	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting in part and denying in part <u>85</u> Motion for Medical Examination. For the reasons stated at yesterday's hearing, the Motion is granted in part and denied in part. Dr. Adhia is to conduct an in-person medical examination of Plaintiff at a mutually agreeable location and at a mutually available time, if necessary outside the March 2, 2022 discovery cutoff. Unless Plaintiff agrees otherwise, the medical examination must take place within 45 miles of Conway or Little Rock. Defendant is to provide the resulting report to the Court and Plaintiff within 10 days of the examination. The report will be conditionally accepted pending resolution of Plaintiff's Motion in Limine [Doc. 70]. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	118	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>96</u> Motion for Leave to File Under Seal. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/17/2022	119	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>105</u> Motion for Leave to File Under Seal. For the reasons stated at yesterday's hearing, the Motion is granted. Signed by Judge Lee P. Rudofsky on 03/17/2022. (mwr) (Entered: 03/17/2022)
03/18/2022	120	SEALED BRIEF. (ldb) (Entered: 03/18/2022)
03/18/2022	121	SEALED DOCUMENT. (ldb) (Entered: 03/18/2022)
03/18/2022	122	SEALED DOCUMENT. (ldb) (Entered: 03/18/2022)
03/18/2022	123	SEALED TRANSCRIPT. (fcd) (Entered: 03/18/2022)
03/18/2022	124	TRANSCRIPT of Telephonic Motion Hearing held on 3/16/2022, before Judge Lee P. Rudofsky. Court Reporter Teresa Hollingsworth. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. DEADLINES: Notice of Intent to Request Redaction due 3/25/2022. Redaction Request due 4/8/2022. Redacted Transcript Deadline set for 4/18/2022. Release of Transcript Restriction set for 6/16/2022. (fcd) (Entered: 03/18/2022)
03/18/2022	125	AMENDED FINAL SCHEDULING ORDER: Jury Trial reset for 12/13/2022 at 9:30 AM in Little Rock, Arkansas Courtroom #1D before Judge Lee P. Rudofsky. Status Report due by 8/15/2022 and Pretrial Disclosure Sheet due by 11/14/2022. Signed at the Direction of the Court on 3/18/2022. (hml) (Entered: 03/18/2022)
03/18/2022	126	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Hearing on <u>33</u> MOTION to Amend/Correct, <u>37</u> MOTION for Partial Summary Judgment, <u>70</u> MOTION in Limine, <u>75</u> MOTION for Summary Judgment, and <u>97</u> MOTION to Extend Time and MOTION to Compel: Motion Hearing set for 4/26/2022 at 10:00 AM in Little Rock, Arkansas Courtroom #1D before Judge Lee P. Rudofsky. (hml) (Entered: 03/18/2022)

03/22/2022	<u>127</u>	NOTICE by Portfolio Recovery Associates LLC <i>Notice of Withdrawal of Its Intent to Request Redaction</i> (Mitchell, David) (Entered: 03/22/2022)
03/22/2022	<u>128</u>	ADDENDUM filed by Portfolio Recovery Associates LLC <i>Exhibit I for Doc. 71-9 redacted</i> (Mitchell, David) (Entered: 03/22/2022)
03/23/2022	<u>129</u>	SEALED Document. (jap) (Entered: 03/23/2022)
03/24/2022	<u>130</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER directing the Clerk's office to replace Exhibit I (Doc. 71-9) with Addendum (Doc. 128). Signed by Judge Lee P. Rudofsky on 03/24/2022. (mwr) (Entered: 03/24/2022)
03/31/2022	<u>131</u>	NOTICE by Portfolio Recovery Associates LLC <i>of Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 03/31/2022)
04/13/2022	<u>132</u>	NOTICE of Appearance by Andrew J. Middlebrooks on behalf of movant Jana Perry. (jap) (Entered: 04/13/2022)
04/13/2022	<u>133</u>	MOTION to Quash Subpoena by Jana Perry. (jap) (Entered: 04/13/2022)
04/13/2022	<u>134</u>	BRIEF IN SUPPORT re <u>133</u> Motion to Quash filed by Jana Perry. (jap) (Entered: 04/13/2022)
04/14/2022	<u>135</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) The Court orders Ms. Hammett to file a response to <u>133</u> Jana Perry's Motion to Quash before 5:00 p.m. on Thursday, April 21, 2022. Signed by Judge Lee P. Rudofsky on 04/14/2022. (gvl) (Entered: 04/14/2022)
04/19/2022	<u>136</u>	OPPOSITION to <u>133</u> MOTION to Quash Subpoena filed by Laura Lynn Hammett. (fjg) (Entered: 04/19/2022)
04/19/2022	<u>137</u>	BRIEF IN SUPPORT of <u>136</u> Opposition to Motion filed by Laura Lynn Hammett. (fjg) (Entered: 04/19/2022)
04/22/2022	<u>138</u>	REPLY to Response to Motion re <u>133</u> MOTION to Quash filed by Jana Perry. (Middlebrooks, Andrew) (Entered: 04/22/2022)
04/24/2022	<u>139</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. The Court does not intend to rule on Ms. Perry's <u>133</u> Motion to Quash Subpoena until it rules on the motion to amend the complaint and the motions for summary judgment (or grants a 56(d) continuance). These rulings may take some time after the hearing set for April 26, 2022. For now, and until the Court rules on the Motion to Quash Subpoena, Ms. Perry need not respond to the subpoena. Signed by Judge Lee P. Rudofsky on 04/24/2022. (gvl) (Entered: 04/24/2022)
04/25/2022	<u>140</u>	ORDER denying <u>97</u> Motion to Extend and Compel Discovery or Sanctions. Ms. Hammett's 56(d) request will be addressed separately. Signed by Judge Lee P. Rudofsky on 4/25/2022. (ldb) (Entered: 04/25/2022)
04/25/2022	<u>141</u>	ORDER authorizing Mr. James A. Trefil to bring a cell phone, laptop computer, or personal digital assistant into the courthouse on 4/26/2022 for a hearing before Judge Lee P. Rudofsky. Signed by Judge Lee P. Rudofsky on 4/25/2022. (hml) (Entered: 04/25/2022)
04/25/2022	<u>142</u>	OBJECTION to <u>138</u> Reply to Response to Motion to Quash Subpoena filed by Laura Lynn Hammett. (fjg) (Entered: 04/25/2022)
04/26/2022	<u>143</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) CLERK'S MINUTES for proceedings held before Judge Lee P. Rudofsky:Motion Hearing held on 4/26/2022 re <u>33</u> MOTION to Amend/Correct, <u>37</u> MOTION for Partial Summary Judgment, and <u>75</u> MOTION for Summary Judgment. After hearing argument from the parties, the Court took the matters under advisement. (Plaintiff: Laura Lynn Hammett; Defendant: David S. Mitchell, Jr. and James Trefil; Court Reporter: Stephen Franklin.) (hml) (Entered: 04/26/2022)
04/27/2022	<u>144</u>	SEALED DOCUMENT. (ldb) (Entered: 04/27/2022)
05/06/2022	<u>145</u>	BRIEF IN SUPPORT re <u>76</u> Brief in Support,,, <u>75</u> Motion for Summary Judgment <i>Supplemental</i> filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered:

		05/06/2022)
05/12/2022	<u>146</u>	Responsive BRIEF of CBM of Central Arkansas v. Bemel filed by Laura Lynn Hammett. (fjg) (Entered: 05/12/2022)
05/16/2022	<u>147</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 05/16/2022)
05/16/2022	<u>148</u>	MOTION to Withdraw as Attorney by Portfolio Recovery Associates LLC (James, Miranda) (Entered: 05/16/2022)
06/02/2022	<u>149</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>147</u> Motion for Leave to File Under Seal. Signed by Judge Lee P. Rudofsky on 06/02/2022. (gvl) (Docket text modified on 6/7/2022 to correct a typographical error pursuant to instruction from Chambers) (jak) (Entered: 06/02/2022)
06/02/2022	<u>150</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>148</u> Motion to Withdraw as Attorney. Attorney Miranda Grace James terminated. Signed by Judge Lee P. Rudofsky on 06/02/2022. (gvl) (Entered: 06/02/2022)
06/02/2022	<u>151</u>	SEALED DOCUMENT. (ldb) (Entered: 06/16/2022)
06/21/2022	<u>152</u>	NOTICE of Change of Address by Laura Lynn Hammett. (cmn) (Entered: 06/21/2022)
06/21/2022	<u>153</u>	MOTION for Order filed by Laura Lynn Hammett. (fjg) (Entered: 06/21/2022)
07/11/2022	<u>154</u>	MOTION for Leave to File Document Under Seal by Laura Lynn Hammett. (fjg) (Entered: 07/11/2022)
07/11/2022	<u>155</u>	BRIEF IN SUPPORT of <u>154</u> Motion for Leave to File Document Under Seal filed by Laura Lynn Hammett. (fjg) (Entered: 07/11/2022)
07/11/2022	<u>156</u>	EXHIBIT B – Recording of June 16, 2022 Plaintiff and Regulatory of Arkansas Medical Board to <u>155</u> Brief in Support filed by Laura Lynn Hammett. USB Jump Drive filed conventionally and maintained in the Clerk's office. (fjg) (Entered: 07/11/2022)
07/19/2022	<u>157</u>	TRANSCRIPT of Motions Hearing held on 4/26/2022, before Judge Lee P. Rudofsky. Court Reporter Stephen Franklin. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. DEADLINES: Notice of Intent to Request Redaction due 7/26/2022. Redaction Request due 8/9/2022. Redacted Transcript Deadline set for 8/19/2022. Release of Transcript Restriction set for 10/17/2022. (fcd) (Entered: 07/19/2022)
07/25/2022	<u>158</u>	MOTION for Leave to File <i>Under Seal</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 07/25/2022)
07/25/2022	<u>159</u>	RESPONSE in Opposition re <u>154</u> MOTION for Leave to File <i>Disclose Expert Report and File Rebuttal Report</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Mitchell, David) (Entered: 07/25/2022)
07/26/2022	<u>160</u>	NOTICE of Intent to Request Redaction of <u>157</u> Electronic Transcript. by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 07/26/2022)
07/26/2022	<u>161</u>	NOTICE of Intent to File (1) Opposition to Motion to File Under Seal; and (2) Motion Pursuant to FRCP 11 by Laura Lynn Hammett re <u>158</u> (jap) (Entered: 07/26/2022)
08/01/2022	<u>162</u>	MOTION for Leave to File Affidavit in Opposition to Allowing Exhibit C to be Filed Under Seal Without a Redacted Version for Public Access Under Seal filed by Laura Lynn Hammett. (fjg) (Entered: 08/01/2022)
08/01/2022	<u>163</u>	OPPOSITION to Motion to File Entire Exhibit Containing Emails (Doc. <u>159</u>) Under Seal; Brief Within filed by Laura Lynn Hammett. (fjg) (Entered: 08/01/2022)

08/05/2022	<u>164</u>	DEPOSITION of Laura Lynn Hammett taken on March 2, 2022 by Portfolio Recovery Associates LLC.(Mitchell, David) (Entered: 08/05/2022)
08/05/2022	<u>165</u>	MOTION for Leave to File <i>Reply</i> by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 08/05/2022)
08/05/2022	166	SEALED DOCUMENT. (fjg) (Entered: 08/05/2022)
08/09/2022	<u>167</u>	MOTION to Redact <u>157</u> TRANSCRIPT,, by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 08/09/2022)
08/10/2022	<u>168</u>	OBJECTIONS to Redactions of Deposition (Docket No. 164) by Laura Lynn Hammett re <u>164</u> Deposition. (jap) (Entered: 08/10/2022)
08/15/2022	<u>169</u>	STATUS REPORT <i>Joint</i> by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 08/15/2022)
08/15/2022	<u>170</u>	NOTICE by Portfolio Recovery Associates LLC of <i>Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 08/15/2022)
08/15/2022	<u>171</u>	NOTICE by Portfolio Recovery Associates LLC of <i>Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 08/15/2022)
08/15/2022	<u>172</u>	NOTICE by Portfolio Recovery Associates LLC of <i>Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 08/15/2022)
08/16/2022	<u>173</u>	CONSOLIDATED ORDER granting in entirety <u>75</u> PRA, LLC's Motion for Summary Judgment; denying <u>37</u> Motion for Partial Summary Judgment; granting in part and denying in part <u>33</u> Motion to Amend; and directing the Clerk to file the Second Amended and Supplemented Complaint. The only live claim remaining in this case is Ms. Hammett's claim against PRA, LLC for a violation of 15 U.S.C. § 1692e(2)(A). If PRA, LLC so chooses, it will have 14 days from the date of this Order to supplement its Motion for Summary Judgment for the limited purpose of arguing the propriety of summary judgment in its favor as to Ms. Hammett's claim under 15 U.S.C. § 1692e(2)(A). Ms. Hammett will have seven days to respond to any supplement that PRA, LLC files on this issue. If PRA, LLC chooses not to supplement its Motion for Summary Judgment, PRA, LLC must file an answer to the Second Amended and Supplemented Complaint. Signed by Judge Lee P. Rudofsky on 8/16/2022. (Unredacted copy of Order filed under seal) (ldb) (Entered: 08/16/2022)
08/16/2022	<u>174</u>	SECOND AMENDED AND SUPPLEMENTED COMPLAINT with Jury Demand against All Defendants, filed by Laura Lynn Hammett. (Docketed pursuant to <u>173</u> Order)(jak) (Entered: 08/16/2022)
08/17/2022	<u>175</u>	COMBINED RESPONSE to Notice of Supplemental Authority <u>172</u> <u>170</u> <u>171</u> by Laura Lynn Hammett. (jap) (Entered: 08/17/2022)
08/19/2022	<u>176</u>	OBJECTIONS to Redactions of Transcript of April 26, 2022 filed by Laura Lynn Hammett. (fjg) (Entered: 08/19/2022)
08/19/2022	<u>177</u>	MOTION for Stay filed by Laura Lynn Hammett. (fjg) (Entered: 08/19/2022)
08/19/2022	<u>178</u>	RESPONSE re <u>168</u> Objection <i>in Opposition</i> by Portfolio Recovery Associates LLC (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Mitchell, David) (Docket text modified on 8/19/2022 to correct the linkage)(jak) (Entered: 08/19/2022)
08/19/2022	<u>179</u>	NOTICE OF DOCKET CORRECTION re <u>178</u> Response. CORRECTION: The docket text was modified to correct the linkage to docket entry <u>168</u> based on the attached correspondence. (jak) (Entered: 08/19/2022)
08/22/2022	180	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>177</u> Motion to Stay. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)
08/22/2022	181	ORDER staying <u>70</u> Motion in Limine. This Motion need not be decided unless any claim in this case survives summary judgment. Accordingly, this Motion is stayed until after the resolution of all summary judgment issues. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)

08/22/2022	182	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) "Plaintiff hopes to file a motion in limine to exclude any opinion and any 'test' results by Dr. Adjia." Doc. 153. Plaintiff will be allowed to file such a motion if any of her claims survive summary judgment. Plaintiff may not do so until after the Court fully resolves all summary judgment issues. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)
08/22/2022	183	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>158</u> Motion for Leave to File. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)
08/22/2022	184	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>162</u> Motion for Leave to File. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)
08/22/2022	185	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>165</u> Motion for Leave to File. Signed by Judge Lee P. Rudofsky on 08/22/2022. (gvl) (Entered: 08/22/2022)
08/22/2022	186	SEALED DOCUMENT. (ldb) (Entered: 08/22/2022)
08/22/2022	187	SEALED DOCUMENT. (ldb) (Entered: 08/22/2022)
08/22/2022	<u>188</u>	Supplemental MOTION for Summary Judgment by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 08/22/2022)
08/22/2022	<u>189</u>	BRIEF IN SUPPORT re <u>188</u> Motion for Summary Judgment filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 08/22/2022)
08/23/2022	<u>190</u>	WITHDRAWAL of Motion for Stay, and MOTION for Extension of Time to File Response to MSJ. Filed by Laura Lynn Hammett. (jap) (Docket text modified on 8/24/2022 to correct a typographical error) (jak) (Entered: 08/23/2022)
08/23/2022	191	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>190</u> Motion to Withdraw, and granting in part and denying in part <u>190</u> Motion for Extension of Time to File Response/Reply. The Court has already denied the Motion to Stay. As for the extension request, there is no good cause to support a lengthy extension. However, as a matter of courtesy, the Court will briefly extend Ms. Hammett's deadline to respond to PRA, LLC's Supplemental Motion for Summary Judgment. Ms. Hammett must respond to that Motion on or before September 9, 2022. Signed by Judge Lee P. Rudofsky on 08/23/2022. (gvl) (Entered: 08/23/2022)
08/24/2022	192	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>167</u> Motion to Redact. With its Motion, PRA, LLC submitted a copy of the April 26, 2022 hearing transcript with proposed redactions. (Doc. 167-1). The proposed redactions are appropriate. The Court directs the court reporter to apply the proposed redactions to the transcript of the April 26, 2022 hearing. The court reporter will then file a redacted version of the transcript on the public record. Signed by Judge Lee P. Rudofsky on 08/24/2022. (gvl) (Entered: 08/24/2022)
08/25/2022	<u>193</u>	REDACTION OF <u>157</u> Transcript of Motions Hearing held on 4/26/2022, before Judge Lee P. Rudofsky. Court Reporter Stephen Franklin. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. (fcd) (Entered: 08/25/2022)
08/29/2022	<u>194</u>	MOTION to Compel Production of Contract or Reconsideration of the Motions for Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 08/29/2022)
08/29/2022	<u>195</u>	BRIEF IN SUPPORT of <u>194</u> Motion to Compel Production of Contract or Reconsideration of the Motions for Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 08/29/2022)
09/09/2022	<u>196</u>	OPPOSITION to <u>188</u> Defendant's Supplemental Motion for Summary Judgment filed August 22, 2022 filed by Laura Lynn Hammett. (jap) (Entered: 09/12/2022)

09/09/2022	<u>197</u>	BRIEF IN SUPPORT of Opposition to Defendant's Supplemental Motion for Summary Judgment filed August 22, 2022 re <u>196</u> filed by Laura Lynn Hammett. (jap) (Entered: 09/12/2022)
09/09/2022	<u>198</u>	REDACTED COUNTER STATEMENT of Undisputed Facts to Defendant Portfolio Recovery Associates, LLC's Motion for Summary Judgment re <u>188</u> filed by Laura Lynn Hammett. (jap) (Entered: 09/12/2022)
09/12/2022	<u>199</u>	RESPONSE in Opposition re <u>194</u> MOTION to Compel filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Mitchell, David) (Entered: 09/12/2022)
09/12/2022	<u>200</u>	MOTION for Leave to File <i>Reply</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 09/12/2022)
09/15/2022	<u>201</u>	MOTION to File Supplemental Authorities to Brief in Support of Opposition to Defendant's Supplemental Motion for Summary Judgment filed August 22, 2022 and Brief in Support of Reconsideration of the Consolidated Order Signed August 16,2022 filed by Laura Lynn Hammett. (fjg) (Entered: 09/15/2022)
09/16/2022	<u>202</u>	MOTION for Order to Clerk to Note Clerical Error filed by Laura Lynn Hammett. (fjg) (Entered: 09/16/2022)
09/16/2022	<u>203</u>	MOTION for Leave to File Unredacted Copy under Seal filed by Laura Lynn Hammett. (fjg) (Entered: 09/16/2022)
09/19/2022	<u>204</u>	REPLY to Response to Motion re <u>188</u> Supplemental MOTION for Summary Judgment filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Baker, Karen) (Entered: 09/19/2022)
09/21/2022	<u>205</u>	OBJECTIONS to Evidence and MOTION to Strike or File Sur-Reply to <u>204</u> Supplemental Motion for Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 09/21/2022)
09/23/2022	<u>206</u>	MOTION to Supplement <u>194</u> Motion for Reconsideration of the Motions for Summary Judgment filed August 29, 2022 filed by Laura Lynn Hammett. (fjg) (Entered: 09/23/2022)
09/29/2022	<u>207</u>	RESPONSE in Opposition re <u>201</u> MOTION for Order filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 09/29/2022)
09/30/2022	<u>208</u>	RESPONSE in Opposition re <u>202</u> MOTION for Order filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 09/30/2022)
10/05/2022	<u>209</u>	RESPONSE in Opposition re <u>205</u> MOTION to Strike <u>204</u> Reply to Response to Motion filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 10/05/2022)
10/05/2022	<u>210</u>	RESPONSE in Opposition re <u>206</u> MOTION for Order filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 10/05/2022)
10/26/2022	<u>211</u>	Joint MOTION to Stay <i>Proceedings</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 10/26/2022)
10/26/2022	<u>212</u>	BRIEF IN SUPPORT re <u>211</u> Motion to Stay <i>Proceedings</i> filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 10/26/2022)
11/02/2022	<u>213</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>211</u> Joint MOTION to Stay Proceedings. Proceedings are stayed until the Court resolves the pending motions. Signed by Judge Lee P. Rudofsky on 11/2/2022. (hml) (Entered: 11/02/2022)
11/02/2022		Case Stayed pursuant to 213 Order. (jak) (Entered: 11/02/2022)
03/16/2023	<u>214</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>202</u> Motion for Order to Note Clerical Error. The Motion is denied for the reasons set forth in Defendant's Response <u>208</u> . Signed by Judge Lee P. Rudofsky on 3/16/2023. (hml) (Entered: 03/16/2023)

03/16/2023	215	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>203</u> Motion for Leave to File Unredacted Counterstatement of Undisputed Facts Under Seal. The Court understands that the Clerk has this document, so the Clerk should file it under seal. Signed by Judge Lee P. Rudofsky on 3/16/2023. (hml) (Entered: 03/16/2023)
03/16/2023	216	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>200</u> Motion for Leave to File Reply Brief in Support of Summary Judgment. As the Court reads the Local Rules, Defendant has a right to file a Reply Brief in this situation. Accordingly, the instant Motion is unnecessary and moot. Signed by Judge Lee P. Rudofsky on 3/16/2023. (hml) (Entered: 03/16/2023)
03/16/2023	217	SEALED DOCUMENT. (ldb) (Entered: 03/16/2023)
03/16/2023	218	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER: In Docs. <u>201</u> , <u>205</u> , and <u>206</u> Ms. Hammett essentially requests one more opportunity to supplement her briefing on the pending Motion for Reconsideration and the pending Motion for Summary Judgment. In general, the arguments for extra briefing made by Ms. Hammett are not persuasive. And the Defendant's counterarguments (especially about the potential for endless briefing and unnecessary litigation costs) have significant force. Nonetheless, because Ms. Hammett is pro se, the Court wishes to give her every procedural benefit of the doubt. Accordingly, the Court grants Ms. Hammett one final brief (of no more than 10 pages) to supplement her arguments on the pending Motion for Reconsideration and the pending Motion for Summary Judgment. There will be no further briefing by anyone on the pending motions after that. However, the Court will hold an argument (in person or by phone) on the two pending motions, and obviously Defendant can address the new brief at that argument. Ms. Hammett's final supplemental brief (of no more than 10 pages) is due within 14 days of the date of this Order. As to the rest of Ms. Hammett's requests in Docs. <u>201</u> , <u>205</u> , and <u>206</u> they are denied. The Court will not formally strike any portions of the Defendant's submissions, although the Court will not take into account (for any substantive ruling) any evidence or arguments in those submissions that violate the applicable laws and rules of Court. Signed by Judge Lee P. Rudofsky on 3/16/2023. (hml) (Entered: 03/16/2023)
03/16/2023	219	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER: In Defendant's Reply Brief <u>204</u> , Defendant included what appeared to be blog posts [204-3] that Ms. Hammett has written about this case. My review of the brief required a review of the blog posts. And that raises a question for the parties. In my mind, my knowledge of the existence and content of these blog posts does not require recusal under either 28 U.S.C. 455 or the applicable judicial canons. While Ms. Hammett expresses strong disagreement with some of my rulings, and sometimes does so with strong or colorful language, nothing in the posts strikes me as so insulting or personally antagonistic that it requires or counsels my recusal. It is true that one of her posts could be read as saying she "hates" me, but that would be taking her words out of context. What she actually said was that I was "a Judge [she] hate[s] to hate." In that context, the impact of the word "hate" is mitigated almost entirely. It is also true that, in her posts, she called me "sneaky," "dangerous," and "dishonorable," as well as implying I am not an honest Judge. But, again, in context she was really just disagreeing with my rulings and the way I recited the record in my summary judgment decision. That kind of criticism (from non-lawyers) of public officials, including judges, is expected, entirely fair game, and part of what makes this country great. Of course, I disagree with her characterizations of my motives. But her statements and words are not the type of personal invective that would make it difficult to remain impartial. Having said all of that, if either party believes that recusal is required or appropriate here, that party should file a recusal motion no later than 14 days from the date of this order. If that occurs, the other party will have 7 days to respond. Signed by Judge Lee P. Rudofsky on 3/16/2023. (hml) (Entered: 03/16/2023)
03/21/2023	<u>220</u>	ORDER ON AMICUS BRIEFS. Signed by Judge Lee P. Rudofsky on 03/21/2023. (llg) (Entered: 03/21/2023)
03/27/2023	<u>221</u>	Supplemental <u>194</u> MOTION for Reconsideration of the Order on Summary Judgment and Surreply on <u>188</u> Supplemental Motion for Summary Judgment by Laura Lynn Hammett. (kth) (Entered: 03/27/2023)

03/27/2023	<u>222</u>	MOTION for Sanctions Pursuant to Fed. Rules Civ. Pro. Rule 11 by Laura Lynn Hammett. (kth) (Entered: 03/27/2023)
03/29/2023	223	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER: The stay in this case 213 is still in effect. Based on the parties' joint stay request and the Court's order granting that request, the stay will be in effect until the Court resolves the motions pending at the time the stay was entered. Defendant should not respond to the recent sanctions motion <u>222</u> until 14 days after the stay is lifted. The Court intends to resolve the necessary motions and lift the stay within the next 30–45 days. Signed by Judge Lee P. Rudofsky on 3/29/2023. (hml) (Entered: 03/29/2023)
04/24/2023	224	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Hearing: Telephone Conference set for 5/23/2023 at 9:00 AM before Judge Lee P. Rudofsky. (hml) (Entered: 04/24/2023)
05/01/2023	<u>225</u>	NOTICE of Supplemental Authorities in Support of <u>221</u> MOTION for Reconsideration of Consolidated Order and Against the Defendant's Supplemental Motion for Summary Judgment filed by Laura Lynn Hammett. (fjg) (Entered: 05/01/2023)
05/22/2023	226	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) NOTICE of Hearing: Telephone Conference reset for 6/14/2023 at 10:00 AM before Judge Lee P. Rudofsky. (hml) (Entered: 05/22/2023)
06/13/2023	<u>227</u>	NOTICE of Appearance by Nancy Anne Smith on behalf of Portfolio Recovery Associates LLC (Smith, Nancy) (Entered: 06/13/2023)
06/14/2023	228	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) CLERK'S MINUTES for proceedings held before Judge Lee P. Rudofsky: Telephone Conference held on 6/14/2023. The Court heard argument from the parties regarding the outstanding motions. Order(s) to be entered under separate entry. (Pro se Plaintiff: Laura Lynn Hammett; Defendant: John Komisin and Nancy Smith; Court Reporter Valarie Flora.) (hml) (Entered: 06/14/2023)
06/14/2023	229	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>154</u> Motion for Leave to Disclose. For the reasons stated on the record at today's hearing, and subject to the very specific conditions discussed at that hearing, the Court grants this Motion. Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	230	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. For the reasons set forth in today's hearing, the Court DENIES Ms. Hammett's requests for reconsideration (Docs. <u>194</u> and <u>221</u>) and Ms. Hammett's request to compel the production of a contract (Doc. <u>194</u>). The Clerk is directed to remove the gavels from <u>194</u> and <u>221</u> . Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	231	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>188</u> PRA's Supplemental Motion for Summary Judgment for the reasons discussed at today's hearing. At the hearing, the Court issued a fairly extensive Order on the record. As soon as the court reporter completes her transcription work of that Order, the Court will file it on the docket. Subsequent to that, the Court will then formally issue a judgment in this case. Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	232	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>133</u> Motion to Quash for the reasons discussed at today's hearing. Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	233	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER finding as moot <u>70</u> Motion in Limine. For the reasons stated on the record at today's hearing, the stay of this Motion is lifted and the Motion is found to be moot. Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	234	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. For the reasons stated on the record at today's hearing, the Court lifts the stay in this case. PRA now has 14 days to respond to Doc. <u>222</u> . No party should file any other document in this case until after the Court files the written transcript of its

		summary-judgment ruling on the docket and immediately thereafter enters judgment in this case. Signed by Judge Lee P. Rudofsky on 6/14/23. (cmr) (Entered: 06/14/2023)
06/14/2023	235	SEALED DOCUMENT. (ldb) (Entered: 06/14/2023)
06/15/2023	236	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. The Court Reporter has now prepared a certified transcript of the summary-judgment and reconsideration rulings made by this Court at yesterday's hearing. The Clerk is directed to enter that certified transcript on the record, designating it as an Order. Sometimes, when ruling from the bench, judges misspeak. That occurred here with respect to two statements. First, on page 8 of the transcript at lines 9-10, the Court said "February of 2018" when the Court meant "February 18." Second, also on page 8 but now at lines 18-19, the Court said "the February 18, 2020, call" when the Court meant "the February 18, 2021, call." Signed by Judge Lee P. Rudofsky on 6/15/23. (cmr) (Entered: 06/15/2023)
06/15/2023	<u>237</u>	ORDER: Transcript of Ruling on <u>188</u> Motion for Summary Judgment. (Docketed pursuant to 236 Order.) (cmn) (Entered: 06/15/2023)
06/15/2023	<u>238</u>	FINAL JUDGMENT: Pursuant to all Orders entered in this case through today, it is considered, ordered, and adjudged that summary judgment is entered on all claims in favor of Defendant Portfolio Recovery Associates, LLC. Signed by Judge Lee P. Rudofsky on 6/15/2023. (cmn) (Entered: 06/15/2023)
06/28/2023	<u>239</u>	RESPONSE in Opposition re <u>222</u> MOTION for Sanctions filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 06/28/2023)
06/29/2023	<u>240</u>	MOTION for Costs <i>Taxable</i> by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 06/29/2023)
06/29/2023	<u>241</u>	NOTICE by Portfolio Recovery Associates LLC <i>Bill of Costs</i> (Attachments: # <u>1</u> Exhibit)(Mitchell, David) (Entered: 06/29/2023)
06/29/2023	<u>242</u>	BRIEF IN SUPPORT re <u>240</u> Motion for Costs filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit)(Mitchell, David) (Entered: 06/29/2023)
07/03/2023	243	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>222</u> Motion for Sanctions. For the reasons set forth in paragraphs 15 and 16 of <u>239</u> PRA's Response, Ms. Hammett's Motion is denied. Moreover, even if the Court concluded that some sanction was appropriate for the conduct Ms. Hammett identified in her Motion for Sanctions, the Court would at most issue an admonishment to PRA's counsel. This case, and the rhetoric in it, has become heated and sharp on both sides. While PRA's counsel have thrown their share of sharp elbows, the record reveals that Ms. Hammett has engaged in conduct that comes perilously close to harassment of opposing counsel and abuse of the litigation process. In these conditions, even if PRA's counsel put a pinky toe over the appropriate line, any sanction over an admonishment would be more than what is necessary to deter repetition of the conduct or comparable conduct. See Fed. R. Civ. Pro. 11(c)(4). Signed by Judge Lee P. Rudofsky on 7/3/23. (cmr) (Entered: 07/03/2023)
07/03/2023	<u>244</u>	MOTION for Stay of Proceedings on Taxation of Costs until after the Appeal and MOTION to Strike or Suspend Defendant's <u>240</u> Motion filed by Laura Lynn Hammett. (fjg) (Entered: 07/03/2023)
07/03/2023	<u>245</u>	BRIEF IN SUPPORT of <u>244</u> Motion to Stay Proceedings on Taxation of Costs until after the Appeal and Motion to Strike or Suspend Defendant's <u>240</u> Motion filed by Laura Lynn Hammett. (fjg) (Entered: 07/03/2023)
07/05/2023	246	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. If PRA objects to Ms. Hammett's Motion to Stay or Strike, it must file an opposition on or before July 7, 2023. Signed by Judge Lee P. Rudofsky on 7/5/23. (cmr) (Entered: 07/05/2023)
07/07/2023	<u>247</u>	OBJECTIONS by Portfolio Recovery Associates LLC re <u>244</u> Motion to Stay, Motion to Strike. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Mitchell, David) (Entered: 07/07/2023)

07/10/2023	248	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>244</u> Ms. Hammett's Motion to Strike or Stay. With respect to Ms. Hammett's request to strike, it is entirely unclear to the Court what Ms. Hammett is suggesting as a reason to strike <u>240</u> PRA's Motion for Costs. If it is her argument that the Motion for Costs is premature or if it is some type of an argument that a District Judge does not have authority to entertain such a Motion, those arguments are just not an accurate understanding of the governing law. Accordingly, and in addition to the reasons in footnote 1 of <u>247</u> PRA's Opposition Brief, the request to strike the Motion for Costs is denied. With respect to Ms. Hammett's request to stay the Motion for Costs, most of her arguments are not even close to the mark. At best, they suggest a reason for the Court to give Ms. Hammett a very brief extension of time in which to respond to the Motion for Costs. The only even plausible argument that Ms. Hammett has for a stay is her assertion that she "will probably be forced into bankruptcy when PRA tries to execute on the judgment." This argument appears in paragraph 10 of her request for a stay. But Ms. Hammett has provided no facts to prove out this assertion. Even if she had, on balance, a stay is not justified. The Court will, however, extend her deadline to respond to the Motion for Costs by one week. Instead of her opposition being due on July 13, 2023, it is now due on July 20, 2023. No further extensions. Signed by Judge Lee P. Rudofsky on 7/10/23. (cmr) (Entered: 07/10/2023)
07/14/2023	<u>249</u>	NOTICE OF APPEAL as to <u>238</u> Judgment by Laura Lynn Hammett. Filing fee of \$505 paid, receipt number L1T2872. (jh) (Entered: 07/14/2023)
07/14/2023	<u>250</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>249</u> Notice of Appeal re <u>238</u> Judgment. NOTIFICATION TO COUNSEL: REQUEST FOR TRANSCRIPTS SHOULD BE FILED WITH THE DISTRICT COURT CLERK. (jh) (Entered: 07/14/2023)
07/14/2023	<u>251</u>	USCA Docketing Letter and Scheduling Order as to <u>249</u> Notice of Appeal filed by Laura Lynn Hammett. USCA Case Number 23-2638. (jh) (Entered: 07/14/2023)
07/19/2023	<u>252</u>	RESPONSE and Objections to <u>240</u> Defendant's Motion for Taxable Costs, <u>241</u> Bill of Costs, <u>242</u> Brief in Support filed by Laura Lynn Hammett. (ajj) (Entered: 07/19/2023)
07/19/2023	<u>253</u>	AFFIDAVIT in Support of Response and Objections to <u>240</u> Defendant's Motion for Taxable Costs, <u>241</u> Bill of Costs, <u>242</u> Brief in Support by Laura Lynn Hammett. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(ajj) (Docket text modified on 7/19/2023 to correct exhibit name.)(cmn) (Entered: 07/19/2023)
07/19/2023	<u>254</u>	TRANSCRIPT REQUEST re <u>249</u> Notice of Appeal filed by Laura Lynn Hammett. (fjg) (Entered: 07/19/2023)
07/19/2023		NOTICE OF DOCKET CORRECTION re <u>253</u> Affidavit. CORRECTION: The docket text was modified to correct the name of attachment #5 as "Exhibit E" as indicated by the document. (cmn) (Entered: 07/19/2023)
07/21/2023	255	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. Defendant is directed to file a Reply on the costs issue on or before July 27, 2023. Although the Reply may include whatever arguments Defendant wants to make, the Court is specifically interested in Defendant's arguments in response to Ms. Hammett's assertions that (1) Defendant is not the prevailing party, (2) 15 U.S.C. § 1692k(a)(3) prevents the application of FRCP 54(d) and 28 U.S.C. § 1920 in this case, (3) awarding Defendant full costs in this matter, where the Defendant has considerably more resources than Plaintiff, would essentially hold high "the sword of Damocles" or otherwise be unfair, and (4) the Pivot Copy Service costs are higher than necessary. The Reply should be no longer than 8 pages. Signed by Judge Lee P. Rudofsky on 7/21/23. (cmr) (Entered: 07/21/2023)
07/21/2023	<u>256</u>	MOTION to Extend Time to File Reply in Support of Motion for Taxable Costs by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 07/21/2023)
07/25/2023	<u>257</u>	USCA Revised Scheduling Order as to <u>249</u> Notice of Appeal filed by Laura Lynn Hammett. Transcript due by 8/23/2023. (jh) (Entered: 07/25/2023)
07/27/2023	258	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER granting <u>256</u> Motion to Extend Time. Signed by Judge Lee P. Rudofsky on 7/27/23. (cmr) (Entered: 07/27/2023)

08/03/2023	<u>259</u>	REPLY to Response to Motion re <u>240</u> MOTION for Costs <i>Taxable Costs</i> filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Mitchell, David) (Entered: 08/03/2023)
08/15/2023	<u>260</u>	Transcript of Telephone Conference filed for the date of 12/1/2021, before Judge Lee P. Rudofsky, re <u>249</u> Notice of Appeal. Court Reporter Stephen Franklin. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Request Redaction due 8/22/2023. Redaction Request due 9/5/2023. Redacted Transcript Deadline set for 9/15/2023. Release of Transcript Restriction set for 11/13/2023. (fcd) (Entered: 08/15/2023)
08/21/2023	<u>261</u>	Transcript of Motion Hearing filed for the date of 6/14/2023, before Judge Lee P. Rudofsky, re <u>249</u> Notice of Appeal. Court Reporter Valarie Flora. Transcript may be viewed only at the public terminals in the Clerk's office. Copies of transcript are only available through the Official Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Request Redaction due 8/28/2023. Redaction Request due 9/11/2023. Redacted Transcript Deadline set for 9/21/2023. Release of Transcript Restriction set for 11/20/2023. (fcd) (Entered: 08/21/2023)
08/22/2023	<u>262</u>	NOTICE of Intent to File a Motion to Settle the Record for Omissions from Transcript of 12/1/2021 Hearing filed by Laura Lynn Hammett. (fjg) (Entered: 08/22/2023)
08/23/2023	<u>263</u>	ORDER granting <u>240</u> Motion for Taxable Costs; and directing Plaintiff to pay to Defendant \$8,356.18. Signed by Judge Lee P. Rudofsky on 8/23/2023. (jhb) (Entered: 08/23/2023)
08/23/2023	<u>264</u>	Transmitted Record on Appeal to US Court of Appeals re <u>249</u> Notice of Appeal: Copies of <u>98</u> , <u>124</u> , <u>157</u> , <u>260</u> , <u>261</u> Transcripts; Copies of <u>52</u> , <u>53</u> , <u>66</u> , <u>99</u> , <u>120</u> , <u>122</u> , <u>123</u> , <u>129</u> , <u>144</u> , <u>151</u> , <u>166</u> , <u>173</u> , <u>186</u> , <u>187</u> , <u>217</u> , <u>235</u> Sealed Docket Entries; and <u>59</u> , <u>68</u> , <u>100</u> , <u>121</u> , <u>156</u> Docket Entries (Originals). (jhb) (Additional attachment(s) added on 8/28/2023: # <u>1</u> Main Document – Correct) (cmn) (Docket entry modified on 8/28/2023 to establish linkage.)(cmn) (Entered: 08/23/2023)
08/28/2023	<u>265</u>	NOTICE OF DOCKET CORRECTION re <u>264</u> Transmitted Record on Appeal. CORRECTION: The original document was attached to the docket in error (document 166 excluded from list in error) due to a clerical mistake by the Clerk's office. The correct document was added as an attachment to <u>264</u> docket entry and is attached hereto for service/review by the parties. The docket text was modified to establish linkage to 166 docket entry. (cmn) (Entered: 08/28/2023)
08/28/2023	<u>266</u>	NOTICE of Intent to Request Redaction of <u>261</u> Electronic Transcript. by Portfolio Recovery Associates LLC (Mitchell, David) (Entered: 08/28/2023)
09/05/2023	<u>267</u>	MOTION to Settle the Record to Correct Errors and Omissions in Transcript of December 1, 2021 Hearing <u>260</u> by Laura Lynn Hammett. (bmd) (Entered: 09/05/2023)
09/05/2023	<u>268</u>	BRIEF IN SUPPORT re <u>267</u> Motion to Settle the Record to Correct Errors and Omissions in the Transcript of December 1, 2021 filed by Laura Lynn Hammett. (bmd) (Entered: 09/05/2023)
09/05/2023	<u>269</u>	AFFIDAVIT Regarding <u>267</u> MOTION to Settle the Record to Correct Errors and Omissions in the Transcript of December 1, 2021 by Laura Lynn Hammett. (bmd) (Entered: 09/05/2023)
09/08/2023	<u>270</u>	NOTICE by Portfolio Recovery Associates LLC re <u>266</u> Notice of Intent to Request Redaction <i>Defendant Portfolio Recovery Associates, LLC's Notice of Withdrawal of Its Intent to Request Redaction</i> (Mitchell, David) (Entered: 09/08/2023)
09/14/2023	<u>271</u>	NOTICE OF APPEAL as to <u>263</u> Order by Laura Lynn Hammett. Filing fee of \$505 paid, receipt number LIT3578. (jhb) (Entered: 09/14/2023)
09/14/2023	<u>272</u>	USCA Appeal Fees received \$505 receipt number LIT3578 re <u>271</u> Notice of Appeal filed by Laura Lynn Hammett. (jhb) (Entered: 09/14/2023)

09/14/2023	<u>273</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>271</u> Notice of Appeal re <u>263</u> Order. (jbh) (Entered: 09/14/2023)
09/15/2023	<u>274</u>	USCA Docketing Letter as to <u>271</u> Notice of Appeal filed by Laura Lynn Hammett. USCA Case Number 23-3093. (jbh) (Entered: 09/15/2023)
09/15/2023	<u>275</u>	USCA Consolidated Scheduling Order as to <u>249</u> , <u>271</u> Notices of Appeal filed by Laura Lynn Hammett. (jbh) (Entered: 09/15/2023)
09/19/2023	<u>276</u>	RESPONSE in Opposition re <u>267</u> MOTION to Amend/Correct <u>260</u> Appeal Transcript, filed by Portfolio Recovery Associates LLC. (Attachments: # <u>1</u> Exhibit Declaration of David S. Mitchell, JR.)(Mitchell, David) (Entered: 09/19/2023)
09/21/2023	<u>277</u>	MOTION to Revive the Subpoena to Court Reporter Jana Perry. Filed by Laura Lynn Hammett. (jap) (Entered: 09/21/2023)
09/21/2023	<u>278</u>	NOTICE of Supplemental Authority by Laura Lynn Hammett. (jap) (Entered: 09/21/2023)
09/21/2023	<u>279</u>	ORDER granting in part and denying in part <u>267</u> Motion to Settle the Record to Correct Errors and Omissions in the Transcript of [the] 12/1/2021 Hearing. Signed by Judge Lee P. Rudofsky on 9/21/2023. (jbh) (Entered: 09/21/2023)
10/05/2023	<u>280</u>	RESPONSE in Opposition re <u>277</u> MOTION for Order to Revive Subpoena filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 10/05/2023)
10/06/2023	<u>281</u>	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER denying <u>277</u> Ms. Hammett's Motion for Order to Revive Subpoena for each of the reasons set forth in <u>280</u> PRA's Response in Opposition. Signed by Judge Lee P. Rudofsky on 10/6/2023. (mec) (Entered: 10/06/2023)
11/01/2023	<u>282</u>	NOTICE OF APPEAL as to <u>279</u> Order, <u>281</u> Order by Laura Lynn Hammett. (jbh) (Entered: 11/01/2023)
11/01/2023	<u>283</u>	USCA Appeal Fees received \$505 receipt number LIT4129 re <u>282</u> Notice of Appeal filed by Laura Lynn Hammett. (jbh) (Entered: 11/01/2023)
11/01/2023	<u>284</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>282</u> Notice of Appeal re <u>279</u> Order, <u>281</u> Order. (jbh) (Entered: 11/01/2023)
11/02/2023	<u>285</u>	USCA Docketing Letter as to <u>282</u> Notice of Appeal filed by Laura Lynn Hammett. USCA Case Number 23-3432. (jbh) Additional attachment added on 11/3/2023: # <u>1</u> Main Document – Correct. (kbc) (Entered: 11/03/2023)
11/02/2023	<u>286</u>	USCA Scheduling Order as to <u>249</u> , <u>271</u> , <u>282</u> Notices of Appeal filed by Laura Lynn Hammett. (jbh) (Entered: 11/03/2023)
11/03/2023	<u>287</u>	NOTICE OF DOCKET CORRECTION re <u>285</u> USCA Docketing Letter. CORRECTION: The original document was submitted in error (wrong image file) due to a clerical mistake by the Clerk's office. The correct document was added to <u>285</u> and hereto for service/review by the parties. (kbc) (Entered: 11/03/2023)
06/05/2024	<u>288</u>	OPINION of USCA as to <u>249</u> , <u>271</u> , <u>282</u> Notices of Appeal filed by Laura Lynn Hammett. (jbh) (Entered: 06/05/2024)
06/05/2024	<u>289</u>	USCA JUDGMENT as to <u>249</u> , <u>271</u> , <u>282</u> Notices of Appeal filed by Laura Lynn Hammett: The appeal of the denial of Hammett's post-judgment motion is dismissed and the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court. (jbh) (Entered: 06/05/2024)
07/16/2024	<u>290</u>	MANDATE of USCA in accordance with the opinion and judgment of 6/5/2024 as to <u>249</u> , <u>271</u> , <u>282</u> Notices of Appeal filed by Laura Lynn Hammett. (jbh) (Entered: 07/16/2024)
07/17/2024	<u>291</u>	MOTION to Stay of Execution of Judgement pending Petition for Writ of Certiorari by Laura Lynn Hammett. (adj) (Entered: 07/17/2024)
07/17/2024	<u>292</u>	AFFIDAVIT in Support re <u>291</u> MOTION to Stay of Execution of Judgement pending Petition for Writ of Certiorari by Laura Lynn Hammett. (adj) (Entered: 07/17/2024)

07/18/2024	293	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. If Defendant does not oppose the motion in Doc. <u>291</u> , it should let the Court know that within five (5) days of the date of today's Order. If Defendant does oppose the motion, it should file an opposition brief within seven (7) days of today's Order. Signed by Judge Lee P. Rudofsky on 7/18/2024. (mec) (Entered: 07/18/2024)
07/18/2024	<u>294</u>	RESPONSE to Motion re <u>291</u> MOTION to Stay <i>Statement of Non–Opposition for Stay Request</i> filed by Portfolio Recovery Associates LLC. (Mitchell, David) (Entered: 07/18/2024)
07/18/2024	295	(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) ORDER. Having reviewed and considered Docs. <u>291</u> , <u>292</u> , and <u>294</u> , the Court stays any execution of the award of taxable costs (Doc. <u>263</u>) until Plaintiff's forthcoming petition to the Supreme Court of the United States is resolved or the petition deadline lapses without a petition having been filed. This decision is largely premised on Defendant's decision not to oppose the stay request. Signed by Judge Lee P. Rudofsky on 7/18/2024. (mec) (Entered: 07/18/2024)
08/15/2024	<u>296</u>	Appeal Record Returned: Docket Entries 59, <u>68</u> , 100, 121, 156. (jbh) (Entered: 08/15/2024)

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix C

Order Denying Leave to File Electronically

Laura Lynn Hammett
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA HAMMETT

PLAINTIFF

v.

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

PORFOLIO RECOVERY ASSC. LLC;
DOES 1-99

DEFENDANTS

ORDER

Plaintiff Laura Hammett has moved for permission to participate in electronic filing. (Doc. #7). Section I.B of the CM/ECF Administrative Policies and Procedures Manual for Civil Filings¹ adopted by General Order 53² prohibits *pro se* parties from participating in electronic filing. Accordingly, the motion is denied.

Also pending is John Komisin's motion to appear *pro hac vice* as additional counsel for Defendant Portfolio Recovery Associates, LLC. (Doc. 17) The Court grants the motion pursuant to Local Rule 83.5(d).

IT IS SO ORDERED this 1st day of September, 2021.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

¹ <https://www.are.uscourts.gov/sites/are/files/cvmanual.pdf>

² <https://www.are.uscourts.gov/sites/are/files/general-ordes/GO53.pdf>

No. _____

In the

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LAURA LYNN HAMMETT,

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v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix D

Consolidated Order Public Redacted

Laura Lynn Hammett
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA LYNN HAMMETT

PLAINTIFF

v.

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

PORFOLIO RECOVERY ASSOCIATES, LLC;
DOES 1-99

DEFENDANTS

CONSOLIDATED ORDER¹

Pro se Plaintiff Laura Lynn Hammett brings myriad federal and state law claims against Defendant Portfolio Recovery Associates, LLC (“PRA, LLC”).² Ms. Hammett alleges that PRA, LLC (1) violated numerous provisions of the Fair Debt Collection Practices Act, (2) violated the Telephone Consumer Protection Act, and (3) committed several torts under Arkansas law.³

This Order addresses three pending motions. First, the Court addresses PRA, LLC’s Motion for Summary Judgment.⁴ The Court GRANTS this Motion. Second, the Court addresses Ms. Hammett’s Motion to Amend the First Amended and Supplemented Complaint.⁵ The Court GRANTS in part and DENIES in part this Motion. Third, the Court addresses Ms. Hammett’s Motion for Partial Summary Judgment.⁶ The Court DENIES this Motion.

¹ The Court is issuing two versions of this Order. The Court will file a redacted version on the public record. The Court will file an unredacted version under seal. Only Ms. Hammett, PRA, LLC, and PRA, LLC’s counsel may view the unredacted version of this Order. Neither party may share the unredacted version with anyone else or reveal the contents of the redacted information. If there is an appeal in this matter, the unredacted version of this Order should be filed under seal with the Eighth Circuit, unless the Eighth Circuit concludes otherwise.

² See First Am. & Suppl. Compl. (Doc. 6).

³ See generally *id.*

⁴ Def.’s Mot. for Summ. J. (Doc. 75).

⁵ Pl.’s Mot. to Am. (Doc. 33).

⁶ Pl.’s Mot. for Partial Summ. J. (Doc. 37).

BACKGROUND⁷

In 2001, Ms. Hammett (then Laura J. Lynn) was living in California and opened a credit card account with Capital One Bank.⁸ The account number ended in -6049.⁹ In 2010, Ms. Hammett became delinquent on this account.¹⁰ As of April 7, 2011, Ms. Hammett was past due on seven monthly payments.¹¹ The account balance was \$1,916.05.¹²

On April 8, 2011, Capital One charged off the amount that Ms. Hammett owed on this account.¹³ The term “charge off” means “[t]o treat (an account receivable) as a loss or expense because payment is unlikely” or “to treat as a bad debt.”¹⁴ There are companies, like PRA, LLC, that buy charged-off accounts from credit card companies.¹⁵ On November 19, 2013, PRA, LLC bought Capital One’s “rights and interests in the -6049 account . . .”¹⁶

⁷ On summary judgment, the Court recites the genuinely disputed facts in a light most favorable to the nonmoving party, including giving the nonmoving party all reasonable inferences from the facts. *Haggenmiller v. ABM Parking Servs., Inc.*, 837 F.3d 879, 884 (8th Cir. 2016). Of course, the Court also relies on undisputed facts. Essentially, the Court considers the version of the facts most favorable to the nonmovant that a rational juror could find on this record. Accordingly, the Court’s factual recitation is only good for the summary judgment motions. This case presents partially dueling motions for summary judgment. For efficiency purposes, and to give Ms. Hammett every possible benefit, the Court has chosen to recite all genuinely disputed facts in the light most favorable to Ms. Hammett, including giving her the benefit of all reasonable inferences.

⁸ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶¶ 5–7; Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121); *see also* Hammett Dep. Vol. I (Doc. 164) at 80:4–12, 81:15–18. Ms. Hammett’s deposition was split between two days. The Court cites the March 2, and March 24, 2022 portions of Ms. Hammett’s deposition as Volume I (“Vol. I”) and Volume II (Vol. II), respectively. The Court uses the pagination from the transcripts. PRA, LLC filed a redacted version of Ms. Hammett’s deposition on the public record and an unredacted version under seal. When the Court cites a redacted portion of Ms. Hammett’s deposition, the Court will cite both versions of Ms. Hammett’s deposition.

⁹ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121); *see also* Ex. 1 to Def.’s Notice of Suppl. Authority (Doc. 106-1) at 3.

¹⁰ *See* Ex. 1 to Def.’s Notice of Suppl. Authority (Doc. 106-1) at 3, 5 (April 7, 2011 account statement stating that the account is “7 payments past due”).

¹¹ *Id.*

¹² *Id.* at 3.

¹³ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121).

¹⁴ *Charge Off, Black’s Law Dictionary* (11th ed. 2019).

¹⁵ *See* Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 6 (discussing information PRA, LLC receives when it buys accounts from Capital One).

¹⁶ *Id.* ¶ 9.

As part of this purchase, Capital One transmitted to PRA, LLC “load data” associated with the account.¹⁷ Load data provides specific details about an account that a company like PRA, LLC buys from Capital One.¹⁸ The load data that Capital One provided to PRA, LLC with respect to account number -6049 contained personal information about Ms. Hammett.¹⁹ It listed Ms. Hammett’s prior name, Laura J. Lynn.²⁰ It listed an address at which Ms. Hammett briefly lived, 5757 Erlanger Street, San Diego, California 92122-3801.²¹ The load data listed Ms. Hammett’s cell phone number that ends in -6000 and has an area code geographically tied to southern California.²² The load data also listed Ms. Hammett’s birthdate and social security number.²³ According to the load data, the charge-off amount was \$1,916.05 and the post-charge-off interest amount was \$381.58.²⁴ These amounts resulted in a “current total balance” of \$2,297.63.²⁵ The instant case arises from PRA, LLC’s attempt to collect this amount.

On December 3, 2013, PRA, LLC mailed a letter to Ms. Hammett addressed to 5757 Erlanger Street, San Diego, California 921223801.²⁶ The letter stated that PRA, LLC had

¹⁷ *Id.* ¶¶ 6–7; *see also* Ex. B to Ex. 1 to Def.’s Statement of Facts (Doc. 78-5) (Under Seal at Doc. 121) (indicating that Capital One transferred to PRA, LLC records of individual accounts); Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121).

¹⁸ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 7.

¹⁹ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121).

²⁰ *Id.*; *see also* Hammett Dep. Vol. I (Doc. 164) (Under Seal at Doc. 166) at 78:4–8 (Ms. Hammett acknowledging that her name used to be Laura J. Lynn).

²¹ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121); *see also* Hammett Dep. Vol. I (Doc. 164) at 78:9–12 (Ms. Hammett acknowledging she lived at 5757 Erlanger for two nights).

²² Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121); *see also* Hammett Dep. Vol. I (Doc. 164) at 78:24–79:1; *see also* Hammett Aff. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 42 (Ms. Hammett stating that the area code for her -6000 number is 760, which “covers Southeastern California and North San Diego County, which is Southwest California”).

²³ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121); *see also* Hammett Dep. Vol. I (Doc. 164) at 79:5–7.

²⁴ Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121).

²⁵ *Id.*

²⁶ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28; *see also* Ex. F. to Ex. 1 to Def.’s Statement of Facts (Doc. 78-28) at 2. As discussed below, the zip code was not properly hyphenated.

purchased the -6049 account from Capital One.²⁷ The letter stated that the amount of the debt was \$2,297.63.²⁸ The letter told Ms. Hammett that (1) she had thirty days to inform PRA, LLC that she wanted to dispute the debt, and (2) if she did not do so, PRA, LLC would consider the debt valid.²⁹

PRA, LLC also tried to contact Ms. Hammett by phone.³⁰ On December 8, 2013, PRA, LLC called Ms. Hammett's phone number ending in -6000.³¹ Ms. Hammett did not answer.³² PRA, LLC did not leave a message.³³ On December 12, 2013, PRA, LLC called the -6000 number again.³⁴ Ms. Hammett answered but did not identify herself.³⁵ PRA, LLC asked if Ms. Hammett

See supra p. 5. It appears that PRA, LLC used another company, Compumail, to facilitate the dispatch of the letter. *See* Ex. E to Ex. 1 to Def.'s Statement of Facts (Doc. 78-8) (Under Seal at Doc. 121) at 5.

²⁷ Ex. F. to Ex. 1 to Def.'s Statement of Facts (Doc. 78-28) at 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰

Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 36.

Ex. 1 (Dreano Decl.) to

Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 32; Ex. H to Ex. 1 to Def.'s Statement of Facts (Doc. 78-11) (Under Seal at Doc. 121) at 22.

Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 33; Ex. H to Ex. 1 to Def.'s Statement of Facts (Doc. 78-11) (Under Seal at Doc. 121) at 22–23.

Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 34; Ex. H to Ex. 1 to Def.'s Statement of Facts (Doc. 78-11) (Under Seal at Doc. 121) at 23.

Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 34; Ex. H to Ex. 1 to Def.'s Statement of Facts (Doc. 78-11) (Under Seal at Doc. 121) at 23.

Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 36. As will be discussed below, these processes are not full proof. In this case, for example, there are two occasions in which Ms. Hammett was called after 9:00 p.m. Central Standard Time. *See infra* at pp. 13–15.

³¹ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 7.

³² *See id.* (stating that the call went to an answering machine).

³³ *See id.* (stating that PRA, LLC did not leave a message).

³⁴ *Id.*

³⁵ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 10.

was available.³⁶ Ms. Hammett said, “No this is the estate sale. It’s a business.”³⁷ PRA, LLC apologized and asked if Ms. Hammett worked at the business.³⁸ Ms. Hammett did not answer PRA, LLC’s question.³⁹ Instead, the call abruptly ended.

On December 18, 2013, PRA, LLC learned that the December 3, 2013 letter was returned as undeliverable because of a zip-code error in the address.⁴⁰ On December 19, 2013, PRA, LLC changed the address’s “zip code from ‘921223801’ to ‘92122-3801,’ and immediately resent the same letter.”⁴¹ On February 5, 2014, PRA, LLC sent another letter to the same address.⁴² This letter, too, contained information concerning PRA, LLC’s purchase of the debt and Ms. Hammett’s options on responding to the debt.⁴³ The letters sent on December 19, 2013, and February 5, 2014, were not returned as undeliverable.⁴⁴ Ms. Hammett “did not request validation of her debt—or

³⁶ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107-6) at 3.

³⁷ Hammett Dep. Vol. I (Doc. 164) at 23:8; *see also* Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107-6) at 3.

³⁸ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107-6) at 3.

³⁹ *Id.*

⁴⁰ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28; Ex. E to Ex. 1 to Def.’s Statement of Facts (Doc. 78-8) (Under Seal at Doc. 121) at 5. Throughout Ms. Hammett’s Response to Defendant’s Statement of Facts, Ms. Hammett offers blanket denials without pointing to any record facts. *See, e.g.*, Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 28. On summary judgment, Ms. Hammett cannot rely on such denials to raise a genuine dispute of material fact. Rather, she must point to record facts to support her denials. Where she fails to do so, the law directs the Court to treat her unsupported denials as an admission. *See Fed. R. Civ. P. 56(e)(2)* (stating that, “if a nonmovant . . . fails to properly address another party’s assertion of fact . . . , the court may . . . consider the fact undisputed for purposes of the motion” for summary judgment); *see also Ruby v. Springfield R-12 Pub. Sch. Dist.*, 76 F.3d 909, 911 (8th Cir. 1996) (“[A] nonmoving party cannot rest on denials or allegations in the pleadings, but must set forth specific facts sufficient to raise a genuine issue for trial.”). The Court will not flag every time Ms. Hammett has failed to address PRA, LLC’s assertions of facts. Nevertheless, this legal point applies to all of Ms. Hammett’s unsupported denials.

⁴¹ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28; Ex. E to Ex. 1 to Def.’s Statement of Facts (Doc. 78-8) (Under Seal at Doc. 121) at 5.

⁴² Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28; Ex. E to Ex. 1 to Def.’s Statement of Facts (Doc. 78-8) (Under Seal at Doc. 121) at 5; Ex. F to Ex. 1 to Def.’s Statement of Facts (Doc. 78-28) (Under Seal at Doc. 121) at 2–3.

⁴³ Ex. F to Ex. 1 to Def.’s Statement of Facts (Doc. 78-28) (Under Seal at Doc. 121) at 3.

⁴⁴ Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28.

otherwise respond [to the letters] in any way, ever, because [unbeknownst to PRA, LLC] she did not receive the letters.”⁴⁵

After PRA, LLC was told the -6000 phone number associated with Ms. Hammett’s account was a business number, PRA, LLC did not call that number again for nearly seven years.⁴⁶ PRA, LLC did, however, call other numbers in reference to Ms. Hammett’s debt.⁴⁷ From March 24, 2014, through July 14, 2015, PRA, LLC made twenty-nine calls to a phone number ending in -3337.⁴⁸ PRA, LLC did not reach Ms. Hammett with any of these calls.⁴⁹

In 2015, Ms. Hammett moved from California to a cabin in Witts Springs, Arkansas.⁵⁰ Ms. Hammett “intentionally did not disclose to most people she was moving from California to

⁴⁵ Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 29; Hammett Dep. Vol. I (Doc. 164) at 65:10.

⁴⁶ See Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1–7 (showing that PRA, LLC did not call the -6000 number between December 12, 2013, and November 20, 2020).

⁴⁷ *Id.*

⁴⁸ *Id.* at 7. The record does not reveal who owned this phone number.

Ms. Hammett says that, in 2014, PRA, LLC also called a phone number ending in -8660 and spoke with Ms. Hammett’s former fiancé, Michael Williams, about Ms. Hammett’s debt. *See, e.g.*, Aff. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 35 (Ms. Hammett saying that, in late 2014, Michael Williams told her that a debt collector “kept calling him about a debt”); Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 11 (Ms. Hammett saying that “Michael Williams, who appears to be deceased, told [Ms.] Hammett that he received several calls to his number ending -8660” from debt collectors in 2014). PRA, LLC presents evidence, in the form of a phone log, that shows PRA, LLC did not call a number ending in -8660 during 2014. Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal) at 7. By sworn declaration, PRA, LLC asserts that it has never spoken with Mr. Williams. Ex. 1 (Dreano Decl.) to Def.’s Statement of Facts (Doc. 78-3) (Under Seal) ¶ 21. In response, Ms. Hammett presents bare denials and her own testimony about what Mr. Williams told her. Bare denials do not cut it on summary judgment. And the statements that Mr. Williams allegedly made to Ms. Hammett “are unsworn and made out of court, so they’re inadmissible for summary judgment purposes.” *Glover v. Bostrom*, 31 F.4th 601, 605 (8th Cir. 2022). While the Court reviews “the record in the light most favorable to [Ms. Hammett] as the non-moving party,” the Court does “not stretch this favorable presumption so far as to consider as evidence statements found only in inadmissible hearsay.” *Mays v. Rhodes*, 255 F.3d 644, 648 (8th Cir. 2001). This means that PRA, LLC’s factually supported assertion that it did not call Mr. Williams in 2014 is unchallenged and thus not the subject of a genuine dispute.

⁴⁹ See Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 7 (showing that PRA, LLC reached an “Answering Machine/Voice Mail,” had “No Contact,” or spoke with a “Third Party”). PRA, LLC did not call any numbers associated with Ms. Hammett’s account between July 15, 2015, and March 13, 2017. *Id.* at 6–7.

⁵⁰ See Hammett Dep. Vol. I (Doc. 164) at 17:20–21; Aff. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 8.

Arkansas.”⁵¹ At the cabin, Ms. Hammett had a landline ending in -2653.⁵² PRA, LLC somehow learned of this phone number.⁵³ Between March 13, 2017, and March 2, 2018, PRA, LLC called the -2653 number forty-four times.⁵⁴ Most of these calls went unanswered.⁵⁵ Some didn’t. On April 6, 2017, for example, an unidentified person answered PRA, LLC’s call.⁵⁶ The PRA, LLC representative explained that “[t]his is Cindy Graham calling on a recorded line for Laura Lynn.”⁵⁷ The call recipient asked Ms. Graham, “Who are you with?”⁵⁸ Ms. Graham said she was “calling from Portfolio Recovery Associates.”⁵⁹ The call recipient said, “We don’t accept any recorded calls on this line.”⁶⁰ That person also told the PRA, LLC representative to destroy any recording.⁶¹ The PRA, LLC representative said, “Okay. Ma’am, I don’t know who I am speaking to. So you have a wonderful day.”⁶²

⁵¹ Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 33.

⁵² Hammett Dep. Vol. I (Doc. 164) at 17:16–21; *see also* Ex. cc to Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) at 1 (showing a phone bill addressed to Laura Lynn related to a telephone number ending in -2653 and an address at 9985 Lick Fork Road, Witts Springs, Arkansas 72686).

⁵³ Although PRA, LLC learned that this number may be associated with Ms. Hammett in 2017, it is unclear from the record whether PRA, LLC knew in 2017 that the number and Ms. Hammett were associated with a particular address in Witts Springs, Arkansas. The record does show that, on September 18, 2019, PRA, LLC obtained information suggesting that Ms. Hammett was associated with an address in Witts Springs, Arkansas. Ex. E to Ex. 1 to Def.’s Statement of Facts (Doc. 78-8) (Under Seal at Doc. 121) at 6. And on November 1, 2019, PRA, LLC made a soft-credit inquiry with respect to Ms. Hammett, which might have included information linking Ms. Hammett to the Witts Springs address. *See* Ex. ff to Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) at 6.

⁵⁴ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 6–7.

⁵⁵ *Id.*

⁵⁶ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 5.

⁵⁷ *Id.*

⁵⁸ *Id.*; Ex. 15 (Apr. 6, 2017 Audio Recording) to Pl.’s Mot. to Compel (Under Seal at Doc. 100).

⁵⁹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 5.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

On August 24, 2017, PRA, LLC had another brief conversation with an unidentified person on the other end of the -2653 line.⁶³ Here's what was said:

[Recipient]: Hello.

[Caller]: Yes, hi. This is Whitney Hodge calling on a recorded line for Laura Lynn. Is he or she available?

[Recipient]: She won't be here until September 11th.

[Caller]: You said she's not available?

[Recipient]: Yes.

[Caller]: Okay. Thank you.

....⁶⁴

On a few other calls, someone answered, a PRA, LLC representative stated his or her name, the representative said that he or she was calling on a recorded line, and then the call abruptly ended.⁶⁵ Ms. Hammett does not recall ever speaking with PRA, LLC on any of these calls.⁶⁶ Ms. Hammett moved out of the Witts Springs cabin in February of 2018.⁶⁷

Between March 9, 2018, and May 4, 2018, PRA, LLC called two phone numbers associated with Ms. Hammett's account.⁶⁸ PRA, LLC made twenty-six calls to a landline ending in -8660.⁶⁹ At some point in time, Ms. Hammett shared this landline with her former fiancé, Michael

⁶³ *Id.* at 7.

⁶⁴ *Id.* at 7; *see also* Ex. 15 (Aug. 24, 2017 Audio Recording) to Pl.'s Mot. to Compel (Under Seal at Doc. 100).

⁶⁵ *See, e.g.*, Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 6, 8.

⁶⁶ *See* Aff. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 9 (Ms. Hammett stating that, as of March 10, 2021, she did not know that PRA, LLC had called the Witts Springs number).

⁶⁷ *Id.* ¶ 10.

⁶⁸ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal) at 5-6.

⁶⁹ *Id.*

Williams.⁷⁰ PRA, LLC also called the -2653 number (the Witts Springs cabin landline) thirteen times.⁷¹ PRA, LLC did not make contact with anyone at either number.⁷²

Between May 5, 2018, and March 7, 2020, PRA, LLC called two phone numbers associated with Ms. Hammett's account.⁷³ PRA, LLC called a phone number ending in -6822 once.⁷⁴ Ms. Hammett does not recall this phone number.⁷⁵ PRA, LLC called the -2653 number (the Witts Springs cabin landline) 120 times.⁷⁶ PRA, LLC did not communicate with Ms. Hammett through these calls.⁷⁷

Between March 10, 2020, and November 17, 2020, PRA, LLC called three phone numbers associated with Ms. Hammett's account.⁷⁸ PRA, LLC called the -2653 number (the Witts Springs cabin landline) 141 times.⁷⁹ PRA, LLC called a phone number ending in -1148 once and a phone number ending in -1644 once—a total of two calls.⁸⁰ The -1644 number did not belong to Ms. Hammett.⁸¹ Ms. Hammett is unfamiliar with the number ending in -1148.⁸² PRA, LLC did not speak with anyone on the calls made to these phone numbers.⁸³

⁷⁰ Aff. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 36. In her deposition, Ms. Hammett testified that the -8660 number may have been registered only in Mr. Williams's name. Hammett Dep. Vol. I (Doc. 164) at 16:19–17:4.

⁷¹ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal) at 5–6.

⁷² *Id.*

⁷³ *Id.* at 4–5.

⁷⁴ *Id.* at 5.

⁷⁵ Hammett Dep. Vol. I (Doc. 164) at 20:13–14.

⁷⁶ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 4–5.

⁷⁷ *Id.*

⁷⁸ *Id.* at 1–3.

⁷⁹ *Id.*

⁸⁰ *Id.* at 2.

⁸¹ Hammett Dep. Vol. I (Doc. 164) at 20:5–7.

⁸² *Id.* at 20:8–12.

⁸³ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1–3. Most of PRA, LLC's evidence regarding phone calls comes from its phone log. *See id.* at 1–7. Ms. Hammett asserts that PRA, LLC's phone log is unreliable. Specifically, Ms. Hammett says PRA, LLC's phone log is missing fifteen calls PRA, LLC

On November 18, 2020, PRA, LLC (for the first time since December of 2013) called Ms. Hammett's phone number ending in -6000.⁸⁴ Ms. Hammett picked up.⁸⁵ Ms. Hammett recorded the call.⁸⁶ At the beginning of the call, PRA, LLC informed Ms. Hammett that it was calling on a recorded line.⁸⁷ PRA, LLC said it was calling for Laura Lynn and asked if Ms. Hammett "want[ed] the name of the company."⁸⁸ Ms. Hammett said, "Yes, please."⁸⁹ PRA, LLC identified itself as "Portfolio Recovery Associates."⁹⁰ Ms. Hammett then told PRA, LLC that it was speaking with

made to her phone number ending in -6000 between August 18, 2020, and October 30, 2020. Aff. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶¶ 24–26. Ms. Hammett relies on her cellphone provider's records to identify calls from various phone numbers that "were probably from" PRA, LLC. *Id.* Ms. Hammett says that these calls "fit the pattern" of phone calls she received from PRA, LLC. *Id.* ¶ 25. Ms. Hammett describes the pattern as her receiving incoming calls lasting one minute from unknown phone numbers that were no longer in service. *Id.* She says she called some of the phone numbers on PRA, LLC's log and learned that they were also no longer in service. *Id.* With respect to the content of the calls, Ms. Hammett says that the callers spoke with the same cadence as PRA, LLC callers. Hammett Dep. Vol. II (Doc. 164) at 36:24–25. She also says that the callers used the same exact script as PRA, LLC. *Id.* at 36:25–37:5. According to Ms. Hammett, the callers would say something like "[t]his is Joe Smith on the recorded line for Laura Lynn." *Id.* at 34:1–2.

Ms. Hammett is relying on rank speculation in the place of facts. Ms. Hammett admits that she has no personal recollection of any of these calls. *Id.* at 33:18. Ms. Hammett admits that no caller ever self-identified as a PRA, LLC representative. *Id.* at 36:17–20. Ms. Hammett admits that she did not even try to call these numbers back until after she got her phone records (on February 20, 2022, almost a year and a half after the phone calls were made). *See id.* at 34:15–20 (Ms. Hammett saying that she called the fifteen numbers after she got her cellphone records); Hammett Dep. Vol. I (Doc. 164) at 31:21–22 (Ms. Hammett stating that she got her cellphone records on February 20, 2022). Finally, Ms. Hammett admits that these calls could have come from other people. Hammett Dep. Vol. II (Doc. 164) at 38:19–20. Ms. Hammett cannot rely on this speculation to raise a genuine dispute of material fact with respect to the accuracy of PRA, LLC's phone log. Moreover, PRA, LLC has filed a sworn declaration stating that none of the phone numbers Ms. Hammett believes PRA, LLC called from during this time period was owned by PRA, LLC. Ex. 3 to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-3) ¶¶ 5–6. The declaration also says that PRA, LLC never called the -6000 number on the dates Ms. Hammett says it did. *Id.*

⁸⁴ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

⁸⁵ *See* Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 12.

⁸⁶ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 20.

⁸⁷ *Id.* at 14; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

⁸⁸ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 14; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

⁸⁹ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 14; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁰ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 14; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

“Laura.”⁹¹ PRA, LLC said it wanted to make sure it was calling “the correct Ms. Lynn.”⁹² PRA, LLC told Ms. Hammett a birthdate and asked if it was her birthdate.⁹³ Ms. Hammett said she wanted more information about PRA, LLC before giving personal information about herself.⁹⁴ PRA, LLC told Ms. Hammett it was calling in “regards to a personal business matter” and “to continue, [PRA, LLC] would have to verify” that it was talking to the right Ms. Lynn.⁹⁵

Ms. Hammett responded by asking PRA, LLC’s name and asked if PRA, LLC was “an LLC or a corporation.”⁹⁶ PRA, LLC first said it was a company and, upon further questioning from Ms. Hammett, then said it was an LLC.⁹⁷ Next, PRA, LLC and Ms. Hammett reached an impasse, with Ms. Hammett asking what the call was about and PRA, LLC saying that it could not provide further details unless it was sure it was speaking with the right person.⁹⁸ Then Ms. Hammett told PRA, LLC that “[w]hatever this is about, please send me a letter and don’t use this phone number.”⁹⁹ PRA, LLC said it could not do that because Ms. Hammett had not “verified” that she was the correct “Laura Lynn.”¹⁰⁰ Ms. Hammett repeated her request that PRA, LLC not

⁹¹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 14; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹² Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹³ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁴ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁵ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁶ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁷ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁸ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 15–18; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

⁹⁹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 19; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰⁰ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 19; *see also* Ex. 15 (Nov. 18,

call her phone number because she was “on the do-not-call list.”¹⁰¹ PRA, LLC told Ms. Hammett that it did not have a do-not-call list because it was not a telemarketer.¹⁰² Ms. Hammett then asked PRA, LLC if it was “allowed to make a collections call even if the person asks you not to and to put it in writing?”¹⁰³ PRA, LLC told Ms. Hammett that she could send PRA, LLC “a cease and desist” as she saw fit.¹⁰⁴

Between November 29, 2020, and January 26, 2021, PRA, LLC called the -6000 number thirty-one times.¹⁰⁵ Some calls were answered. Some were not. On most of the calls that were answered, the person who answered hung up immediately after PRA, LLC said it was calling on a recorded line for “Laura Lynn.”¹⁰⁶ On December 9, 2020, however, a more substantive call occurred.¹⁰⁷ PRA, LLC called the -6000 number.¹⁰⁸ Ms. Hammett answered.¹⁰⁹ PRA, LLC told Ms. Hammett that it was “calling on a recorded line for Laura Lynn.”¹¹⁰ Ms. Hammett did not identify herself and asked who was calling.¹¹¹ PRA, LLC identified itself as “Portfolio Recovery

2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰¹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 20; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰² Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 20; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰³ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 20; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰⁴ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 20; *see also* Ex. 15 (Nov. 18, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰⁵ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁰⁶ *See, e.g.*, Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 26, 27, 31, 32, 33, 34, 38, 40, 41; *see also* Ex. 15 (Audio Recordings) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁰⁷ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1; *see also* Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Under Seal at Doc. 100).

¹⁰⁸ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁰⁹ Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 17.

¹¹⁰ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹¹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

Associates.”¹¹² Ms. Hammett said that she had asked PRA, LLC “not to call this telephone number” and “to put anything that” PRA, LLC had to say “in writing.”¹¹³ Ms. Hammett then said “thank you” before hanging up.¹¹⁴

A similar call occurred on December 16, 2020. PRA, LLC called the -6000 number.¹¹⁵ Ms. Hammett answered but did not identify herself.¹¹⁶ PRA, LLC said it was “calling on a recorded line for Laura Lynn.”¹¹⁷ Ms. Hammett told PRA, LLC to “delete the recording” and that PRA, LLC had “no permission to record” the call.¹¹⁸

On January 28, 2021, PRA, LLC called the -6000 number.¹¹⁹ Nobody answered.¹²⁰ This call is fairly important to the case. It is one of two calls that occurred outside the statutorily prescribed window for collection calls—the approved window being between 8:00 a.m. and 9:00 p.m. in the time zone at the debtor’s location.¹²¹ On the date of the call, Ms. Hammett was living in Arkansas. Arkansas is on Central Standard Time.¹²² The call came in at 9:19 p.m. Central

¹¹² Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹³ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹⁴ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 25; Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹⁵ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 28; Ex. 15 (Dec. 16, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹⁶ Hammett Dep. Vol. I (Doc. 164) at 45:14–24 (Ms. Hammett saying she had a discussion with PRA, LLC on December 16, 2020); Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 28–29.

¹¹⁷ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 28; Ex. 15 (Dec. 16, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹⁸ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 28; Ex. 15 (Dec. 16, 2020 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹¹⁹ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78–7) (Under Seal at Doc. 121) at 1.

¹²⁰ *Id.*

¹²¹ See 15 U.S.C. § 1692c(a)(1) (stating that a debt collector “may not communicate with a consumer” at an unusual time and that a “debt collector shall assume that the convenient time for communicating with a consumer is after [8:00 a.m.] and before [9:00 p.m.], local time at the consumer’s location”).

¹²² Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 35.

Standard Time.¹²³ The -6000 number had a California area code.¹²⁴ California is on Pacific Standard Time. The call came in at 7:19 p.m. Pacific Standard Time.

On January 29, 2021, PRA, LLC called the -6000 number.¹²⁵ Someone answered.¹²⁶ After PRA, LLC said it was calling on a recorded line for Laura Lynn, whoever answered ended the call.¹²⁷ Then, on February 1, 2021, PRA, LLC called the -6000 number.¹²⁸ Ms. Hammett answered but did not identify herself.¹²⁹ PRA, LLC said it was calling on a recorded line for Laura Lynn.¹³⁰ Ms. Hammett told PRA, LLC to wait a moment, and then PRA, LLC disconnected the call.¹³¹

Immediately following the termination of that call, Ms. Hammett called PRA, LLC back.¹³² Ms. Hammett did not identify herself.¹³³ She did say that she owned the -6000 number.¹³⁴ Ms. Hammett asked PRA, LLC not to call the -6000 number on a recorded line.¹³⁵ Ms. Hammett asked

¹²³ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1. PRA, LLC's phone log lists times based on Eastern Standard Time. Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 28.

¹²⁴ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 34.

¹²⁵ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹²⁶ *Id.*; see also Ex. 15 (Jan. 29, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹²⁷ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1; see also Ex. 15 (Jan. 29, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹²⁸ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹²⁹ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 44; Ex. 15 (Feb. 1, 2021 (file ending in 3631) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); see also Hammett Dep. Vol. I (Doc. 164) at 43:2-13 (Ms. Hammett saying she spoke with PRA, LLC on February 1, 2021).

¹³⁰ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 44; Ex. 15 (Feb. 1, 2021 (file ending in 3631) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹³¹ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 44; Ex. 15 (Feb. 1, 2021 (file ending in 3631) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 17.

¹³² Hammett Dep. Vol. I (Doc. 164) at 43:2-6; see also Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 45-49.

¹³³ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 45-46.

¹³⁴ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 45.

¹³⁵ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex.

for that number to be removed from PRA, LLC's calling list because it was on "the do-not-call list."¹³⁶ PRA, LLC told Ms. Hammett that PRA, LLC does not "actually have a do-not-call list."¹³⁷ PRA, LLC acknowledged that it was possible that PRA, LLC was trying to reach the wrong person.¹³⁸ PRA, LLC said that the -6000 number did register in the system and that it could mark it as a wrong number if PRA, LLC could verify to whom it was speaking.¹³⁹ Ms. Hammett did not identify herself or otherwise verify her identity.¹⁴⁰

On February 2, 2021, PRA, LLC called Ms. Hammett's -6000 number.¹⁴¹ Nobody answered.¹⁴² This is the second call that occurred outside the statutorily prescribed window for collection calls.¹⁴³ On the date of the call, Ms. Hammett was living in Arkansas. Arkansas is on Central Standard Time.¹⁴⁴ The call came in at 9:14 p.m. Central Standard Time.¹⁴⁵ The -6000 number had a California area code.¹⁴⁶ California is on Pacific Standard Time. The call came in at 7:14 p.m. Pacific Standard Time.

6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 45.

¹³⁶ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 45-46.

¹³⁷ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 47.

¹³⁸ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 47.

¹³⁹ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 47-48.

¹⁴⁰ Ex. 15 (Feb. 1, 2021 (file ending in 9669) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal); Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 44-49.

¹⁴¹ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁴² *Id.*

¹⁴³ See 15 U.S.C. § 1692c(a)(1) (stating that a debt collector "may not communicate with a consumer" at an unusual time and that a "debt collector shall assume that the convenient time for communicating with a consumer is after [8:00 a.m.] and before [9:00 p.m.], local time at the consumer's location").

¹⁴⁴ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 35.

¹⁴⁵ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁴⁶ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 34.

On February 4, 2021, PRA, LLC called the -6000 number.¹⁴⁷ Nobody answered.¹⁴⁸ On February 9, 2021, PRA, LLC called the same number.¹⁴⁹ Someone picked up and quickly ended the call after a PRA, LLC representative said that he or she was calling on a recorded line for Laura Lynn.¹⁵⁰ Between February 10, 2021, and February 15, 2021, PRA, LLC called the -6000 number four times.¹⁵¹ PRA, LLC did not communicate with anyone on these calls.¹⁵² On February 16, 2021, PRA, LLC called the -6000 number.¹⁵³ Someone answered and quickly ended the call after a PRA, LLC representative said that he or she was calling on a recorded line for Laura Lynn.¹⁵⁴ On February 17, 2021, PRA, LLC called the -6000 number but did not speak with anyone on the call.¹⁵⁵ This is the last phone call that PRA, LLC made to any numbers associated with Ms. Hammett's account.

On February 18, 2021, Ms. Hammett called PRA, LLC.¹⁵⁶ Ms. Hammett spoke with a PRA, LLC representative named Tabitha Boshears.¹⁵⁷ Ms. Hammett told Ms. Boshears that her name was Laura and that PRA, LLC had her last name listed as Lynn.¹⁵⁸ Ms. Hammett then

¹⁴⁷ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 52; Ex. 15 (Feb. 9, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁵¹ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 54; Ex. 15 (Feb. 16, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁵⁵ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1.

¹⁵⁶ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 55; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁵⁷ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 55; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁵⁸ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 55; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

remarked on her receiving multiple calls from PRA, LLC and asked Ms. Boshears about the debt PRA, LLC was allegedly trying to collect.¹⁵⁹ Ms. Boshears indicated that she saw “something with the name” Ms. Hammett provided.¹⁶⁰ Ms. Boshears asked Ms. Hammett to verify her identity.¹⁶¹ Ms. Hammett provided her birth date.¹⁶² Ms. Boshears “thereafter disclosed [that PRA, LLC] was a debt collector.”¹⁶³

Ms. Boshears told Ms. Hammett that the debt related to a “Capit[al] One Mastercard.”¹⁶⁴ Ms. Boshears then began to give Ms. Hammett payment options.¹⁶⁵ Ms. Hammett interrupted Ms. Boshears, saying she did not need payment options because she did not owe any money.¹⁶⁶ Ms. Hammett said she was not familiar with the Capital One account.¹⁶⁷ Ms. Hammett said that PRA, LLC ran her credit report on November 1, 2019, and knew that Ms. Hammett had no debt.¹⁶⁸ Ms. Hammett then said that she didn’t “want any more phone calls or electronic communication.”¹⁶⁹

¹⁵⁹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 55; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁰ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 55–56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶¹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶² Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶³ Pl.’s Resp. to Def.’s Statement of Facts (Doc. 99) (Under Seal) ¶ 18.

¹⁶⁴ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal). Ms. Boshears also told Ms. Hammett that, because of the age of the debt, PRA, LLC would not sue Ms. Hammett on the debt or report the debt to credit reporting agencies. Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁵ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁶ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁷ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 56; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁸ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 57; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.’s Mot. to Compel (Doc. 100) (Under Seal).

¹⁶⁹ Ex. 6 (Call Trs.) to Reply to Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 107–6) at 57; Ex. 15 (Feb. 18, 2021

Next, Ms. Hammett gave Ms. Boshears her full name, Laura Lynn Hammett, and an address located in Conway, Arkansas.¹⁷⁰ (This was the first time Ms. Hammett indicated to PRA, LLC that she lived in Arkansas.¹⁷¹) After that, Ms. Boshears told Ms. Hammett that, if Ms. Hammett didn't want PRA, LLC communicating with her, Ms. Hammett needed to send that request to PRA, LLC in writing.¹⁷² Ms. Boshears then asked Ms. Hammett to confirm that she was denying owing any debt to PRA, LLC.¹⁷³ Ms. Hammett said that the Capital One debt was "absolutely" not hers.¹⁷⁴ In response, Ms. Boshears said, "So I'll go ahead and set in a dispute for fraud for you . . ."¹⁷⁵ Ms. Boshears told Ms. Hammett that the account would be transferred to the "disputes department" and that Ms. Hammett should expect to receive "documentation in the mail in reference to the dispute."¹⁷⁶

On February 20, 2021, Ms. Hammett sent PRA, LLC a written cease-and-desist letter.¹⁷⁷ About two weeks later, Ms. Hammett received a letter from PRA, LLC dated February 19, 2021.¹⁷⁸

Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷⁰ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 57; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷¹ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 42.

¹⁷² Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 58; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal). PRA, LLC also gave Ms. Hammett the PRA, LLC address for Ms. Hammett's cease-and-desist letter. Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 58; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷³ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 59; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷⁴ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 59; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷⁵ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 59; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷⁶ Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 59-60; Ex. 15 (Feb. 18, 2021 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁷⁷ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 27; Hammett Dep. Vol. I (Doc. 164) at 67:16-19.

¹⁷⁸ Ex. A to Pl.'s Mot. for Partial Summ. J. (Doc. 39-1) at 2; Hammett Dep. Vol. I (Doc. 164) at 130:5-8 (Ms. Hammett stating that she received the letter dated February 19, 2021, in March 2021).

The letter listed an account number ending in -6049.¹⁷⁹ The letter stated that the account balance was \$2,297.63.¹⁸⁰ The letter said in part:

The Disputes Department at Portfolio Recovery Associates, LLC (“PRA, LLC”) understands that you wish to dispute this account because you have been a victim of identity theft or fraud. The following information is being provided in response to your recent communication concerning the account referenced above. Account number . . . 6049 and its proceeds were sold, assigned and transferred by the Seller to PRA, LLC on 11/19/2013. At the time of the sale, the Seller provided an electronic file of its business records containing information concerning the account; a summary of which can be found below. Please contact us if you would like to receive a payment history of payments that have posted to this account since our company purchased this account.¹⁸¹

In bold, at the bottom of the first page, PRA, LLC wrote that “[t]his communication is from a debt collector. This communication is made for the limited purpose of responding to your dispute and is NOT an attempt to collect a debt.”¹⁸² The letter provided instructions on how a customer can “dispute an account due to issues related to fraud/identity theft.”¹⁸³ According to the letter, one of the ways a customer can dispute a debt is to submit an official “Identity Theft Report.”¹⁸⁴ A customer can submit such a report by filling out a “PRA, LLC Identity Theft Affidavit,” which was attached to the letter.¹⁸⁵

The attached affidavit is two pages long and has five sections.¹⁸⁶ The first section seeks personal information like a customer’s full name and social security number.¹⁸⁷ The second

¹⁷⁹ Ex. A to Pl.’s Mot. for Partial Summ. J. (Doc. 39-1) at 2.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 4.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 4–7.

¹⁸⁶ *Id.* at 6–7.

¹⁸⁷ *Id.* at 6.

18, 2021.¹⁹⁷ The letter was addressed to a Laura Lyman (not Laura Lynn).¹⁹⁸ The letter referenced Lyman's account number and said that PRA, LLC had "completed the investigation into your dispute and your account has been closed."¹⁹⁹ After Ms. Hammett contacted PRA, LLC about this erroneous letter, PRA, LLC sent Ms. Hammett a letter dated April 14, 2021.²⁰⁰ This letter was addressed to Ms. Hammett and referenced Ms. Hammett's (Laura Lynn's) account number.²⁰¹ The balance was listed as zero.²⁰² The letter said that "Portfolio Recovery Associates, LLC has closed this account."²⁰³ After receiving this letter, Ms. Hammett again contacted PRA, LLC to say that PRA, LLC left out language in the letter indicating that PRA, LLC had "concluded its investigation of [Ms. Hammett's] dispute."²⁰⁴ In response, PRA, LLC sent Ms. Hammett another letter dated April 23, 2021.²⁰⁵ This letter also listed Ms. Hammett's account balance as zero.²⁰⁶ The letter stated that "Portfolio Recovery Associates . . . has concluded its investigation of your dispute and is closing your account."²⁰⁷

this but fails to offer any evidence to raise a genuine dispute of material fact on whether PRA, LLC waived the debt. *See supra* note 40.

¹⁹⁷ Ex. 6 to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 83; Ex. 15 (Apr. 10, 2021 (file ending 9340) Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

¹⁹⁸ Ex. 6 to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 82.

¹⁹⁹ Hammett Dep. Vol. I (Doc. 164) at 69:8–25.

²⁰⁰ *Id.* at 70:1–6; *see also* Ex. 21 to Hammett Dep. (Doc. 164) (Under Seal at 166).

²⁰¹ Ex. 21 to Hammett Dep. (Doc. 164) (Under Seal at Doc. 166).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Hammett Dep. Vol. I (Doc. 164) at 70:14–17.

²⁰⁵ Ex. B to Pl.'s Mot. for Partial Summ. J. (Doc. 39-2) at 2.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

DISCUSSION

This Order addresses three pending Motions: (1) PRA, LLC's Motion for Summary Judgment,²⁰⁸ (2) Ms. Hammett's Motion to Amend,²⁰⁹ and (3) Ms. Hammett's Motion for Partial Summary Judgment.²¹⁰

I. PRA, LLC's Motion for Summary Judgment

Ms. Hammett sues PRA, LLC for alleged violations of the following provisions of the Fair Debt Collection Practices Act (FDCPA):

- 15 U.S.C. § 1692b
- 15 U.S.C. § 1692c(a)(1)
- 15 U.S.C. § 1692c(c)
- 15 U.S.C. § 1692d
- 15 U.S.C. § 1692d(5)
- 15 U.S.C. § 1692e(10)
- 15 U.S.C. § 1692e(11)
- 15 U.S.C. § 1692e(13)
- 15 U.S.C. § 1692e(14)
- 15 U.S.C. § 1692g(a)(3)
- 15 U.S.C. § 1692g(a)(4)
- 15 U.S.C. § 1692g(a)(5).²¹¹

²⁰⁸ Def.'s Mot. for Summ. J. (Doc. 75).

²⁰⁹ Pl.'s Mot. to Amend (Doc. 33).

²¹⁰ Pl.'s Mot. for Partial Summ. J. (Doc. 37).

²¹¹ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 253, 255, 257, 261, 263, 265, 268, 270, 271, 273, 275, 278.

Ms. Hammett also sues PRA, LLC for alleged violations of 47 U.S.C. § 227, which is part of the Telephone Consumer Protection Act (TCPA).²¹² Finally, under Arkansas state law, Ms. Hammett alleges that PRA, LLC committed the torts of intentional infliction of emotional distress, negligent infliction of emotional distress, and invasion of privacy by intrusion upon seclusion.²¹³

PRA, LLC seeks summary judgment on all claims against it.²¹⁴ Ms. Hammett's response (or lack thereof) to PRA, LLC's Motion has cleared some of the underbrush on Ms. Hammett's claims. First, Ms. Hammett has expressly given up on her FDCPA claim under 15 U.S.C. § 1692c(c).²¹⁵ Second, in her Brief in Opposition, Ms. Hammett did not respond to PRA, LLC's summary-judgment arguments respecting Ms. Hammett's FDCPA claims under 15 U.S.C. §§ 1692e(11), 1692e(14), and 1692g(3)–(5).²¹⁶ So those claims are out.²¹⁷ Third, Ms. Hammett has given up on her TCPA claims.²¹⁸ And fourth, Ms. Hammett has given up on her state law claim for negligent infliction of emotional distress.²¹⁹ That still leaves a lot of ground to cover. Specifically, Ms. Hammett is still actively pressing (and defending against summary judgment) six FDCPA violations as well as two state common law torts.

²¹² *Id.* ¶¶ 280–82.

²¹³ *Id.* ¶¶ 283, 296, 302.

²¹⁴ Def.'s Mot. for Summ. J. (Doc. 75).

²¹⁵ See Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 12 (conceding that PRA, LLC "did not violate 1692c(c)").

²¹⁶ See *id.* at 29 (Ms. Hammett stating that, "[b]ecause of time constraints, Plaintiff is skipping the other FDCPA arguments"). The Court granted two extensions of Ms. Hammett's deadline to file a response to PRA, LLC's Motion. Feb. 10, 2022 Order (Doc. 84); Feb. 18, 2022 Order (Doc. 93).

²¹⁷ See *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535, 540 (8th Cir. 2020) ("The 'failure to oppose a basis for summary judgment constitutes waiver of that argument,' because the non-moving party is responsible for demonstrating any genuine dispute of material fact that would preclude summary judgment.") (quoting *Satcher v. Univ. of Ark. at Pine Bluff Bd. of Trs.*, 558 F.3d 731, 735 (8th Cir. 2009)). The Eighth Circuit makes clear that it is not a "District Court's responsibility to sift through the record to see if, perhaps, there [is] an issue of fact." *Id.* (quoting *Satcher*, 558 F.3d at 735).

²¹⁸ Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 29 (Ms. Hammett stating she "[w]ithdraws her TCPA claims").

²¹⁹ Hammett Dep. Vol. I (Doc. 164) at 15:24–16:3 (Ms. Hammett stating that she does not oppose PRA, LLC's Motion for Summary Judgment on the negligent-infliction-of-emotional-distress claim).

A. Summary Judgment Standard

A court shall grant summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.²²⁰ The moving party has the burden to show that (1) there is an absence of a genuine dispute of material fact on at least one essential element of the nonmoving party's case and (2) the absence means that a rational juror could not possibly find for the nonmoving party on that essential element of the nonmoving party's case.²²¹ Conversely, if the nonmoving party can present specific facts by "affidavit, deposition, or otherwise, showing the existence of a genuine issue for trial," then summary judgment is not appropriate.²²²

Importantly, "[t]he mere existence of a factual dispute is insufficient alone to bar summary judgment"²²³ The dispute of fact must be both genuine and material to prevent summary judgment.²²⁴ A genuine dispute of fact exists where a rational juror could decide the particular question of fact for the nonmoving party.²²⁵ A material dispute of fact exists where the juror's decision on the particular question of fact determines the outcome of a potentially dispositive issue under the substantive law.²²⁶

B. Ms. Hammett's FDCPA Claims

The Eighth Circuit explains that the "FDCPA is designed to protect consumers from abusive debt collection practices and to protect ethical debt collectors from competitive

²²⁰ *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (citing FED. R. CIV. P. 56(c)(2)).

²²¹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

²²² *Grey v. City of Oak Grove*, 396 F.3d 1031, 1034 (8th Cir. 2005).

²²³ *Holloway v. Pigman*, 884 F.2d 365, 366 (8th Cir. 1989).

²²⁴ *Id.*

²²⁵ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

²²⁶ *Id.*

disadvantage.”²²⁷ The FDCPA regulates debt collectors. The FDCPA defines “debt collector” to mean “any person who uses any instrumentality of interstate commerce . . . in any business the principal purpose of which is the collection of any debts”²²⁸ With respect to debt collectors, the FDCPA “prohibits certain types of collection practices, such as the use or threat of violence, obscene language, publication of shame lists, and harassing or anonymous phone calls.”²²⁹ Ms. Hammett brings numerous FDCPA claims against PRA, LLC. The Court addresses them in turn, but the long and short of it is that Ms. Hammett’s current claims do not get past summary judgment.

1. 15 U.S.C. § 1692b

Ms. Hammett alleges that PRA, LLC improperly communicated with her former fiancé, Michael Williams, in violation of 15 U.S.C. § 1692b.²³⁰ Section 1692b provides in relevant part:

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information”

Ms. Hammett’s § 1692b claim fails because it is time-barred. The FDCPA has a one-year statute of limitations.²³¹ The Eighth Circuit says that this limitations period is jurisdictional and

²²⁷ *Peters v. Gen. Serv. Bureau, Inc.*, 277 F.3d 1051, 1054 (8th Cir. 2002).

²²⁸ 15 U.S.C. § 1692a(6). Nobody disputes that PRA, LLC is a debt collector.

²²⁹ *Peters*, 277 F.3d at 1054.

²³⁰ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 253–54.

²³¹ *Id.* at § 1692k(d) (“An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.”).

“not subject to equitable tolling.”²³² Ms. Hammett alleges (without cognizable evidence) that PRA, LLC communicated with Mr. Williams in 2014.²³³ Ms. Hammett filed her Complaint on March 10, 2021—at least six years after PRA, LLC allegedly communicated with Mr. Williams.²³⁴ That’s about five years too late. Thus, the Court lacks jurisdiction to entertain this claim. The Court will dismiss this claim.²³⁵

2. 15 U.S.C. § 1692c(a)(1)

Ms. Hammett alleges that PRA, LLC called her after 9:00 p.m. in violation of 15 U.S.C. § 1692c(a)(1).²³⁶ Section 1692(c)(a)(1) provides:

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o’clock [a.m.] and before 9 o’clock [p.m.], local time at the consumer’s location

It is undisputed that PRA, LLC called Ms. Hammett, while she was living in Arkansas, two times after 9 p.m. Central Standard Time. But this claim still has a fatal flaw. On the facts in this record, the bona fide error defense shields PRA, LLC from liability. No rational juror could conclude otherwise.

²³² *Hageman v. Barton*, 817 F.3d 611, 616 (8th Cir. 2016).

²³³ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 163–67.

²³⁴ Compl. (Doc. 1).

²³⁵ Even if the claim were not time-barred, it would still fail at this stage. There is no evidence in the record that would allow a rational juror to find that PRA, LLC ever communicated with Mr. Williams. *See supra* note 48. Without such evidence, no rational juror could conclude that PRA, LLC violated § 1692b.

²³⁶ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 255–56.

The Eighth Circuit says that “[t]he bona fide error defense exists as an exception to the strict liability imposed upon debt collectors by the FDCPA.”²³⁷ Under 15 U.S.C. § 1692k(c), “[a] debt collector may not be held liable in [an FDCPA action] if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” According to the Eighth Circuit, a bona fide error is a “plausible and reasonable” error “made despite the use of procedures reasonably adapted to prevent that specific error.”²³⁸

Given the factual record in this case, a rational juror could only conclude that PRA, LLC’s two phone calls made to Ms. Hammett after 9:00 p.m. Central Standard Time were unintentional FDCPA violations. These two calls (out of about 426 calls total) are the only calls that PRA, LLC made to a phone number associated with Ms. Hammett’s account outside of § 1692c(a)(1)’s time restrictions.²³⁹ In both instances, PRA, LLC called Ms. Hammett’s -6000 number, which had an area code associated with California. If the calls would have landed in California, they would have been received almost two hours before 9:00 p.m. Pacific Standard Time and thus would not have violated § 1692c(a)(1)’s time restrictions. Recall that PRA, LLC’s initial information indicated that Ms. Hammett lived in California. And on previous phone calls, no one (including Ms. Hammett) ever told PRA, LLC that Ms. Hammett lived in Arkansas.

For very similar reasons, a rational juror could only conclude that PRA, LLC’s late phone calls were “plausible and reasonable” errors.²⁴⁰ Again, the -6000 number PRA, LLC called had a

²³⁷ *Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8th Cir. 2001).

²³⁸ *Wilhelm v. Credico, Inc.*, 519 F.3d 416, 420 (8th Cir. 2008). Resolving the question of whether procedures are “reasonably adapted to avoid” the error is a “fact-intensive inquiry.” *Id.* at 421. Of course, where the record facts are not subject to genuine dispute and a rational juror could only reach one conclusion from those facts, summary judgment is warranted.

²³⁹ Ex. D to Ex. 1 to Def.’s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1-7.

²⁴⁰ *Wilhelm*, 519 F.3d at 420.

California area code. The phone calls would have been timely had the recipient been in California. PRA, LLC did not have a solid address for Ms. Hammett that established that she lived somewhere besides California. The error as to her location (and thus the appropriate time to call her) is easy to understand. It is certainly "plausible and reasonable."

Finally, a rational juror could only conclude that PRA, LLC “employed procedures ‘reasonably adapted to avoid’ the error[s] that occurred.”²⁴¹ The Court has summarized these procedures *supra* footnote 30. [REDACTED]

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These procedures appear to directly and reasonably mitigate the risk that a collection call will be made outside the statutorily prescribed window. Indeed, they even identify and try to mitigate the specific problem that occurred here—where a cellphone area code indicates a different time zone from a person's actual location.

The most generous reading of Ms. Hammett's position is that (1) the violations were intentional, (2) if unintentional, the violations were not "plausible and reasonable" errors, and (3)

²⁴¹ *Id.* at 421.

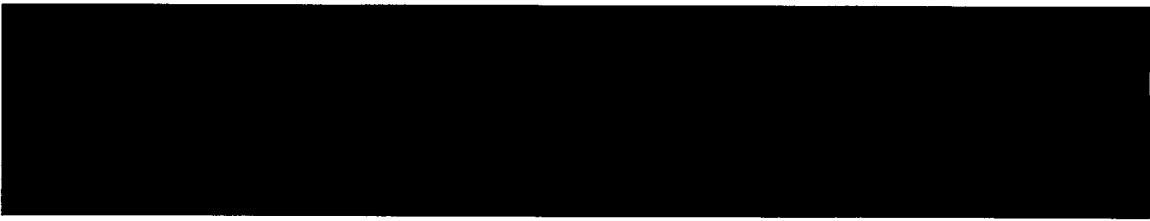
²⁴² Ex. 1 (Dreano Decl.) to Def.'s Statement of Facts (Doc. 78-3) (Under Seal at Doc. 121) ¶ 33; Ex. H to Ex. 1 to Def.'s Statement of Facts (Doc. 78-11) (Under Seal at Doc. 121) at 22–23.

in any event, PRA, LLC's procedures were not reasonably adapted to avoid the violations. All three of her arguments rely on the same basic facts.

First, Ms. Hammett notes that, in 2017, PRA, LLC somehow acquired (and called) Ms. Hammett's landline phone number at the Witts Springs cabin.²⁴³ From this, Ms. Hammett argues that PRA, LLC knew she was living in Arkansas when it made the two after-hours calls. Recall that, in August 2017, PRA, LLC spoke with someone on the Witts Springs cabin landline who said that Ms. Hammett would not be back until September. But PRA, LLC never knowingly spoke with Ms. Hammett on this number. And the unidentified recipient of the August 2017 call never suggested that Ms. Hammett lived at the cabin permanently. The limited and vague 2017 contact with a person unknown to PRA, LLC regarding Ms. Hammett's "September return" occurred over three years before the two after-hours calls. PRA, LLC's knowledge of the Witts Springs landline (and maybe the related location of the cabin) does not mean that PRA, LLC knew that Ms. Hammett was in Arkansas in late January and early February of 2021.

Second, Ms. Hammett points to a soft-credit inquiry that PRA, LLC performed on her in November of 2019, and says that the inquiry would have revealed to PRA, LLC that she was living in Arkansas. The problem for Ms. Hammett is that the record only establishes that such an inquiry was made. It does not in any way suggest what the inquiry revealed. Without speculating, which is forbidden, a rational juror could not conclude that this inquiry informed PRA, LLC of Ms. Hammett's Arkansas residency.²⁴⁴

²⁴³ Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 14.

²⁴⁴ 

In short, the facts relied on by Ms. Hammett do not in any way undermine the conclusion that the two after-hours calls were (1) unintentional and (2) “plausible and reasonable” errors. Nor do they undermine the conclusion that (3) PRA, LLC’s procedures were “reasonably adapted” to guard against the two outlier violations of § 1692c(a)(1).

It is fair to say that PRA, LLC likely knew, in 2017, that the phone number to the Witts Springs cabin was a landline with an Arkansas area code. But PRA, LLC did not have solid information that Ms. Hammett lived there, let alone on a continuing basis. Hunches and leads are different from knowledge. The only solid information that PRA, LLC had as to Ms. Hammett’s whereabouts indicated that she resided in California—which matched the area code of the cellphone to which the two offending calls were made.²⁴⁵ To benefit from the bona-fide-error defense, PRA, LLC was not required to input into its calling system every possible *time zone* in which Ms. Hammett *might* have been living. That would be the gold-standard of collection practices. And perhaps PRA, LLC should consider adopting a best practice like this one in the future. But the bona fide error defense doesn’t require perfection. Its touchstone is reasonableness—specifically the “maintenance of procedures reasonably adapted” to avoid violations.²⁴⁶ Not a low hurdle, but not a terribly high one either. PRA, LLC did not have to take “every conceivable precaution” to avoid a violation of § 1692c(a)(1).²⁴⁷ It had to take reasonable precautions. It did so. Every rational juror would conclude that PRA, LLC prevails under the bona fide error defense.

[REDACTED]

²⁴⁵ PRA, LLC did not have to “conduct[] an independent investigation” of Ms. Hammett’s current address. *Cf. Smith v. Transworld Sys.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (agreeing with the trial court that the FDCPA did not require an “independent investigation of [a] debt referred for collection”) (internal quotations omitted).

²⁴⁶ 15 U.S.C. § 1692k(c).

²⁴⁷ *Scott v. Portfolio Recovery Assocs.*, 139 F. Supp. 3d 956, 971 (S.D. Iowa 2015) (quoting *Kort v. Diversified Collection Servs., Inc.*, 394 F.3d 530, 539 (7th Cir. 2005)).

3. 15 U.S.C. §§ 1692d & 1692d(5)

Ms. Hammett alleges that PRA, LLC violated 15 U.S.C. § 1692d generally and § 1692d(5) specifically. With respect to § 1692d, Ms. Hammett alleges that PRA, LLC violated this provision by “contacting [Ms.] Hammett incessantly, coercing her into speaking on a recorded line, and mailing an ‘affidavit’ for [Ms.] Hammett to fill out that brought up horrible events from the past”²⁴⁸ With respect to § 1692d(5), Ms. Hammett alleges that PRA, LLC violated this provision by “making an insufferable number of calls to [Ms.] Hammett”²⁴⁹

Section 1692d provides as follows:

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. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller’s identity.

²⁴⁸ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 261–62.

²⁴⁹ *Id.* ¶¶ 263–64.

No rational juror could conclude—at least on this record—that PRA, LLC violated the general prohibition of § 1692d or the specific prohibition of § 1692d(5).

As for the general prohibition of § 1692d, the Supreme Court counsels that “[s]tatutory construction is a holistic endeavor, and, at a minimum, must account for a statute’s full text, language as well as punctuation, structure, and subject matter.”²⁵⁰ This Court “must read § 1692d in its entirety to determine what constitutes harassment, oppression, or abuse.”²⁵¹ In providing the (admittedly non-exhaustive) examples of prohibited conduct in §§ 1692d(1)–(6), the statute itself illustrates the proper way to define “harassment, oppression, or abuse.” None of that conduct in the prohibited examples constitutes run-of-the-mill debt-collection activity. All of the prohibited conduct in the statutorily provided examples is egregious—far beyond mere inconveniences. The general prohibition in § 1692d must be read in this light such that the entire section proscribes egregious conduct and not mere inconveniences.²⁵²

Other district judges in the Eighth Circuit have come to the same basic conclusion. For example, in *Fox v. Procollect, Inc.*, Judge Holmes (then of the Eastern District of Arkansas) emphasized that § 1692d prohibits “fairly egregious conduct.”²⁵³ Judge Holmes noted that the

²⁵⁰ *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (internal quotations and citation omitted).

²⁵¹ *Fox v. ProCollect, Inc.*, No. 4:17-cv-00634-JLH, 2019 WL 386159, at *5 (E.D. Ark. Jan. 30, 2019).

²⁵² The Court recognizes that the examples listed in §§ 1692d(1)–(6) are non-exhaustive. The Court also recognizes that Congress made clear that the listed examples are not meant to “limit[] the general application” of § 1692d. This statutory command defeats the negative-implication canon—*expressio unius*. Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 107, 132–133 (2012) (“The expression of one thing implies the exclusion of others”). It also greatly tempers another canon of statutory construction—*eiusdem generis*. *Id.* at 199 (“Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned.”). To be clear, then, other actions not encapsulated by (or even not similar to) the six listed examples are actionable if the “natural consequence” of those actions is “to harass, oppress, or abuse.” 15 U.S.C. § 1692d. Still, none of this means that the listed examples are entirely irrelevant to the Court’s analysis of the general prohibition in § 1692d. The examples can and do inform the Court’s understanding of what it means to “harass, oppress, or abuse” a debtor. *See Davis v. Phelan Hallinan & Diamond PC*, 687 F. App’x 140, 145 (3d Cir. 2017) (“Although that list does not strictly limit the general application of the prohibition, it illustrates the level of culpability required to violate § 1692d.”).

²⁵³ 2019 WL 386159, at *6.

"Sixth Circuit has described the conduct in § 1692d as 'tactics intended to embarrass, upset, or frighten a debtor.'"²⁵⁴ Similarly, in *VanHorn v. Genpact Services, LLC*, Judge Fenner of the Western District of Missouri explained that, "[w]hen reading § 1692d in its entirety, it is evident [that] absent egregious conduct or intent to annoy, abuse, or harass, a debt collector does not violate the FDCPA by persistently calling in the attempt to reach a debtor regarding a debt owed and due."²⁵⁵

No record evidence hints at threats of violence, the use of obscene language, or anything else that could come close to the type of conduct § 1692d proscribes. Thus, no rational juror could conclude that PRA, LLC "engag[ed] in any conduct the natural consequence of which [was] to harass, oppress, or abuse" Ms. Hammett.²⁵⁶ For her § 1692d arguments, Ms. Hammett points to

²⁵⁴ *Id.* (quoting *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 330 (6th Cir. 2006)).

²⁵⁵ No. 09-1047-cv, 2011 WL 4565477, at *3 (W.D. Mo. Feb. 14, 2011).

²⁵⁶ 15 U.S.C. § 1692d. In her Brief in Opposition to Summary Judgment, Ms. Hammett asserts in passing that she has stated a claim against PRA, LLC for a violation of 15 U.S.C. § 1692d(6). Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 16–17. The Brief quickly argues that PRA, LLC did not provide Ms. Hammett with a meaningful disclosure on the phone calls. *Id.* at 17. Ms. Hammett seems to argue that, on the phone calls, PRA, LLC omitted facts "that would lead one to conclude that [PRA, LLC] was . . . a debt collector or that the call [was] . . . a debt collection call." *Id.* (internal quotations omitted) (citation omitted). Such an omission, to Ms. Hammett, means that PRA, LLC violated § 1692d(6)'s mandate that a debt collector provide a "meaningful disclosure of its identity" on phone calls. There are numerous problems with Ms. Hammett's argument. Most importantly, Ms. Hammett's First Amended and Supplemented Complaint is very specific when it comes to her claims. She detailed (in chapter and verse) twelve provisions of the FDCPA that PRA, LLC allegedly violated. First Am. and Suppl. Compl. (Doc. 6) ¶¶ 252–79. Section 1692d(6) was not one of those provisions. Ms. Hammett cannot use a summary judgment brief to allege claims that were not included in her operative pleading.

In any event, Ms. Hammett's substantive § 1692d(6) argument does not hold water. No rational juror could conclude that Ms. Hammett ever allowed PRA, LLC an opportunity to make the in-depth disclosures that Ms. Hammett believes PRA, LLC was required to provide. Most of the connected calls that PRA, LLC placed to Ms. Hammett were terminated by Ms. Hammett after PRA, LLC said it was calling on a recorded line. *See supra* pp. 12–16. On the calls that got past the hang-up stage, Ms. Hammett went out of her way to avoid confirming her identity with personally identifying information. Because Ms. Hammett would not confirm her identity, PRA, LLC representatives did not expound on why they were calling. Ms. Hammett fails to direct the Court to any binding authority that says a debt collector must reveal its identity and the purpose of a call before the debt collector even knows it is speaking with the correct person. In fact, if a debt collector did so, it would likely subject itself to liability for unlawful third-party disclosures. *See* 15 U.S.C. 1692c(b) (prohibiting debt collectors from communicating, "in connection with the collection of any debt, with any person other than the consumer . . .").

It is also worth noting that, out of the hundreds of calls in this case, there's only one substantive call where a PRA, LLC representative did not provide the name of the company very early on in the call. On that call, after the PRA, LLC representative gave his name, Ms. Hammett asked the representative to hold and then (1) demanded that the

(1) what she characterizes as incessant phone calls, (2) PRA, LLC's use of a recorded line, and (3) PRA, LLC's dispatch of the debt-dispute letter. The Court will now address each of her contentions.

a. Persistent Phone Calls

Ms. Hammett argues that PRA, LLC violated § 1692d(5) "by making an insufferable number of calls to [Ms.] Hammett that [Ms.] Hammett refused to speak with them on."²⁵⁷ Because § 1692d(5) speaks specifically about phone calls, it provides the analytical framework for this allegation. Under § 1692d(5), the issue boils down to whether a rational juror could conclude that PRA, LLC intended to annoy, abuse, or harass when it placed about 187 phone calls over the course of a year and after being told not to call the -6000 number.²⁵⁸

The answer to that question is no. "[W]hether a debt collector's conduct in attempting to contact a debtor by telephone amounts to harassment or annoyance in violation of [§ 1692d(5)] ultimately turns on evidence regarding the volume, frequency, pattern, or substance of the phone calls."²⁵⁹ "[T]his is a fact-intensive issue," but "it may be resolved as a matter of law when the summary judgment record establishes that no [rational juror] could find the requisite level of harassment."²⁶⁰ And while the Eighth Circuit has not set out a definitive gauge for evaluating

representative delete the call and (2) threatened criminal prosecution before hanging up on the representative. Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107-6) at 28; Ex. 15 (Dec. 16, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

²⁵⁷ First Am. and Suppl. Compl. (Doc. 6) ¶ 264.

²⁵⁸ As mentioned *supra* Section I.B.1, the statute of limitations under the FDCPA is one year. Ms. Hammett filed her original Complaint on March 10, 2021. Compl. (Doc. 1). For purposes of Ms. Hammett's FDCPA claims, the look-back period goes to March 10, 2020—one year back from the date on which Ms. Hammett filed her Complaint.

²⁵⁹ *Kuntz v. Rodenburg LLP*, 838 F.3d 923, 926 (8th Cir. 2016) (quoting *Kavalin v. Global Credit & Collection Corp.*, No. 10-cv-314, 2011 WL 1260210, at *4 (W.D.N.Y. Mar. 31, 2011)).

²⁶⁰ *Id.* (collecting cases).

when a number of phone calls reaches that requisite level, “[c]ourts generally agree . . . that a high volume of calls will rarely, if ever make out a FDCPA violation on its own.”²⁶¹

Let’s start with call volume and frequency. PRA, LLC called phone numbers associated with Ms. Hammett’s account approximately 187 times between March 10, 2020, and February 17, 2021. That’s about seventeen calls a month (most of which went unanswered). PRA, LLC never called a number associated with Ms. Hammett’s account more than once a day. No rational juror could find that the call volume and frequency indicated that PRA, LLC “repeatedly or continuously” called or spoke with Ms. Hammett “with intent to annoy, abuse, or harass” her.²⁶² Other district court judges have reached similar conclusions. For example, in *Van Horn*, Judge Skenner found that 114 calls in a four-month period did not violate the FDCPA.²⁶³ In *Carman v. CBE Group, Inc.*, Judge Robinson from the District of Kansas granted summary judgment to a debt collector on a § 1692d(5) claim when that debt collector called the plaintiff 149 times in a two-month period.²⁶⁴

The pattern and substance of the calls also offer no help to Ms. Hammett’s § 1692d(5) claim. Aside from the two calls discussed *supra* Section I.B.2, PRA, LLC never called a number associated with Ms. Hammett’s account before 8:00 a.m. and after 9:00 p.m. That means that 99% of the phone calls were made within the timeframe assumed convenient in the FDCPA. (And the Court has already concluded that the other two phone calls were the product of a good-faith mistake

²⁶¹ *Fox*, 2019 WL 386159, at *2.

²⁶² 15 U.S.C. § 1692d(5).

²⁶³ 2011 WL 4565477, at *1.

²⁶⁴ 782 F.Supp.2d 1223, 1229–1232 (D. Kan. 2011); *see also Clingaman v. Certegy Payment Recovery Servs.*, No. H-10-2483, 2011 WL 2078629, at *4–5 (S.D. Tex. May 26, 2011) (granting summary judgment for a defendant who placed 55 phone calls over three and a half months).

as to Ms. Hammett's whereabouts.) So no rational juror could conclude that PRA, LLC's pattern of calls evidenced an intent to annoy, abuse, or harass Ms. Hammett.

Likewise, no rational juror could conclude that the substance of the phone calls between Ms. Hammett and PRA, LLC manifested such an intent. PRA, LLC never threatened Ms. Hammett, used obscene language with Ms. Hammett, misrepresented who it was, or otherwise engaged in any conversations that could lead a rational juror to conclude that PRA, LLC, through its phone calls, intended to annoy, abuse, or harass Ms. Hammett.

Ms. Hammett resists this conclusion with two main arguments. They are not persuasive. First, Ms. Hammett argues that PRA, LLC's phone logs are inaccurate and thus a genuine fact dispute precludes summary judgment on her § 1692d claims.²⁶⁵ As discussed above, Ms. Hammett speculates that PRA, LLC called her more times than PRA, LLC's phone logs show.²⁶⁶ She does not provide any evidence to support this speculation. In any event, even if the Court adds the fifteen calls that Ms. Hammett speculates PRA, LLC made, doing so would not create a genuine

²⁶⁵ Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 16. Ms. Hammett invokes Federal Rule of Civil Procedure 56(d) to argue that the Court should either deny outright or delay ruling on PRA, LLC's Motion because she has not had adequate time for discovery to ascertain how many times PRA, LLC called her before November 18, 2020. *Id.* at 6. Rule 56(d) allows a court to "defer considering a summary judgment motion or allow time for discovery '[i]f a nonmovant shows by affidavit or declaration that, for specific reasons, it cannot present facts essential to justify its opposition.'" *Anzaldua v. Ne. Ambulance and Fire Prot. Dist.*, 793 F.3d 822, 836 (8th Cir. 2015) (quoting Fed. R. Civ. P. 56(d)). PRA, LLC filed its Motion on January 28, 2022 (almost a year after this case was filed). Def.'s Mot. for Summ. J. (Doc. 75). Ms. Hammett moved for and received two extensions to respond to PRA, LLC's Motion. Feb. 10, 2022 Order (Doc. 84); Feb. 18, 2022 Order (Doc. 93). This gave Ms. Hammett up to March 1, 2022 (an additional month and a half after the original response deadline), to continue discovery (and to timely move to compel discovery) and respond to PRA, LLC's Motion. On March 1, 2022 (a day before the discovery deadline), Ms. Hammett filed her Opposition to PRA, LLC's Motion and included in it her Rule 56(d) request. In the request, Ms. Hammett says that she has been unable to get records identifying PRA, LLC's third-party phone-service providers. Br. in Supp. of Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 99) (Under Seal) at 7. She says that records from these providers would reveal the number of phone calls PRA, LLC made to her. *See id.* Ms. Hammett only sets "forth some facts she 'hope[s] to elicit from further discovery.'" *Anzaldua*, 793 F.3d at 836–37 (quoting *Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998)). That is not enough to justify the relief Ms. Hammett seeks. *Id.* at 836. The Court denies Ms. Hammett's request. This is simply not an instance where PRA, LLC blindsided Ms. Hammett with a premature summary judgment motion, the chief harm Rule 56(d) guards against.

²⁶⁶ *See supra* note 83.

dispute of material fact. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”²⁶⁷ Fifteen additional calls would barely raise the average number of calls. Further, the calls that Ms. Hammett alleges to have occurred (and speculates came from PRA, LLC) were made on different days and at reasonable times.²⁶⁸

Second, Ms. Hammett argues that PRA, LLC should have stopped calling her after she told PRA, LLC to stop calling.²⁶⁹ For starters, Ms. Hammett never verified her identity on calls initiated by PRA, LLC. (PRA, LLC didn’t know who was telling it to stop calling.) The FDCPA does not force debt collectors to honor requests to stop calling a phone number every time an unidentified person tells them to stop doing so. Not heeding such a request does not give rise to an FDCPA violation and does not (on its own) show an “intent to annoy, abuse, or harass” a debtor.²⁷⁰

Even had Ms. Hammett properly identified herself, PRA, LLC would still be entitled to summary judgment. Ms. Hammett would argue that a rational juror could infer an intent to annoy, abuse, or harass based on the number of calls made after Ms. Hammett asked PRA, LLC to stop calling. But such an argument would fail. Where courts have “held intent to harass could be inferred, the debt collector did more than simply continue to call or speak to the plaintiff after being asked to stop.”²⁷¹ In our case, unlike other cases, the debt collector did “nothing more.”

²⁶⁷ *Anderson*, 477 U.S. at 252.

²⁶⁸ See Aff. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) ¶ 26. Ms. Hammett has no personal recollection of any of these alleged calls, and thus a rational juror could not use the unknown substance of these calls to determine that PRA, LLC somehow crossed the line. Even if the Court credited Ms. Hammett’s speculation (which it does not), a rational juror still could not find for Ms. Hammett on her § 1692d claims.

²⁶⁹ Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 21.

²⁷⁰ 15 U.S.C. § 1692d(5).

²⁷¹ *Fox*, 2019 WL 386159, at *5.

Finally, it is worth mentioning that Congress has provided a mechanism by which a debtor can stop a collector's communications—a written cease-and-desist letter.²⁷² On the November 18, 2020 call, PRA, LLC told Ms. Hammett that she could put her request—that communication stop—in writing. She did not do so at that time; indeed, she did not do so until February 20, 2021, which was after all of the calls at issue here. If Congress only prohibits calls to a debtor after that debtor has submitted a written cease-and-desist letter to a debt collector, it stands to reason that a verbal request by the debtor is not enough to trigger an FDCPA violation.

b. The Recorded Line

Ms. Hammett argues that PRA, LLC calling her on a recorded line constituted harassment because she “begged not to be recorded . . .”²⁷³ But companies calling people on recorded lines is a ubiquitous practice. It is a fact of life. No rational juror could conclude that the mere use of a recorded line on its own constitutes harassment, oppression, or abuse. Nor could a rational juror conclude that the use of a recorded line somehow transforms otherwise legal calls (such as the 187 calls discussed above) into prohibited harassment, oppression, or abuse. Ms. Hammett does not provide the Court with a single case suggesting that the use of a recorded line constituted harassment, oppression, or abuse. And the Court has found none.

c. The Debt-Dispute Letter

Ms. Hammett argues that the debt-dispute letter violated § 1692d—because the “identity theft affidavit . . . looked like a threat to prosecute [Ms.] Hammett if she did not answer the invasive questions.”²⁷⁴ For this type of communication, the Eighth Circuit gauges an FDCPA violation by “utilizing the unsophisticated-consumer standard which is designed to protect consumers of below

²⁷² 15 U.S.C. § 1692c(c).

²⁷³ Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 18.

²⁷⁴ *Id.* at 25.

average sophistication or intelligence without having the standard tied to the very last rung on the sophistication ladder.”²⁷⁵ While “[t]his standard protects the uninformed or naive consumer,” it still “contains an objective element of reasonableness to protect debt collectors from liability for peculiar interpretations of collection letters.”²⁷⁶ Finally, “[t]he unsophisticated consumer test is a practical one, and statements that are merely susceptible of an ingenious misreading do not violate the FDCPA.”²⁷⁷

No rational juror (looking through the lens of an unsophisticated consumer) could consider the sending of this letter or the letter itself to be “harass[ment], oppress[ion], or abuse” on PRA, LLC’s part.²⁷⁸ The letter came on the heels of Ms. Hammett’s denial of the debt. The letter explained how Ms. Hammett could dispute the debt that PRA, LLC said she owed. The letter contained no threats, did not demand payment, and specifically (in bold-faced type) said that the letter was sent “**for the limited purpose of responding to [Ms. Hammett’s] dispute and is NOT an attempt to collect a debt.**”²⁷⁹

4. 15 U.S.C. § 1692e(10) & (13)

Ms. Hammett alleges that PRA, LLC violated 15 U.S.C. § 1692e(10) and (13) by sending her the debt-dispute letter.²⁸⁰ She also alleges that PRA, LLC violated § 1692e(10) by sending her a letter addressed to Laura Lyman (not Laura Lynn).²⁸¹ She alleges that both letters were backdated.²⁸²

²⁷⁵ *Strand v. Diversified Collection Serv., Inc.*, 380 F.3d 316, 317 (8th Cir.2004) (internal quotations omitted).

²⁷⁶ *Id.* at 317–18.

²⁷⁷ *Peters*, 277 F.3d at 1056 (internal quotations omitted).

²⁷⁸ 15 U.S.C. § 1692d.

²⁷⁹ Ex. A to Pl.’s Mot. for Partial Summ. J. (Doc. 39-1) at 2.

²⁸⁰ First Am. and Suppl. Compl. (Doc. 6) ¶¶ 265–67.

²⁸¹ *Id.* ¶¶ 203–17.

²⁸² *Id.* ¶¶ 213, 260.

Section 1692e provides in relevant part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

...

(13) The false representation or implication that documents are legal process.

The letters sent to Ms. Hammett are not actionable under § 1692e because they were not sent “in connection with the collection of any debt.”²⁸³ To establish a violation under § 1692e, a plaintiff must show that a communication was “in connection with the collection of any debt.”²⁸⁴ The Eighth Circuit uses the “animating purpose test” to determine whether “certain statements or conduct are in connection with the collection of a debt.”²⁸⁵ “Under this test, ‘for a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor.’”²⁸⁶ “An explicit demand for payment is not required for a communication to satisfy the animating purpose test; implicit demands for payment may satisfy the test based upon the specific content of the communications.”²⁸⁷ Whether the animating purpose of a communication is to induce payment is “a question of fact that generally is committed to the

²⁸³ 15 U.S.C. § 1692e.

²⁸⁴ *McIvor v. Credit Control Servs., Inc.*, 773 F.3d 909, 913 (8th Cir. 2014).

²⁸⁵ *Heinz v. Carrington Mortg. Serv., LLC*, 3 F.4th 1107, 1112 (8th Cir. 2021).

²⁸⁶ *Id.* (quoting *McIvor*, 773 F.3d at 914).

²⁸⁷ *Id.*

discretion of the jurors, not the court,” but “where a reasonable jury could not find that an animating purpose of the statements was to induce payment, summary judgment is appropriate.”²⁸⁸

Let’s begin with the debt-dispute letter. No rational juror could conclude that an animating purpose of the letter was to induce payment. PRA, LLC sent this letter in response to Ms. Hammett’s dispute of the debt. The letter did not expressly demand payment. In fact, the letter specifically stated (in bold-faced type) that this “**communication is made for the limited purpose of responding to your dispute and is NOT an attempt to collect a debt.**”²⁸⁹ The letter contained no implicit demand either. The letter stated a balance due but “did not demand payment or threaten consequences” if Ms. Hammett did not pay.²⁹⁰ If anything, the letter provided Ms. Hammett with an avenue to avoid the debt. There is simply no record evidence upon which a rational juror could conclude that this letter was “in connection with the collection of any debt.”²⁹¹

The same is true for the Laura Lyman letter. As a reminder, this is a letter Ms. Hammett received in March 2021 that (1) was addressed to Laura Lyman (instead of Laura Lynn), (2) said that PRA, LLC was closing Laura Lyman’s account, and (3) listed the amount owed as \$0.00. A rational juror could not conclude that an animating purpose behind this letter was the collection of a debt. Putting aside the incorrect name and account, the letter literally said PRA, LLC was closing

²⁸⁸ *Id.* (cleaned up).

²⁸⁹ Ex. A to Pl.’s Mot. for Partial Summ. J. (Doc. 39-1) at 2.

²⁹⁰ *Heinz*, 3 F.4th at 1113–14 (citing *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011)).

²⁹¹ 15 U.S.C. § 1692e. Even if a rational juror could conclude that this letter was “sent in connection with the collection of any debt,” Ms. Hammett’s claims with respect to this letter would still fail. *Id.* Falsity is a requirement for FDCPA liability under this section. *McIvor*, 773 F.3d at 913. There is no record evidence that this letter was false in any way. Moreover, no rational juror could agree with Ms. Hammett’s claim that the affidavit in the debt-dispute letter was a “false representation or implication that [the debt-dispute letter was] legal process.” 15 U.S.C. § 1692e(13). Nothing about the debt-dispute letter (or the affidavit) would suggest to the “unsophisticated consumer” that the letter was legal process. Process is “[a] summons or writ, esp. to appear or respond in court . . .” *Process*, Black’s Law Dictionary (11th ed. 2019). Neither the letter nor the included affidavit makes any mention of a court or otherwise suggests that any type of legal proceeding was on the horizon.

an account and no debt was owed. No rational juror could conclude that this letter was sent in connection with the collection of a debt.

With respect to the debt-dispute letter, Ms. Hammett says that the letter “was not meant to help Plaintiff. It was meant to collect personal information about Plaintiff, like an overbroad set of interrogatories.”²⁹² With respect to the Laura Lyman letter, Ms. Hammett says that “[i]t was a ruse to make plaintiff think she won her dispute . . .”²⁹³ Both positions are nothing more than speculation by Ms. Hammett. Such speculation fails to create a genuine issue of material fact. There is no evidence from which a rational juror could reach Ms. Hammett’s position.

C. Ms. Hammett’s Intentional Infliction of Emotional Distress Claim

Ms. Hammett alleges that PRA, LLC committed the tort of intentional infliction of emotional distress—otherwise known as the tort of outrage.²⁹⁴ Ms. Hammett’s supporting allegations center around (1) PRA, LLC’s alleged contact with Mr. Williams in 2014, (2) PRA, LLC’s alleged dispatch of backdated letters (the debt-dispute letter and Laura Lyman letter), which “caused cognitive dissonance” in Ms. Hammett, and (3) the number of phone calls PRA, LLC made to Ms. Hammett.²⁹⁵ Ms. Hammett says that this conduct caused her emotional distress “so severe that no reasonable person could be expected to endure it.”²⁹⁶

²⁹² Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 27.

²⁹³ *Id.*

²⁹⁴ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 283–95. In Arkansas, the tort of intentional infliction of emotional distress is the tort of outrage. *See Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 20, 799 S.W.2d 795, 796 (1990) (stating that the Arkansas Supreme Court “first recognized the tort of outrage—the intentional infliction of emotional distress—in *M.B.M. Co. v. Counce . . .*”).

²⁹⁵ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 213, 285, 288, 294–95.

²⁹⁶ *Id.* ¶¶ 293–94.

The parties assume that Arkansas law applies.²⁹⁷ In Arkansas, the statute of limitations for the tort of outrage is three years.²⁹⁸ The Arkansas Supreme Court “has taken a very narrow view of claims of outrage.”²⁹⁹ To prevail at trial on her outrage claim, Ms. Hammett would have to prove, by a preponderance of the evidence, “the following elements: (1) [PRA, LLC] intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of [its] conduct; (2) [PRA, LLC’s] conduct was ‘extreme and outrageous,’ was ‘beyond all possible bounds of decency,’ and was ‘utterly intolerable in a civilized community;’ (3) the actions of [PRA, LLC] were the cause of [Ms. Hammett’s] distress; and (4) the emotional distress sustained by [Ms. Hammett] was so severe that no reasonable person could be expected to endure it.”³⁰⁰

The Arkansas Supreme Court says that “the tort of outrage requires clear-cut proof.”³⁰¹ And while “[t]he type of conduct that meets the standard for outrage must be determined on a case-by-case basis,”³⁰² “[l]iability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”³⁰³ Accordingly, “[m]erely describing the conduct as outrageous does not make it so.”³⁰⁴

²⁹⁷ See Br. in Supp. of Def.’s Mot. for Summ. J. (Doc. 76-1) (Under Seal at Doc. 121) at 37 (relying on Arkansas law); Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 31 (agreeing with PRA, LLC’s use of Arkansas law).

²⁹⁸ *Hutcherson v. Rutledge*, 2017 Ark. 359, at 5, 533 S.W.3d 77, 80.

²⁹⁹ *Renfro v. Adkins*, 323 Ark. 288, 299, 914 S.W.2d 306, 311 (1995).

³⁰⁰ *McQuay v. Guntharp*, 331 Ark. 466, 470, 963 S.W.2d 583, 585 (1998) (quoting *Angle v. Alexander*, 328 Ark. 714, 722, 945 S.W.2d 933, 937 (1997)).

³⁰¹ *Renfro*, 323 Ark. at 299, 914 S.W.2d at 312.

³⁰² *Crockett v. Essex*, 341 Ark. 558, 564, 19 S.W.3d 585, 589 (2000) (quoting *Hollomon v. Keadle*, 326 Ark. 168, 931 S.W.2d 413 (1996)).

³⁰³ *Palmer v. Ark. Council on Econ. Educ.*, 344 Ark. 461, 474, 40 S.W.3d 784, 791–92 (2001) (quoting *Givens v. Hixson*, 275 Ark. 370, 372, 631 S.W.2d 263, 264 (1982)).

³⁰⁴ *Renfro*, 323 Ark. at 299, 914 S.W.2d at 312.

On this record, no rational juror could conclude that PRA, LLC's conduct went "beyond all possible bounds of decency . . . to be regarded as atrocious, and utterly intolerable in a civilized community."³⁰⁵ With respect to PRA, LLC allegedly contacting Mr. Williams and sending backdated letters, the Court has already explained that there is no record evidence to support such speculation. No rational juror could find "atrocious" conduct where there is no evidence of the alleged conduct in the first place. In any event, even if this alleged conduct actually occurred, it would not have been so "atrocious" as to allow a rational juror to conclude that PRA, LLC is liable for the tort of outrage.

The same conclusion holds for the number and type of phone calls that PRA, LLC made to Ms. Hammett. No rational juror would consider the calls to be "atrocious" conduct. In the three years before Ms. Hammett filed her original Complaint (on March 10, 2021), PRA, LLC called phone numbers associated with her account about 348 times—an average of about ten calls a month.³⁰⁶ (Of course, a vast majority of those calls went unanswered.) Specific to Ms. Hammett's -6000 number, during the three-year look-back period, PRA, LLC called that number forty-five times over the course of three months. A rational juror could find that the total number of calls to all numbers, or the calls to the -6000 number, were an inconvenience. But that doesn't make them "atrocious."

The substance of the conversations that PRA, LLC had with Ms. Hammett could not be considered "atrocious" by a rational juror. PRA, LLC did not threaten Ms. Hammett, lie to her about who was calling, use obscene language, call at all hours of the night, or call her multiple times a day. For better or worse, anyone with a phone (including a rational juror and the Court)

³⁰⁵ *Palmer*, 344 Ark. at 474, 40 S.W.3d at 791–92 (quoting *Givens*, 275 Ark. at 372, 631 S.W.2d at 264).

³⁰⁶ Ex. D to Ex. 1 to Def.'s Statement of Facts (Doc. 78-7) (Under Seal at Doc. 121) at 1–5.

receives a lot of unsolicited phone calls. They are, for sure, an inconvenience. But such calls are not “utterly intolerable in a civilized community.”³⁰⁷ At bottom, nothing PRA, LLC did or said with respect to Ms. Hammett was so extreme or outrageous as to allow a rational juror to find that PRA, LLC is liable for the tort of outrage. The Court therefore grants summary judgment to PRA, LLC on Ms. Hammett’s outrage claim.

D. Ms. Hammett’s Invasion of Privacy by Intrusion Upon Seclusion Claim

Ms. Hammett alleges that PRA, LLC invaded her privacy by (1) “refusing to stop calling her unless she spoke on a recorded line,” (2) “calling [Ms.] Hammett repeatedly without meaningful identification,” (3) forcing “[Ms.] Hammett to be taped in order to make the calls stop,” (4) demanding that Ms. Hammett tell PRA, LLC her birthday, (5) demanding that Ms. Hammett “lend her voice to” PRA, LLC’s recordings, and (6) emailing Ms. Hammett at an email address she did not own until after 2007.³⁰⁸

The parties assume that Arkansas law applies.³⁰⁹ Under Arkansas law, intrusion upon seclusion is one of four “invasion of privacy” torts.³¹⁰ For this tort, the Arkansas Supreme Court has “adopted the approach of the Restatement (Second) of Torts”³¹¹ In the Restatement, liability for intrusion upon seclusion is defined as follows:

One who intentionally intrudes, physically or otherwise, upon the solicitude or seclusion of another or his private affairs or concerns, is subject to liability to the

³⁰⁷ *Palmer*, 344 Ark. at 474, 40 S.W.3d at 792 (quoting *Givens*, 275 Ark. at 372, 631 S.W.2d at 264).

³⁰⁸ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 302–03, 306–07, 309, 312–13.

³⁰⁹ See Br. in Supp. of Def.’s Mot. for Summ. J. (Doc. 76-1) (Under Seal at Doc. 121) at 43 (citing Arkansas law); Br. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 45 (stating that “[t]he bar on a seclusion claim in Arkansas is a bit lower than on outrage”).

³¹⁰ *Dodrill v. Ark. Democrat Co.*, 265 Ark. 628, 637, 590 S.W.2d 840, 844 (1979) (citing Restatement (Second) of Torts § 652A (1977)); see also *Fletcher v. Price Chopper Foods of Trumann, Inc.*, 220 F.3d 871, 875 (8th Cir. 2000) (applying Arkansas law).

³¹¹ *McMullen v. McHughes Law Firm*, 2015 Ark. 15, at 13, 454 S.W.3d 200, 209.

other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.³¹²

Applying Arkansas law, the Eighth Circuit explains that intrusion upon seclusion has three elements: “(1) an intrusion (2) that is highly offensive (3) into some matter in which a person has a legitimate expectation of privacy.”³¹³ According to the Arkansas Supreme Court, an intrusion is an “invasion . . . upon the plaintiff’s solitude or seclusion” done by someone who “believes, or is substantially certain, that he lacks the necessary legal or personal permission to commit the intrusive act.”³¹⁴ Ultimately, “[a] legitimate expectation of privacy is the ‘touchstone’ of the tort of intrusion” upon seclusion.³¹⁵ That is, “a person’s behavior may give rise to an inference that he [or she] no longer expects to maintain privacy in some aspect of his [or her] affairs.”³¹⁶

No record facts support Ms. Hammett’s theory of liability. With respect to the recording issue (calling on a recorded line and making Ms. Hammett “lend her voice” to PRA, LLC), no rational juror could conclude that PRA, LLC forced Ms. Hammett to speak on a recorded line. PRA, LLC, not unlike countless other businesses, simply called Ms. Hammett on a recorded line. PRA, LLC even told her it was doing so. This isn’t an instance where PRA, LLC surreptitiously recorded calls. (Surreptitious recording might well qualify as highly offensive.) No rational juror would find openly and transparently recording calls to be highly offensive.³¹⁷

³¹² Restatement (Second) of Torts § 652B (1977).

³¹³ *Fletcher*, 220 F.3d at 875 (applying Arkansas law).

³¹⁴ *McMullen*, 2015 Ark. 15, at 13–14, 454 S.W.3d at 209.

³¹⁵ *Wal-Mart Stores, Inc. v. Lee*, 348 Ark. 707, 720, 74 S.W.3d 634, 644 (2002) (quoting *Fletcher*, 220 F.3d at 877).

³¹⁶ *Fletcher*, 220 F.3d at 877 (8th Cir. 2000).

³¹⁷ The Court notes that it is legal in Arkansas for a party to a phone call to record the phone call. *See* Ark. Code Ann. § 5-60-120(a). Thus, no rational juror could conclude that PRA, LLC “believe[d], or [was] substantially certain that [it] lack[ed] the necessary legal . . . permission” to record calls with Ms. Hammett. *McMullen*, 2015 Ark. 15, at 14, 454 S.W.3d at 209; *see also* *Fletcher*, 220 F.3d at 876 (same). So, with respect to the recorded-line issue, no rational juror could find an actionable intrusion upon Ms. Hammett’s seclusion in the first place—let alone a highly offensive one.

With respect to the issue of PRA, LLC repeatedly calling Ms. Hammett without providing meaningful identification, this allegation is fatally flawed. Except when Ms. Hammett did not give PRA, LLC an opportunity to do so, PRA, LLC identified itself on each substantive phone call PRA, LLC made within the three-year limitations period.³¹⁸ For example, on the November 18, 2020 call, PRA, LLC identified itself and even told Ms. Hammett that she could send a written cease-and-desist request to PRA, LLC.³¹⁹ PRA, LLC also identified itself as Portfolio Recovery Associates on the December 9, 2020 call.³²⁰ On this record, no rational juror could conclude that PRA, LLC repeatedly called Ms. Hammett without identifying itself. So, no rational juror could find for Ms. Hammett on this aspect of her intrusion upon seclusion claim.

With respect to the issue of PRA, LLC's requesting that Ms. Hammett provide her birthdate or other personal information, no rational juror could find this to be highly offensive. PRA, LLC asked Ms. Hammett to verify personal information that PRA, LLC already had. Attempting to verify Ms. Hammett's identity (so the call could be with the right person) through the use of information that she voluntarily gave Capital One when she opened her credit card is entirely reasonable and unoffensive. Indeed, as PRA, LLC argues, with limited exceptions, a debt collector cannot communicate with a third party about a consumer's debt without the consumer's consent.³²¹ So, it was "reasonable for [PRA, LLC] to determine whether the person on the call [was Ms.

³¹⁸ See *Norris v. Bakker*, 320 Ark. 629, 631–32, 634, 899 S.W.2d 70, 71 (1995) (affirming grant of summary judgment based on the running of the three-year limitations period for invasion of privacy). As discussed in footnote 256, there was one call where a PRA, LLC representative identified only himself (not PRA, LLC). But, Ms. Hammett didn't give the representative a real opportunity to identify PRA, LLC on that call. Ex. 6 (Call Trs.) to Reply to Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Doc. 107–6) at 28; Ex. 15 (Dec. 16, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal).

³¹⁹ Pl.'s Resp. to Def.'s Statement of Facts (Doc. 99) (Under Seal) ¶ 54.

³²⁰ Ex. 15 (Dec. 9, 2020 Audio Recording) to Pl.'s Mot. to Compel (Doc. 100) (Under Seal). While Ms. Hammett seems to quibble with the fact that PRA, LLC did not always identify itself as Portfolio Recovery Associates, LLC, no rational juror could find the absence of the LLC appendage as PRA, LLC not meaningfully identifying itself.

³²¹ Br. in Supp. of Def.'s Mot. for Summ. J. (Doc. 76-1) (Under Seal at Doc. 121) at 47 (citing 15 U.S.C. § 1692c(b)).

Hammett] prior to engaging in its debt collection efforts by disclosing its identity and the purpose of the call.”³²² For her part, Ms. Hammett doesn’t point to any case establishing that identification-verification requests are highly offensive.

With respect to PRA, LLC’s counsel emailing Ms. Hammett a courtesy copy of PRA, LLC’s answer at a different email address, no rational juror could conclude that this intruded upon Ms. Hammett’s seclusion. Ms. Hammett filed the instant lawsuit. She thus opened herself up to receiving litigation-related correspondence from PRA, LLC or its counsel. Similarly, Ms. Hammett used this email address in a public filing (her complaint in a California lawsuit). Because Ms. Hammett included this email address in a public filing, a rational juror could only conclude that Ms. Hammett’s behavior gave rise to “to an inference that [she] no longer expect[ed] to maintain privacy in” the email address she used in a public court filing.³²³ In any event, even if a rational juror could find that Ms. Hammett had a legitimate expectation of privacy in the email address, no rational juror could conclude that sending a copy of an answer to Ms. Hammett was highly offensive.

The closest Ms. Hammett comes to chinning the bar on her intrusion claim is the number of phone calls (45) that PRA, LLC placed to her -6000 number between November 18, 2020, and February 17, 2021. In *CBM of Central Arkansas v. Bemel*, the Arkansas Supreme Court held that a jury verdict against a debt collector was sustainable because the jury could have found a “wrongful invasion of privacy.”³²⁴ Over ten months, the debt collector sent “about 50 collection

³²² *Wisdom v. Portfolio Recovery Assocs., LLC*, No. 3:14-cv-299, 2015 WL 1892956, at *5 (N.D. Tex. Apr. 24, 2015).

³²³ *Fletcher*, 220 F.3d at 877.

³²⁴ 274 Ark. 223, 225, 623 S.W.2d 518, 519 (1981).

letters” to the plaintiff.³²⁵ The debt collector also called the plaintiff seventy times.³²⁶ Over the plaintiff’s protests that she worked late nights and slept in, the debt collector “repeatedly called her” at 7:00 a.m. or later, “awakening her.”³²⁷ The debt collector also placed “many calls” to the plaintiff’s place of employment.³²⁸ On one of the calls to the plaintiff, the debt collector represented that it “was working out of the prosecuting attorney’s office and was going to garnish[] her wages.”³²⁹ The debt collector also admitted to customarily using fictitious names.³³⁰

Bemel just doesn’t get Ms. Hammett where she needs to go. It is true that the debt collector in *Bemel* called the plaintiff fewer times (on average) than PRA, LLC called Ms. Hammett. But the number of calls by themselves was not dispositive. The other conduct in *Bemel*—conduct that combined with the number of calls pushed the plaintiff in that case over the finish line—is conspicuously absent here. PRA, LLC did not impersonate a prosecutor to scare Ms. Hammett. PRA, LLC did not call Ms. Hammett’s employer. No record evidence hints at PRA, LLC using fictitious names when dealing with Ms. Hammett. No record evidence suggests that PRA, LLC was aware that calling Ms. Hammett at reasonable times would disrupt her sleep. At bottom, no rational juror could view this record and conclude that anything PRA, LLC did or said constitutes intrusion upon seclusion.

³²⁵ *Id.* at 224, 623 S.W.2d at 519.

³²⁶ *Id.*, 623 S.W.2d at 519.

³²⁷ *Id.* at 225, 623 S.W.2d at 519.

³²⁸ *Id.*, 623 S.W.2d at 519.

³²⁹ *Id.*, 623 S.W.2d at 519.

³³⁰ *Id.*, 623 S.W.2d at 519.

II. Ms. Hammett's Motion to Amend

As explained above, PRA, LLC is entitled to summary judgment on all claims against it in the First Amended and Supplemented Complaint. Usually, such a ruling would be the end of the case, at least at the district court level. But there's a wrinkle here that must be addressed.

Ms. Hammett filed her original Complaint on March 10, 2021.³³¹ Then, on April 12, 2021, Ms. Hammett filed her First Amended and Supplemented Complaint (the "Operative Complaint").³³² About eight months later, on November 15, 2021, Ms. Hammett moved to amend the Operative Complaint.³³³

In the proposed Second Amended and Supplemented Complaint (the "Proposed Second Amended Complaint") Ms. Hammett seeks to add two defendants—PRA Group, Inc. and Compumail Information Services, Inc. ("Compumail").³³⁴ With respect to PRA, Group, Inc., Ms. Hammett alleges that PRA, LLC is a wholly owned subsidiary of PRA Group, Inc.³³⁵ As such, Ms. Hammett alleges that PRA Group, Inc. is directly and vicariously responsible for PRA, LLC's acts.³³⁶ With respect to Compumail, Ms. Hammett alleges that it "worked in concert with PRA in at least [some] written collection activities" alleged in the Proposed Second Amended Complaint.³³⁷ Ms. Hammett also alleges that Compumail is liable for all of PRA's violations of federal law, essentially as an aider and abetter of PRA's violations.³³⁸

³³¹ Compl. (Doc. 1).

³³² First Am. & Suppl. Compl. (Doc. 6).

³³³ Pl.'s Mot. to Amend (Doc. 33). This proposed Second Amended and Supplemented Complaint came seven days before the November 22, 2021 deadline to add parties or amend pleadings. Sept. 16, 2021 Final Scheduling Order (Doc. 23) at 2.

³³⁴ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) at 2 of 85.

³³⁵ *Id.* ¶ 2.

³³⁶ *Id.* ¶ 9.

³³⁷ *Id.* ¶ 10.

³³⁸ *Id.* ¶ 12.

The Proposed Second Amended Complaint presses all claims found in the Operative Complaint except for the claim for negligent infliction of emotional distress.³³⁹ It also purports to bring additional claims. Specifically, the Proposed Second Amended Complaint adds claims against Defendants for (1) an FDCPA violation of 15 U.S.C. § 1692e(2)(A), (2) two violations of the Consumer Financial Protection Act, and (3) negligence under Arkansas law.³⁴⁰ PRA, LLC opposes Ms. Hammett's Motion to Amend.³⁴¹ PRA, LLC principally argues that the Motion should be denied because "the proposed substantive amendments would be futile."³⁴² For the most part, PRA, LLC is correct. So most of the Proposed Second Amended Complaint will not be allowed. There is, however, one exception. Ms. Hammett's proposed amendment is appropriate insofar as it adds a claim against PRA, LLC for a violation of 15 U.S.C. 1692e(2)(A).

A. The Proposed Second Amended Complaint

The Proposed Second Amended Complaint weighs in at 406 paragraphs.³⁴³ The Proposed Second Amended Complaint almost exclusively alleges joint conduct, be it PRA, LLC along with PRA Group, Inc. or all three purported defendants combined. When the Proposed Second Amended Complaint alleges joint conduct by PRA, LLC and PRA Group, Inc., it refers to the entities collectively as "PRA."³⁴⁴ When the Proposed Second Amended Complaint alleges joint conduct by PRA and Compumail, it refers to them collectively as "Defendants."³⁴⁵ Nevertheless,

³³⁹ Compare First Am. & Suppl. Compl. (Doc. 6) ¶¶ 296–99 (alleging negligent infliction of emotional distress), with Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Motion to Amend (Doc. 33-1) (omitting any allegation of negligent infliction of emotional distress).

³⁴⁰ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶¶ 315–319, 374–84.

³⁴¹ Def.'s Resp. to Pl.'s Mot. to Am. (Doc. 41) at 3.

³⁴² *Id.*

³⁴³ See Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1).

³⁴⁴ *Id.* ¶ 9. In the Operative Complaint, Ms. Hammett used "PRA" to mean PRA, LLC only.

³⁴⁵ *Id.* ¶ 14.

the Proposed Second Amended Complaint does present some individualized factual allegations with respect to both PRA Group, Inc. and Compumail.

According to the Proposed Second Amended Complaint: (1) PRA Group, Inc. is a Delaware LLC “with its headquarters in Virginia,”³⁴⁶ (2) PRA Group, Inc. is one of “the largest acquirers of nonperforming loans in the world,”³⁴⁷ and (3) PRA Group, Inc. owns PRA, LLC.³⁴⁸ The Proposed Second Amended Complaint further alleges that the Consumer Financial Protection Bureau (“CFPB”) has directed PRA Group, Inc. to assume the ultimate responsibility for overseeing that PRA, LLC complies with the TCPA and FDCPA.³⁴⁹ According to the Proposed Second Amended Complaint, this direction came by way of a Consent Order entered into between PRA, LLC and the CFPB.³⁵⁰ And through this Consent Order, “PRA Group, Inc. has exercised control over” PRA, LLC.³⁵¹ The Proposed Second Amended Complaint says that PRA Group, Inc. acknowledged its responsibility for PRA, LLC when it filed a joint answer with PRA, LLC in a different lawsuit.³⁵² Finally, according to the Proposed Second Amended Complaint, PRA Group, Inc. controls PRA, LLC because PRA Group, Inc. filed a “2020 Annual Report” that defined PRA Group, Inc. to include its subsidiaries.³⁵³

According to the Proposed Second Amended Complaint, Compumail is “a debt collector.”³⁵⁴ The Proposed Second Amended Complaint alleges that: (1) Compumail is a

³⁴⁶ *Id.* ¶ 37.

³⁴⁷ *Id.* ¶ 48.

³⁴⁸ *Id.* ¶ 2.

³⁴⁹ *Id.* ¶ 3.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.* ¶ 5.

³⁵³ *Id.* ¶¶ 6–7.

³⁵⁴ *Id.* ¶ 51.

“California corporation” headquartered in Concord, California,³⁵⁵ and (2) Compumail “sends a significant number of collection letters on behalf of several debt collectors including PRA to citizens of Arkansas.”³⁵⁶ The Proposed Second Amended Complaint further alleges the following. “On its website, Compumail explains . . . that it does not just print and post what the debt collector tells it to print and post. It uses its own experience in debt collection to help create mailings that will increase the response rates and save some of the costs of returned mail.”³⁵⁷ Compumail worked with PRA “in at least [the] written collection activities complained of” in the Proposed Second Amended Complaint.³⁵⁸ Compumail “appears to process returned mail, as the letters sent on behalf of PRA have a Compumail return address.”³⁵⁹ And Compumail “was given a copy [of the aforementioned Consent Order] and knew it was helping PRA violate it.”³⁶⁰

The Proposed Second Amended Complaint brings federal and state law claims. Under Federal law, the Proposed Second Amended Complaint alleges that PRA (PRA, LLC and PRA Group, Inc. combined) violated thirteen provisions of the FDCPA: 15 U.S.C. §§ 1692b, 1692c(a)(1), 1692c(c), 1692d, 1692d(5), 1692e(2)(A), 1692(e)10, 1692e(11), 1692e(13), 1692e(14), 1692g(a)(3), 1692g(a)(4), and 1692g(a)(5).³⁶¹ Ms. Hammett alleges that Compumail joined PRA in the alleged violations of 15 U.S.C. §§ 1692d, 1692e(2)(A), 1692e(10), 1692e(13), and 1692e(14).³⁶²

³⁵⁵ *Id.* ¶ 37.

³⁵⁶ *Id.* ¶ 52.

³⁵⁷ *Id.* ¶ 184.

³⁵⁸ *Id.* ¶ 10.

³⁵⁹ *Id.* ¶¶ 11, 174, 183.

³⁶⁰ *Id.* ¶ 360.

³⁶¹ *Id.* ¶¶ 302–43.

³⁶² *Id.* ¶¶ 312, 316, 321, 334, 336.

With the exception of Ms. Hammett's new claim under 15 U.S.C. § 1692e(2)(A), Ms. Hammett alleges the same FDCPA violations as she does in the Operative Complaint.³⁶³ As to Ms. Hammett's new claim under 15 U.S.C. § 1692e(2)(A), Ms. Hammett alleges that Defendants violated this provision by sending her a letter that said, "Plaintiff owed \$2,297.63 to the LL[C] when in fact Plaintiff owed nothing to the LLC."³⁶⁴ For the other FDCPA claims, Ms. Hammett's factual allegations are nearly identical to the Operative Complaint. However, Ms. Hammett does add more facts to allege a second theory of recovery under 15 U.S.C. § 1692e(10).³⁶⁵ On that front, Ms. Hammett says that Defendants are being deceptive by using discovery tools in litigation "to help verify the alleged debt" Ms. Hammett owed.³⁶⁶

The Proposed Second Amended Complaint includes a few other federal claims as well. As in the Operative Complaint, Ms. Hammett alleges that PRA violated the TCPA.³⁶⁷ Ms. Hammett's factual allegations underlying the TCPA claims remain unchanged from the Operative Complaint. It also seems as though Ms. Hammett alleges that Defendants' conduct violated various provisions of the CFPA.³⁶⁸ Specific factual allegations concerning alleged violations of the CFPA are conspicuously absent.

As to state law claims, the facts and claims alleged in the Proposed Second Amended Complaint are similar to the Operative Complaint. While the Operative Complaint alleges outrage, negligent infliction of emotional distress, and invasion of privacy by intrusion upon seclusion, the

³⁶³ Compare First Am. & Suppl. Compl. (Doc. 6) ¶¶ 253, 255, 257, 261, 263, 265, 268, 270, 271, 273, 275, 278, with Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶¶ 302–43.

³⁶⁴ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶ 316.

³⁶⁵ See *supra* at pp. 39–40.

³⁶⁶ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶¶ 323–30.

³⁶⁷ *Id.* ¶ 344.

³⁶⁸ *Id.* ¶¶ 12, 317.

Proposed Second Amended Complaint alleges the torts of outrage, negligence, and invasion of privacy by intrusion upon seclusion.³⁶⁹ As will become apparent below, the new negligence claim is really an attempt to dress up or disguise the old claim for negligent infliction of emotional distress.

With respect to the tort of outrage, according to the Proposed Second Amended Complaint, the “Defendants worked in a conspiracy to collect an alleged debt that could not be verified, each ratifying and adopting the actions of each other.”³⁷⁰ PRA persistently made phone calls to Ms. Hammett, waking her from “much needed sleep on several occasions.”³⁷¹ These calls, plus backdated letters that Defendants sent to Ms. Hammett, caused her to return to therapy and suffer “cognitive dissonance.”³⁷² This conduct, according to the Proposed Second Amended Complaint, was “extreme and outrageous.”³⁷³

With respect to the negligence claim, the Proposed Second Amended Complaint says that the Defendants breached their “legal duty arising from the FDCPA to protect Plaintiff as an alleged debtor from harm, by verifying debt, notifying the alleged debtor of her rights, mailing verification of debt and the original creditor’s address when requested[,] and not subjecting their ‘customer’ to harassment.”³⁷⁴

With respect to the invasion-of-privacy-by-intrusion-upon-seclusion claim, the Proposed Second Amended Complaint says that PRA’s refusal to stop calling Ms. Hammett on a recorded

³⁶⁹ *Id.* ¶¶ 346–404.

³⁷⁰ *Id.* ¶ 346.

³⁷¹ *Id.* ¶¶ 348, 361.

³⁷² *Id.* ¶¶ 351–52.

³⁷³ *Id.* ¶ 366.

³⁷⁴ *Id.* ¶ 377.

line was an invasion of her privacy.³⁷⁵ PRA forced Ms. Hammett “to be taped in order to make the calls stop.”³⁷⁶ When PRA called, Ms. Hammett said that she was “Laura Lynn.”³⁷⁷ PRA would still demand that Ms. Hammett tell PRA her birthday.³⁷⁸ PRA had no right to make this demand or to require Ms. Hammett to “lend her voice to [PRA’s] recordings.”³⁷⁹ All of this conduct, according to the Proposed Second Amended Complaint, infringed upon Ms. Hammett’s solitude.³⁸⁰

The Proposed Second Amended Complaint also alleges facts concerning PRA’s conduct during this litigation to undergird Ms. Hammett’s intrusion-upon-seclusion claim.³⁸¹ According to the Proposed Second Amended Complaint, PRA’s attorney emailed Ms. Hammett at a second email address she did not own until 2007, “long after she signed any alleged agreement with Capital One.”³⁸² PRA, LLC also abused “the litigation by telling the Court that [Ms.] Hammett was demanding no less than one million dollars for emotional distress damages.”³⁸³ PRA also has access, through this litigation, to Ms. Hammett’s likeness.³⁸⁴ Ms. Hammett cannot control or monitor whether PRA uses her likeness and is thus “embarrassed and angry that PRA might use her likeness for training purposes.”³⁸⁵

³⁷⁵ *Id.* ¶ 385.

³⁷⁶ *Id.* ¶ 386.

³⁷⁷ *Id.* ¶ 388.

³⁷⁸ *Id.* ¶ 389.

³⁷⁹ *Id.* ¶ 390.

³⁸⁰ *Id.* ¶ 393.

³⁸¹ *Id.* ¶¶ 395–96, 398–401.

³⁸² *Id.* ¶¶ 395–96.

³⁸³ *Id.* ¶ 398.

³⁸⁴ *Id.* ¶ 401.

³⁸⁵ *Id.*

B. Legal Standard

Federal Rule of Civil Procedure 15 governs Ms. Hammett's Motion to Amend.³⁸⁶ Under Rule 15(a), "a party is entitled to amend his [or her] complaint one time as a matter of course within specified time frames."³⁸⁷ After this, "a party may amend its pleading only with the opposing party's written consent or the court's leave."³⁸⁸ PRA, LLC opposes Ms. Hammett's Motion.³⁸⁹ So Ms. Hammett needs leave of the Court. Under Rule 15(a)(2), "[t]he court should freely give leave when justice so requires." Rule 15(a) creates a liberal amendment standard. "However, there is no absolute right to amend and a court may deny the motion based upon a finding of undue delay, bad faith . . . , or futility."³⁹⁰ "An amendment is futile if the amended claim 'could not withstand a motion to dismiss under Rule 12(b)(6).'"³⁹¹ And "[t]o survive a motion to dismiss for failure to state a claim [under Rule 12(b)(6)], the complaint must show the plaintiff is entitled to relief by alleging sufficient factual matter, accepted as true to state a claim to relief that is plausible on its face."³⁹²

³⁸⁶ As noted above, Ms. Hammett filed her Motion to Amend before the November 22, 2021 deadline to add parties or amend pleadings in the Court's then operative Final Scheduling Order. *See Mot. to Am.* (Doc. 33) (showing filing date as November 15, 2021); Sept. 16, 2021 Final Scheduling Order (Doc. 23) at 2 (setting November 22, 2021 as the deadline to seek leave to add parties or amend pleadings). Thus, the Court need not modify its scheduling order to allow amendment. So, the "good cause" standard under Federal Rule of Civil Procedure 16(b)(4) does not apply here.

³⁸⁷ *Rivera v. Bank of Am., N.A.*, 993 F.3d 1046, 1051 (8th Cir. 2021).

³⁸⁸ Fed. R. Civ. P. 15(a)(2).

³⁸⁹ Def.'s Resp. to Pl.'s Mot. to Am. (Doc. 41).

³⁹⁰ *Baptist Health v. Smith*, 477 F.3d 540, 544 (8th Cir. 2007).

³⁹¹ *Hillesheim v. Myron's Cards & Gifts, Inc.*, 897 F.3d 953, 955 (8th Cir. 2018) (quoting *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 719 (8th Cir. 2014)).

³⁹² *Id.* (internal quotations and citations omitted). The Court bears in mind that "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (internal quotations and citation omitted).

C. Adding Compumail Would be Futile

The Proposed Second Amended Complaint fails to assert any factual allegations to support plausible claims against Compumail for FDCPA violations or Arkansas torts.³⁹³ Let's start with the FDCPA. As its full name suggests, the FDCPA regulates debt collectors. The Proposed Second Amended Complaint alleges that Compumail is a debt collector.³⁹⁴ But the Proposed Second Amended Complaint alleges no facts to support the unadorned legal conclusion that Compumail is a debt collector. Taking as true the allegations in the Proposed Second Amended Complaint, as the Court would on a Rule 12(b)(6) motion, Compumail at most provides various services to debt collectors, including PRA, LLC. That is not enough to plausibly assert that Compumail is a debt collector and therefore within the FDCPA's ambit. It follows that allowing an amendment to add Compumail as a defendant for FDCPA claims would be futile.

Likewise, the Proposed Second Amended Complaint does not allege facts sufficient to state a claim against Compumail for state-common-law torts. The Proposed Second Amended Complaint alleges that Compumail is liable for the torts of outrage and negligence.³⁹⁵ The factual allegations offered to support these state law claims concern three letters that Ms. Hammett received.³⁹⁶ According to the Proposed Second Amended Complaint, Ms. Hammett received a backdated debt-dispute letter that included an allegedly deceptive affidavit.³⁹⁷ Ms. Hammett also received a backdated letter addressed to Laura Lyman (not Laura Lynn) that said PRA, LLC "has

³⁹³ Def.'s Resp. to Pl.'s Mot. to Am. (Doc. 41) at 6.

³⁹⁴ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶ 11.

³⁹⁵ *Id.* ¶¶ 346–84. Ms. Hammett does not allege that Compumail committed invasion of privacy. *See id.* ¶ 385 (bringing invasion-of-privacy claim against only PRA, LLC and PRA Group, Inc.).

³⁹⁶ *See id.* ¶ 352.

³⁹⁷ *Id.* ¶ 321; Ex. A to Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) at 77–82.

concluded its investigation of your dispute and is closing your account.”³⁹⁸ Finally, according to the Proposed Second Amended Complaint, Ms. Hammett received a letter addressed to her, which said that PRA, LLC “has concluded its investigation of your dispute and is closing your account.”³⁹⁹

These allegations do not plausibly assert that Compumail is liable for one or more torts. With respect to the tort of outrage, sending these letters is nowhere near enough for a viable cause of action under Arkansas law. Assuming Compumail did what Ms. Hammett said it did, such conduct is not anywhere in the vicinity of “conduct [that] was ‘extreme and outrageous,’ was ‘beyond all possible bounds of decency,’ and was ‘utterly intolerable in a civilized community.’”⁴⁰⁰

With respect to negligence, the Proposed Second Amended Complaint asserts a novel legal premise that Arkansas law would recognize a duty arising out of the FDCPA.⁴⁰¹ Under Arkansas law, “[i]t is well settled that the law of negligence requires as [an] essential element[] that the plaintiff show that a duty was owed . . .”⁴⁰² Even if a duty could arise out of the FDCPA, it would be of no moment with regard to Compumail. As noted above, the FDCPA regulates debt collectors. The Proposed Second Amended Complaint fails to plead facts that plausibly assert that Compumail is a debt collector. So Compumail would not owe such a duty because it is not plausibly subject to the FDCPA.

³⁹⁸ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶¶ 249–55, 258–59.

³⁹⁹ Ex. B to Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) at 84.

⁴⁰⁰ *McQuay*, 331 Ark. at 470, 963 S.W.2d at 585 (quoting *Angle*, 328 Ark. at 722, 945 S.W.2d at 937).

⁴⁰¹ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶ 377.

⁴⁰² *Lacy v. Flake & Kelley Mgmt., Inc.*, 366 Ark. 365, 367, 235 S.W.3d 894, 896 (2006).

D. Adding PRA Group, Inc. Would be Futile

It would be futile to allow Ms. Hammett to add PRA Group, Inc. as a defendant because the factual allegations in the Proposed Second Amended Complaint are insufficient to state viable causes of action against PRA Group, Inc.

According to the Proposed Second Amended Complaint, PRA Group, Inc. is directly and vicariously responsible for “all acts taken by its subsidiary [PRA, LLC].”⁴⁰³ For this reason, the Proposed Second Amended Complaint by and large collapses PRA, LLC and PRA Group, Inc. into one actor (“PRA”) for purposes of claims and factual allegations.⁴⁰⁴ This is essentially an implicit legal conclusion that PRA Group, Inc. and PRA, LLC are one in the same. Thus, the Proposed Second Amended Complaint seeks to pierce PRA, LLC’s corporate veil to make PRA Group, Inc. liable for PRA, LLC’s acts.⁴⁰⁵

Arkansas law “is viewed to determine whether and how to pierce the corporate veil.”⁴⁰⁶ Under Arkansas law, “[i]t is a nearly universal rule that a corporation and its stockholders are separate and distinct entities, even though the stockholder may own the majority of the stock.”⁴⁰⁷ Thus, “[a] parent corporation is not liable for the [acts] of its subsidiary merely because the parent holds the controlling interest or because the two are managed by the same officers.”⁴⁰⁸ In some circumstances, though, “the corporate entity may be disregarded or looked upon as the alter ego

⁴⁰³ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶ 9.

⁴⁰⁴ *Id.*

⁴⁰⁵ *See id.* ¶ 4 (stating that, “[w]hen the doctrine of separate legal personality is being abused to perpetrate fraud or avoid existing legal obligations, the courts may be prepared to lift the corporate veil, look behind the corporate structure, impute [a] subsidiary’s conduct to the parent, and hold the parent company liable on the basis of vicarious liability for acts of its subsidiary) (internal quotations and citation omitted).

⁴⁰⁶ *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 649 (8th Cir. 2003) (applying Arkansas law).

⁴⁰⁷ *K.C. Props. of Nw. Ark., Inc. v. Lowell Inv. Partners, LLC*, 373 Ark. 14, 32, 280 S.W.3d 1, 15 (2008).

⁴⁰⁸ *Epps*, 327 F.3d at 649.

of the principal stockholder . . .”⁴⁰⁹ This happens “only when the privilege of transacting business in corporate form has been illegally abused to the injury of a third person that the corporate entities should be disregarded.”⁴¹⁰

The Proposed Second Amended Complaint does not allege any facts that plausibly assert that PRA Group, Inc. has “illegally abused” PRA, LLC to the injury of Ms. Hammett. For instance, the Proposed Second Amended Complaint does not allege that PRA Group, Inc. shuttered PRA, LLC when Ms. Hammett filed this lawsuit.⁴¹¹ The Proposed Second Amended Complaint does not allege that any damages Ms. Hammett may be awarded because of PRA, LLC’s conduct will not be paid because PRA, LLC has no assets. The Proposed Second Amended Complaint does not allege that PRA Group, Inc. intermingles funds with PRA, LLC and essentially treats PRA, LLC as a personal piggybank.

In large part, the Proposed Second Amended Complaint hangs its hat on the allegation that PRA Group, Inc. agreed to be responsible for PRA, LLC’s compliance with the FDCPA through a Consent Order between the CFPB and PRA, LLC.⁴¹² The Consent Order had an effective date of September 9, 2015, and terminated five years later.⁴¹³ The Consent Order used some defined

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ See *Winchel v. Craig*, 55 Ark. App. 373, 381–82, 934 S.W.2d 946, 950–51 (1996) (stating that veil-piercing was supported by substantial evidence when the evidence showed that a plaintiff “was injured by [equipment] manufactured by the corporation . . . ; that [defendants] were its sole incorporators, stockholders, and officers; that the corporation had no liability insurance in case someone was hurt by its equipment; that the [defendants] dissolved [the corporation] and sold or transferred its assets” after the plaintiff sued the corporation).

⁴¹² Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶ 3.

⁴¹³ See Ex. E (Consent Order) to Pl.’s Mot. for Partial Summ. J. (Doc. 39-5) at 5, 61. The Court uses the pagination found on the Clerk of this Court’s file stamp. The Court takes judicial notice of the Consent Order because it is a matter of public record that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b)(2). Additionally, the Eighth Circuit has long permitted consideration at the motion-to-dismiss stage of “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings.” *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) (quoting *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012)). Because the futility inquiry under Rule 15(a)(2) overlaps with the inquiry a court undertakes when deciding

terms. It defined “Respondent” to mean “Portfolio Recovery Associates, LLC.”⁴¹⁴ It defined the “Board” to mean “the duly elected and acting Board of Directors of Respondent’s parent company, PRA Group, Inc.”⁴¹⁵ The Consent Order placed some responsibilities on the Board.⁴¹⁶ Importantly, “[t]he Board [had] the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with applicable Federal consumer financial law and [the] Consent Order.”⁴¹⁷

The Consent Order does not alter the Court’s conclusion on whether the Proposed Second Amended Complaint plausibly asserts that PRA, LLC’s veil could be pierced in this case. To be sure, PRA Group, Inc. accepted responsibility for PRA, LLC’s compliance with federal law and the Consent Order. This acceptance of responsibility leads to the reasonable inference that PRA Group, Inc. exercises some level of control over PRA, LLC. Otherwise, how could PRA Group, Inc. agree to be responsible for PRA, LLC’s compliance with federal law? But that type of control is not sufficient under Arkansas law to pierce the corporate veil (or proceed under an alter ego theory). What is required is the illegal abuse of the corporate form. The Consent Order says nothing to suggest, let alone plausibly assert, that PRA Group, Inc. “illegally abused” PRA, LLC’s corporate form “to the injury of a third party”—much less to the injury of Ms. Hammett.⁴¹⁸ As such, the Consent Order does not get Ms. Hammett over the futility hurdle.

a motion to dismiss, the Court can (and will) consider the Consent Order.

⁴¹⁴ Ex. E (Consent Order) to Pl.’s Mot. for Partial Summ. J. (Doc. 39-5) at 6.

⁴¹⁵ *Id.* at 4.

⁴¹⁶ See, e.g., *id.* at 44 (stating that “[t]he Board must review all submissions . . . required by this Consent Order prior to submission to the” CFPB).

⁴¹⁷ *Id.* at 45.

⁴¹⁸ *K.C. Props.*, 373 Ark. at 32, 280 S.W.3d at 15.

In any event, allowing the amendment with respect to PRA Group, Inc. would ultimately make zero difference in the outcome of this case. Ms. Hammett's claims against PRA Group, Inc. are wholly derivative of her claims against PRA, LLC.⁴¹⁹ This means that PRA Group, Inc. could only be liable to the same extent that PRA, LLC is liable. Discovery is now closed and, as shown above, PRA, LLC has established that no rational juror could find for Ms. Hammett on any claims (in the Operative Complaint) against PRA, LLC. Practically speaking, the same would hold true for PRA Group, Inc. if the Court allowed an amendment to add it. Moreover, there is nothing to suggest that any additional discovery from PRA Group, Inc. would alter the Court's summary-judgment analysis. Ms. Hammett could have sought third-party discovery from PRA Group, Inc.; she did not do so. And unless PRA Group, Inc. wanted additional discovery, there would be no justification for ordering further discovery in this case on the merits issues.⁴²⁰

E. Adding Claims Under the CFPA Would be Futile

Very liberally construing the Proposed Second Amended Complaint, it seeks to add claims under the Consumer Financial Protection Act (CFPA).⁴²¹ Specifically, the Proposed Second

⁴¹⁹ At the summary-judgment hearing, the Court asked Ms. Hammett, “[I]n terms of what . . . you’re saying PRA Group has done wrong, . . . it’s the same claims and conduct as it is against [PRA, LLC] . . . , correct?” Apr. 26, 2022 Hr’g Tr. (Doc. 157) at 9:18–24. Ms. Hammett said, “Yes.” *Id.* at 9:25.

⁴²⁰ Indeed, if amending the Operative Complaint to include PRA Group, Inc. would cause or require additional rounds of discovery, leave to amend under Federal Rule of Civil Procedure 15(a)(2) would be inappropriate. In the circumstances of this case, there was undue delay in proposing to add PRA Group, Inc. Ms. Hammett obviously knew about the Consent Order back when she filed her First Amended and Supplemented Complaint. See First Am. and Suppl. Compl. (Doc. 6) ¶ 158 (Ms. Hammett referencing the 2015 Consent Order). The Consent Order is the principal basis for her wanting to add PRA Group, Inc. now. But she waited nearly eight months to seek leave to add PRA Group, Inc. There is no justification for this delay. As the Eighth Circuit notes, undue delay coupled with prejudice to the non-movant is a “[p]roper justification” for denying a motion to amend under Rule 15(a)(2). *Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998). Going through additional discovery would significantly prejudice PRA, LLC, which has already had to go through one full round of discovery on these issues. Of course, prejudice to PRA, LLC would have to be weighed against prejudice to Ms. Hammett. *Id.* Here, it is hard to see what prejudice she would suffer by not getting to bring identical claims based on the same facts against PRA Group, Inc. If she wins against PRA, LLC, there is no indication that she could not recover her full damages from PRA, LLC. If she loses against PRA, LLC, the same reason for the loss would preclude recovery against PRA Group, Inc. Ultimately, the undue delay coupled with prejudice to PRA, LLC would justify the denial of the Motion to Amend.

⁴²¹ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶¶ 12, 317.

Amended Complaint alleges that “Compumail is . . . liable for violations of the same [f]ederal [I]aws as PRA pursuant to 12 U.S.C. [§] 5536(c)(3).”⁴²² The Proposed Second Amended Complaint also alleges that Defendants violated “12 U.S.C. §§ 5531(a) and 5536(a) and (c).”⁴²³

Amending the Operative Complaint to include claims under the CFPA would be futile because the CFPA does not provide a private right of action. To begin with, the CFPA does not include an express private right of action. When Congress does not provide for such a right of action in a statute, that ordinarily ends the inquiry, and a private citizen cannot sue to enforce the federal statute. There is an exception to this rule, however—a judicially implied private right of action. A line of Supreme Court cases, beginning with *Alexander v. Sandoval*, has made quite clear that judicially implied private rights of action are now extremely disfavored.⁴²⁴ If Congress wants private litigants to be able to enforce federal statutes, Congress should express that desire in the statute.

Sandoval and its progeny don’t entirely foreclose the possibility of implied private rights of action. However, those cases do set pretty strict requirements for when a court may imply a private right of action to enforce a statutory provision. First, Congress must use rights-creating language in the statutory provision at issue.⁴²⁵ Second, Congress must provide for a private remedy.⁴²⁶ Both are necessary before a private party can enforce a federal statute.

The Court assumes (without deciding) that the CFPA contains rights-creating language. Nevertheless, there is no clear congressional intent to provide a private remedy. The CFPA created

⁴²² *Id.* ¶ 12.

⁴²³ *Id.* ¶ 317.

⁴²⁴ 532 U.S. 275 (2001); *see also Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002); *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148 (2008); *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).

⁴²⁵ *Sandoval*, 532 U.S. at 286–88.

⁴²⁶ *Id.*

the Consumer Financial Protection Bureau (“CFPB”).⁴²⁷ “If any person violates a Federal consumer financial law, the [CFPB] may . . . commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief”⁴²⁸ The CFPA also authorizes state attorneys general to sue in the name of states “to enforce provisions of” the CFPA.⁴²⁹ These enforcement mechanisms are telling because “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.”⁴³⁰ More telling, though, is the CFPA’s silence regarding private remedies. This silence speaks volumes because it means the Court cannot imply a private right of action to enforce the CFPA.

A plethora of other district court judges have reached the same conclusion.⁴³¹ Ms. Hammett has not provided the Court with any contrary authority, and the Court has found none. Therefore, it would be futile to allow Ms. Hammett to amend the Operative Complaint to add claims under the CFPA.

E. Adding a Claim for Negligence Would be Futile

The Operative Complaint has a claim against PRA, LLC for negligent infliction of emotional distress.⁴³² The Proposed Second Amended Complaint says that “Arkansas has not prior to this recognized a claim for negligent infliction of emotional distress without a physical

⁴²⁷ 12 U.S.C. § 5491(a).

⁴²⁸ *Id.* at § 5564.

⁴²⁹ *Id.* at § 5552.

⁴³⁰ *Sandoval*, 532 U.S. at 290; *see also Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457–58 (1974); *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929) (“When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.”).

⁴³¹ *See, e.g., Zubair v. Conedison Co. of NY*, No. 1:20-cv-1313, 2020 WL 2857206, at *2 (S.D.N.Y June 1, 2020) (“Courts within this Circuit have held that the CFPA provides no private right of action.”) (collecting cases); *Mayall v. Randall Firm, PLLC*, No. 1:13-cv-00166, 2017 WL 3432033, at *2 (D. Utah Aug. 9, 2017) (“[B]ecause the CFPA grants enforcement authority to the [CFPB] and to state attorneys general, the court finds, as other courts have, that the CFPA does not create any private rights of action.”); *Cornwall v. Centerstate Bank of Fla., N.A.*, No. 8:16-cv-1249, 2016 WL 3219725, at *1 (M.D. Fla. June 10, 2016) (holding that the CFPA “does not authorize a private cause of action”).

⁴³² First Am. & Suppl. Compl. (Doc. 6) ¶ 296–301.

causation.”⁴³³ So, instead, the Proposed Second Amended Complaint alleges regular negligence.⁴³⁴ On that front, the Proposed Second Amended Complaint alleges that the “Defendants as debt collectors had a legal duty arising from the FDCPA to protect Plaintiff as an alleged debtor from harm[] by verifying debt, notifying the alleged debtor of her rights, mailing verification of debt and the original creditor’s address when requested and not subjecting their ‘customer’ to harassment.”⁴³⁵ The problem for Ms. Hammett is that, as explained below, the FDCPA does not give rise to a duty under Arkansas common law.

“Under Arkansas law, in order to prevail on a claim of negligence, the plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff’s injuries.”⁴³⁶ “Duty is a concept that arises out of the recognition that relations between individuals may impose upon one a legal obligation for the other.”⁴³⁷ “[W]hat duty, if any, is owed a plaintiff alleging negligence is always a question of law . . .”⁴³⁸ The Arkansas Supreme Court has not weighed in on whether the FDCPA imparts on debt collectors a common-law duty in tort. Therefore, the Court must predict whether the Supreme Court would recognize such a duty.⁴³⁹ The Court concludes that the Arkansas Supreme Court would not recognize a duty arising out of the FDCPA.

⁴³³ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶ 375.

⁴³⁴ *Id.* ¶¶ 374–83.

⁴³⁵ *Id.* ¶ 377.

⁴³⁶ *Yanmar Co., Ltd. v. Slater*, 2012 Ark. 36, at 16, 386 S.W.3d 439, 449.

⁴³⁷ *Kowalski v. Rose Drugs of Dardanelle, Inc.*, 2011 Ark. 44, at 7, 378 S.W.3d 109, 115.

⁴³⁸ *Yanmar*, 2012 Ark. 36, at 16, 386 S.W.3d at 449.

⁴³⁹ See *Progressive N. Inc. Co. v. McDonough*, 608 F.3d 388, 390 (8th Cir. 2010) (explaining that federal courts, when sitting in diversity jurisdiction, “must attempt to predict how the highest [state] court would resolve” an undecided question of state law).

The Arkansas Supreme Court has held fast to its insistence that “the violation of a statute is only evidence of negligence and does not constitute negligence per se.”⁴⁴⁰ In other words, a statutory violation “is evidence a jury may consider in determining whether a defendant is guilty of negligence.”⁴⁴¹ So, under Arkansas law, a plaintiff that proves a statutory violation does not automatically prevail on a negligence claim. A statute itself, then, cannot create a common law duty—at least as a general matter. Without any indication from the Arkansas Supreme Court that the FDCPA is somehow an exception to the general rule, the Court predicts that the Arkansas Supreme Court would not recognize a common-law duty in tort arising from the FDCPA. Without a duty owed, there can be no negligence. Allowing an amendment to add a negligence claim would thus be futile.

Even if the Court’s prediction is wrong, the Proposed Second Amended Complaint still fails to state a viable cause of action for negligence because the Proposed Second Amended Complaint does not allege facts to plausibly assert that Ms. Hammett suffered a physical injury for which compensable damages are available. The Arkansas Supreme Court “has long held that ‘there can be no recovery for fright or mental pain and anguish caused by negligence, where there is no physical injury.’”⁴⁴² “The reason that mental suffering unaccompanied by physical injury is not considered as an element of recoverable damages is that it is deemed to be too remote, uncertain, and difficult of ascertainment; and the reason that such suffering is allowed as an element of damages, when accompanied by physical injury, is that the two are so intimately connected that both must be considered because of the difficulty in separating them.”⁴⁴³

⁴⁴⁰ *Cent. Okla. Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, at 17, 400 S.W.3d 701, 712.

⁴⁴¹ *Berkeley Pump Co. v. Reed-Joseph Land Co.*, 279 Ark. 384, 397, 653 S.W.3d 128, 134 (1983).

⁴⁴² *Dowty v. Riggs*, 2010 Ark. 465, at 7, 385 S.W.3d 117, 121 (quoting *Erwin v. Milligan*, 188 Ark. 658, 663, 67 S.W.2d 592, 594 (1934)).

⁴⁴³ *Id.* (quoting *Chi., Rock Island & Pac. Ry. Co. v. Caple*, 207 Ark. 52, 179 S.W.2d 151, 154 (1944)).

Unsurprisingly, to have a physical injury, there must be “a physical impact.”⁴⁴⁴ And to be clear, “it is the mental anguish that flows from the *injury* and not the mental anguish preceding the injury that may be recoverable”⁴⁴⁵

The Proposed Second Amended Complaint alleges no facts to plausibly assert that Ms. Hammett suffered a compensable physical injury. The Proposed Second Amended Complaint alleges that “PRA’s conduct woke Plaintiff from much needed sleep and caused her mind to race so she could not fall back to sleep.”⁴⁴⁶ Placing a phone call that causes someone’s mind to race does not plausibly generate a physical impact and thus does not plausibly give rise to a physical injury in this case. The Proposed Second Amended Complaint then alleges that Ms. Hammett’s “lack of sleep contributed to the excruciating pain she suffered from ‘Frozen Shoulder Syndrome.’”⁴⁴⁷ Assuming that is true, this exacerbation of pain flows from the mental anguish of not being able to sleep because of the phone calls—not from a preceding physical injury. Allowing an amendment to add this claim would thus be futile for this reason as well.

F. Adding a Claim Under 15 U.S.C. § 1692e(10) Would be Futile

The Operative Complaint alleges a violation of 15 U.S.C. § 1692e(10) based on PRA, LLC’s sending Ms. Hammett a debt-dispute letter that included an allegedly deceptive affidavit.⁴⁴⁸ The Proposed Second Amended Complaint seeks to provide an additional factual basis to establish a separate violation of this provision.⁴⁴⁹ The Proposed Second Amended Complaint alleges that PRA’s “use of discovery tools [in litigation] to try to elicit material to help verify the alleged debt

⁴⁴⁴ *M.B.M. Co., Inc. v. Counce*, 268 Ark. 269, 273, 596 S.W.3d 681, 684 (1980).

⁴⁴⁵ *Caple*, 207 Ark. 52, 179 S.W.2d at 154.

⁴⁴⁶ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶ 379.

⁴⁴⁷ *Id.* ¶ 380.

⁴⁴⁸ First Am. & Suppl. Compl. (Doc. 6) ¶¶ 265–66.

⁴⁴⁹ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.’s Mot. to Am. (Doc. 33-1) ¶¶ 322–31.

is deceptive, false and misleading.”⁴⁵⁰ The Proposed Second Amended Complaint alleges that, on November 8, 2021, PRA, LLC’s counsel “sent a letter to Hammett.”⁴⁵¹ The letter sought responses to various discovery requests concerning the alleged debt Ms. Hammett owed to PRA, LLC.⁴⁵²

There are at least two reasons why allowing this additional theory of liability under 15 U.S.C. § 1692e(10) would be futile. First, as noted multiple times, the FDCPA imposes liability on debt collectors. The Proposed Second Amended Complaint alleges no facts that plausibly assert that PRA, LLC’s lawyer is a debt collector. The Supreme Court makes clear that the FDCPA “applies to attorneys who ‘regularly’ engage in consumer-debt-collection activity, even when that activity consists of litigation.”⁴⁵³ The Proposed Second Amended Complaint does not provide any facts relevant to the question of whether PRA, LLC’s lawyer in this case regularly conducts debt-collection activity. PRA, LLC’s counsel did not launch a debt-collection suit in this case. And the Proposed Second Amended Complaint does not plausibly assert that PRA, LLC’s counsel ever has launched such a suit, let alone regularly launches such suits.

Second, to establish a violation under § 1692e, a plaintiff must show that a communication was “in connection with the collection of any debt.”⁴⁵⁴ As mentioned above, the Eighth Circuit uses the animating-purpose test to determine whether a communication was sent in connection with the collection of any debt. “Under [that] test, ‘for a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor.’”⁴⁵⁵ The instant case revolves around Ms. Hammett’s numerous claims against

⁴⁵⁰ *Id.* ¶ 323.

⁴⁵¹ *Id.* ¶ 325.

⁴⁵² *Id.* ¶¶ 326–30.

⁴⁵³ *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995).

⁴⁵⁴ *McIvor*, 773 F.3d at 913.

⁴⁵⁵ *Heinz*, 3 F.4th at 1112 (quoting *McIvor*, 773 F.3d at 914).

PRA, LLC. It does not include a counterclaim against Ms. Hammett for any alleged debt. The Proposed Second Amended Complaint alleges that Ms. Hammett received the allegedly deceptive letter from PRA, LLC's lawyer during the discovery process in the instant case.⁴⁵⁶ Routine discovery requests from PRA, LLC are not plausibly characterized as an attempt to induce Ms. Hammett to pay any debt. Thus, the Proposed Second Amended Complaint does not plausibly assert that PRA, LLC's lawyer sent this letter in connection with the collection of any debt.

G. Adding a Claim Under 15 U.S.C. § 1692e(2)(A) Would Not be Futile

The Proposed Second Amended Complaint seeks to add a claim under 15 U.S.C. § 1692e(2)(A).⁴⁵⁷ With respect to this claim, the Proposed Second Amended Complaint alleges that Defendants wrote Ms. Hammett telling her she "owed \$2,297.63 to the LL[C] when in fact Plaintiff owed nothing to the LLC."⁴⁵⁸ Section 1692e(2)(A) prohibits the "false representation of the character, amount, or legal status of any debt."

On a motion for leave to amend, the Court must assume the veracity of the proposed complaint's pleaded facts—here that PRA, LLC told Ms. Hammett she owed a debt she didn't owe, and thus that PRA, LLC made a false statement about the amount of a debt owed. The Proposed Second Amended Complaint alleges enough to survive a motion to dismiss on this claim and is therefore not futile. PRA, LLC does not argue otherwise. The Court will allow amendment insofar as Ms. Hammett now has a claim against only PRA, LLC for a violation of 15 U.S.C. § 1692e(2)(A).

⁴⁵⁶ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Am. (Doc. 33-1) ¶¶ 323–30.

⁴⁵⁷ *Id.* ¶ 315.

⁴⁵⁸ *Id.* ¶ 316.

III. Ms. Hammett's Motion for Partial Summary Judgment

On November 22, 2021, Ms. Hammett filed a Motion for Partial Summary Judgment.⁴⁵⁹

The Motion is narrow, seeking summary judgment only on the single claim that PRA, LLC violated 15 U.S.C. § 1692e(A)(2) of the FDCPA.⁴⁶⁰ The Operative Complaint did not allege a violation of this provision. PRA, LLC noticed that omission.⁴⁶¹ Nonetheless, the Court will decide this issue because (1) the Court has concluded *supra* Section II.G that it will grant Ms. Hammett leave to amend the Operative Complaint to include this claim, and (2) PRA, LLC responded to the partial summary judgment motion on the merits.

Under 15 U.S.C. § 1692e(2)(A), a debt collector violates the FDCPA if, “in connection with the collection of any debt,” it makes a “false representation of the “amount . . . of any debt.” Ms. Hammett’s basis for summary judgment is that PRA, LLC violated this provision “by making the false claim that Hammett owed PRA[, LLC] \$2,297.63.”⁴⁶² But, on this record, it does not appear to be genuinely disputed that Ms. Hammett owed PRA, LLC \$2,297.63.⁴⁶³ That is, the

⁴⁵⁹ Pl.’s Mot. for Partial Summ. J. (Doc. 37).

⁴⁶⁰ *Id.* at 6.

⁴⁶¹ Def.’s Resp. to Pl.’s Mot. for Partial Summ. J. (Doc. 52) (Under Seal) at 3.

⁴⁶² Pl.’s Mot. for Partial Summ. J. (Doc. 37) at 2.

⁴⁶³ See *supra* notes 13–25 and accompanying text (illustrating that the record likely leads to only one possible conclusion—that Ms. Hammett owed PRA, LLC \$2,297.63). 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; *see also* Aff. in Supp. of Pl.’s Partial Mot. for Summ. J. (Doc. 39) ¶ 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.”). PRA, LLC has produced documentary evidence indicating that, in 2001, Ms. Hammett opened a Capital One account ending in -6049. Ex. C (Load Data Sheet) to Ex. 1 to Def.’s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121). Ms. Hammett says that she does not “have any written record of a Capital One account . . . and therefore [does] not know the account number of any account [she] may have had.” Aff. in Supp. of Pl.’s Opp’n to Def.’s Mot. for Summ. J. (Doc. 99) (Under Seal) at 1. The fact that Ms. Hammett does not know the account number is not sufficient to raise a genuine dispute of fact as to whether she opened a Capital One account ending in -6049.

PRA, LLC has produced documentary evidence from Capital One showing that, in 2011, Ms. Hammett (then Laura J. Lynn) was seven months past due on the Capital One account ending in -6049. Ex. 13A to Hammett Dep. (Doc. 164); *see also* Def.’s Notice of Suppl. Authority (Doc. 106-1) at 3, 5. This documentary evidence is a Capital One statement sent to Ms. Hammett at an address where Ms. Hammett admits to having once lived. Hammett Dep. Vol. I (Doc. 164) at 91:1–11. The account balance was \$1,916.05. Ex. 13A to Hammett Dep. (Doc. 164); *see also* Def.’s Notice of Suppl. Authority (Doc. 106-1) at 3, 5. PRA, LLC has also produced “load data” from Capital One

Court (tentatively) believes that every rational juror would conclude that Ms. Hammett owed PRA, LLC this amount. In turn, there is good reason to think that no rational juror could conclude that PRA, LLC falsely represented to Ms. Hammett the amount of the debt. That's the exact opposite of the conclusion the Court would have to reach in order to give Ms. Hammett summary judgment on this claim.⁴⁶⁴ Ms. Hammett's Motion is DENIED.

showing that PRA, LLC purchased Ms. Hammett's Capital One account at a time when Ms. Hammett's -6049 account had a balance of \$1,916.05 and a post-charge-off amount of \$381.58. Ex. C (Load Data Sheet) to Ex. 1 to Def.'s Statement of Facts (Doc. 78-6) (Under Seal at Doc. 121). Those amounts total the amount of the debt (\$2,297.63) that PRA, LLC has always tried to recover from Ms. Hammett. Hammett Dep. Vol. II (Doc. 164) at 21:19-20 (stating that PRA, LLC "always tried to collect \$2,297.63").

Ms. Hammett admits that she made purchases on the Capital One account. Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39) ¶ 3. She denies owing the debt, but her testimony is entirely unclear as to why she does not owe the debt. Hammett Dep. Vol. I (Doc. 164) at 82:21-83:12. And her blanket denial is supported by no other evidence. Ms. Hammett testified that she has "no documentary evidence" of the purchases because they were made "10 to 20 years ago." Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39) ¶ 3. She notes that she has "no evidence of a debt . . ." *Id.* ¶ 4. And she notes generally that she "usually paid credit cards off on time." Hammett Dep. Vol. I (Doc. 164) at 104:22-23. At bottom, Ms. Hammett's testimony appears to be that she doesn't know what happened with her Capital One account, but she "believe[s]" she never had a debt . . ." Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39) ¶ 4; *see also* Hammett Dep. Vol. II (Doc. 164) at 13:5-12 (Ms. Hammett stating that she "do[es]n't know" what happened to her Capital One account and that she "do[es]n't think" that her Capital One account went delinquent). Belief is not fact. Belief is not enough to create a genuine dispute of fact.

Ms. Hammett never (by way of affidavit or testimony) testified that she paid off her Capital One balance on time. Ms. Hammett never says she paid off her Capital One balance at all. In fact, Ms. Hammett admits that 2011 was a "crazy time" in her life. Hammett Dep. Vol. I (Doc. 164) at 104:24-105:1. Trying to turn the tables, she says that if Capital One could have given Ms. Hammett "any kind of documentation that shows [Ms. Hammett] purchased something and [Ms. Hammett] remembered purchasing it, then that might convince" her that the Capital One statement showing that Ms. Hammett owed \$1,916.05 was accurate. *Id.* at 103:17-21, 104:25-105:4. But the implication of Ms. Hammett's position is telling. The fact that Ms. Hammett could be convinced with more documentation fatally undermines her blanket denial of owing the debt.

The tenuousness of Ms. Hammett's position is further illustrated by her Motion for Partial Summary Judgment. As discussed in footnote 464 *infra*, Ms. Hammett almost exclusively relies on two very recent letters from PRA, LLC to suggest that PRA, LLC knew she didn't owe any money to PRA, LLC: (1) a February 19, 2021 PRA, LLC letter stating that Ms. Hammett had a balance of \$2,297.63, and (2) an April 23, 2021 PRA, LLC letter stating that Ms. Hammett's balance was \$0.00. Pl.'s Statement of Facts (Doc. 38) at 2; Exs. A, B to Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Docs. 39-1, 39-2). But, for reasons explained below, this documentation does not support her position at all.

⁴⁶⁴ At the very least, Ms. Hammett is not entitled to summary judgment on the issue. Here's how Ms. Hammett gets to her conclusion that PRA, LLC lied to her about owing a debt to PRA, LLC. First, she says PRA, LLC represented that Ms. Hammett owed this amount on a February 18, 2021 phone call between herself and PRA, LLC. Pl.'s Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39) ¶ 6. Second, Ms. Hammett says PRA, LLC repeated this representation "by letter dated '02/19/2021'" (the debt-dispute letter). *Id.* ¶ 6; *see also* Ex. A (the February 19, 2021 debt-dispute letter) to Pl.'s Aff. in Supp. of Partial Summ. J. (Doc. 39-1) at 2; Pl.'s Mot. for Partial Summ. J. (Doc. 37) at 2 (referencing Exhibit A). Third, "[b]y letter dated '04/23/2021,' . . . PRA, LLC admitted the balance on the purported account was '\$0.00' and closed the account." Pl.'s Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39) ¶ 7; *see also* Ex. B to Pl.'s Aff. in Supp. of Pl.'s Mot. for Partial Summ. J. (Doc. 39-2) at 2-3. Fourth, Ms. Hammett did not pay PRA, LLC anything. Pl.'s Mot. for Partial Summ. J. (Doc. 37) ¶ 7. According to Ms.

Given that PRA, LLC has moved for summary judgment on every one of Ms. Hammett's claims, it is fair to believe that PRA, LLC would have moved for summary judgment on this claim had it been live at the time PRA, LLC initially moved for summary judgment. For this reason, the Court will give PRA, LLC fourteen days from the date of this Order to supplement its Motion for Summary Judgment (and briefing). The supplement must be limited to requesting summary judgment on this issue and arguing in support of that request.

CONCLUSION

For the reasons stated above, the Court GRANTS in its entirety PRA, LLC's Motion for Summary Judgment. The Court DENIES Ms. Hammett's Motion for Partial Summary Judgment. The Court GRANTS in part and DENIES in part Ms. Hammett's Motion to Amend. The Clerk is directed to file the Second Amended and Supplemented Complaint.⁴⁶⁵ The Court emphasizes that, pursuant to this Order, the only live claim remaining in this case is Ms. Hammett's claim against PRA, LLC for a violation of 15 U.S.C. § 1692e(2)(A). If PRA, LLC so chooses, it will have fourteen days from the date of this Order to supplement its Motion for Summary Judgment for the limited purpose of arguing the propriety of summary judgment in its favor as to Ms. Hammett's claim under 15 U.S.C. § 1692e(2)(A). Ms. Hammett will have seven days to respond to any supplement that PRA, LLC files on this issue. If PRA, LLC chooses not to supplement its Motion for Summary Judgment, PRA, LLC must file an answer to the Second Amended and Supplemented Complaint in conformance with the Federal Rules of Civil Procedure.

Hammett, because she did not pay PRA, LLC between the February communications and the April account-closing letter, the only reasonable explanation is that she never owed PRA, LLC in the first place. Pl.'s Mot. for Partial Summ. J. (Doc. 37) ¶ 8. The April 23, 2021 letter never "admitted" that Ms. Hammett owed no debt. So to buy Ms. Hammett's argument, a rational juror would have to draw numerous (unreasonable) inferences in Ms. Hammett's favor. On summary judgment, though, the inferences go in favor of the nonmovant (here PRA, LLC). Thus, even taking Ms. Hammett's evidence at face value, she has failed to meet her burden of presenting the absence of a genuine dispute of material fact on this claim.

⁴⁶⁵ Ex. 1 (Proposed Second Am. & Suppl. Compl.) to Pl.'s Mot. to Amend (Doc. 33-1).

IT IS SO ORDERED this 16th day of August 2022.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix E

Transcript of Ruling on Motion for Summary Judgment

Laura Lynn Hammett
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Conway, Arkansas 72032
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Bohemian_books@yahoo.com
Petitioner In Pro Persona

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF ARKANSAS
3 CENTRAL DIVISION

4 LAURA LYNN HAMMETT

5 Plaintiff

6 vs.

No. 4:21-cv-00189-LPR
June 14, 2023
Little Rock, Arkansas

7 PORTFOLIO RECOVERY ASSOCIATES, LLC

8 Defendant

9 TRANSCRIPT OF RULING ON MOTION FOR SUMMARY JUDGMENT

10 BEFORE THE HONORABLE LEE P. RUDOFSKY

11 UNITED STATES DISTRICT JUDGE

12

13 APPEARANCES:

14 On Behalf of the Plaintiff:

15 LAURA LYNN HAMMETT
16 Pro Se Plaintiff
17 16 Gold Lake Club Road
18 Conway, Arkansas 72032

19 On Behalf of the Defendant:

20 JOHN KOMISIN
21 Troutman Sanders LLP
22 1001 Haxall Point
23 Richmond, Virginia 23219

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25 Rose Law Firm
26 120 East Fourth Street
 Little Rock, Arkansas 72201

27 Proceedings reported by machine stenography and
28 displayed in realtime; transcript prepared utilizing
29 computer-aided transcription.

30 Valarie D. Flora, FCRR, TX-CSR, AR-CCR

31 United States Court Reporter

32 Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 THE COURT: Okay. I appreciate very much everybody's
2 extensive briefing on all of the various motions. I also
3 appreciate everybody's argument today. I also appreciate
4 everybody's patience while I ran down a few things that --
5 that you were all telling me. I have done all of that.

6 I have also spent a consider amount of time,
7 especially in this last week, poring over all of your
8 various submissions, both -- both sides, my consolidated
9 order, and all of the facts in the record. I am at a
10 point where I feel like I am ready to rule.

11 I am going to rule orally. Obviously, the court
12 reporter is here, and she can prepare a transcript, and
13 this transcript will be considered my written order for
14 purposes of both the summary judgment motion and the
15 motion to -- and the motion to reconsider.

16 Let me start with the defendant's summary judgment
17 motion. I am going to grant that motion for a number of
18 different reasons. Primarily, what I will tell you is,
19 after going through all of the material in the record,
20 after going through everybody's arguments, and after
21 reviewing my consolidated order, I do believe that my
22 consolidated order still gets right what the record
23 reflects in terms of what a rational juror would and would
24 not conclude about this case or -- or would certainly
25 conclude and could not conclude otherwise.

Valarie D. Flora, FCRR, TX-CSR, AR-CCR
United States Court Reporter
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1 I don't think there is a genuine dispute over Ms.
2 Hammett owing the \$2,297.63. And I am going to adopt for
3 purposes of resolving this motion both the factual
4 background that I provided in the previous order, the
5 consolidated order, and also and in particular footnote
6 463 of that order where I specifically go through what in
7 the record makes it clear to me that no rational juror
8 could find -- could find that Ms. Hammett did not owe this
9 -- this debt. And so, therefore, there is no genuine
10 dispute.

11 I will say I recognize that, for purposes of the
12 summary judgment motion, that there is some more evidence,
13 at least arguable evidence, that relates to this question,
14 the question being under 1690 -- 15 U.S.C. §1692e(2)(A),
15 whether -- whether PRA, in -- in collecting this debt or
16 in connection with collecting this debt, was -- made false
17 or fraudulent statements -- or I guess made false or
18 misrepresentative statements about the existence -- well,
19 I guess about the character or amount of the -- of the
20 debt.

21 I will say that none of that subsequent evidence, to
22 the extent one can characterize it as evidence, suggests
23 to me that any rational juror would conclude or could
24 conclude that PRA's statements were false, meaning that
25 Ms. -- Ms. Hammett actually did not owe the debt or that

1 the debt was not the 2200 and change figure that I've --
2 that I've discussed.

3 I want to say a couple of more specific things, and
4 this actually applies to both the summary judgment and the
5 motion for reconsideration. I will say I appreciate and
6 accept Ms. Hammett's discovery that I had a drafting error
7 in footnote 463. I said at one point in that footnote
8 that Ms. Hammett in her affidavit said, quote, I am a
9 consumer in respect to any debt incurred by me on a credit
10 card issued by Capital One Bank USA in or about 2001,
11 period. And as Ms. Hammett correctly points out, that
12 period was too early and chopped off the rest of the
13 sentence. The full sentence is, I am a consumer in
14 respect to any debt incurred by me on a credit card issued
15 by Capital One Bank USA in or about 2001, comma, as I used
16 any credit card to purchase household items, food, and
17 other consumer items, period, close quote.

18 I hope that is the correct -- is the correct
19 iteration of it. I am going off of page 6 of Ms.
20 Hammett's brief in support of opposition to the
21 defendant's supplement motion for summary judgment. But I
22 agree that I should not have chopped off the sentence with
23 the period. I take responsibility for that.

24 Having said that, the last clause does not change
25 anything in my mind. It does not create more -- a more

1 favorable situation for Ms. Hammett were this to go to a
2 jury than she had before. In fact, if it does anything,
3 it hurts her, but I just don't think it makes any
4 difference one way or the -- or the other.

5 Additionally, I -- while it's sort of after the fact
6 -- after-the-fact declarations that the Eighth Circuit
7 really tells me not to consider, I will even consider that
8 Ms. Hammett changed her statement from not believing that
9 she owed the debt to saying she -- she knows she didn't
10 owe the debt. That's an incredibly conclusory statement,
11 especially given all the other statements that Ms. Hammett
12 has made in both the record and also here at -- at oral
13 argument. Whatever you want to characterize her ultimate
14 statement as a belief or -- or knowledge, she does not
15 have and has not come forward with any evidence from which
16 a rational jury could say that PRA's statements that there
17 was a debt and that it was \$2,297.63 and that she owed it
18 was false or misleading.

19 I also will add that, in addition to the evidence
20 that I cited in note 463, I do think it is worth
21 highlighting that at page 92 and 93 of Ms. Hammett's
22 deposition, when she was talking about her discussions
23 with Capital One -- and I should say, I think at least at
24 the summary judgment stage, I can include this information
25 in my finding pursuant to the residual exception of the

1 hearsay rule. I'll also note that Ms. Hammett didn't
2 object to -- to this information as hearsay, but
3 nonetheless, Ms. Hammett said "they" -- and in this
4 context, she's talking about Capital One. They did say
5 that they had a charge off for the \$2,297.63 but, you
6 know, they didn't have anything else. Then she goes on
7 and adds more to that, but it doesn't take away from what
8 she -- from what she said in what I just read.

9 That is another helpful piece of the record that
10 shows why no rational juror could conclude otherwise than
11 I'm concluding here, which is that, based on this record,
12 it is definitively established that Ms. Hammett owed the
13 \$2,297.63. And, so consequently, PRA's representation of
14 that fact was -- was not false or misleading -- or their
15 representation of those facts.

16 I will also say, while I'm not going to go into as
17 much detail, I do agree with defendant's position that the
18 complaint was limited to -- the operative complaint was
19 limited to writings. Ms. Hammett is very clear on that in
20 paragraph 316 and -- and her complaint is very thorough.
21 So this is not a situation where somebody can't write a
22 complaint and doesn't know what to say. Ms. Hammett knows
23 how to express herself in my view, and it very clearly was
24 just talking about the writings.

25 Quite frankly, I don't think ultimately that makes

1 any difference, but I will also associate myself with the
2 defendant's argument that none of those writings had as an
3 animating purpose the collection of the debt, which under
4 binding Eighth Circuit precedent means that they fall
5 outside of 15 U.S.C. §1692e(2)(A). I think the same thing,
6 quite frankly, is true of the call in February, even were
7 we to get there.

8 I will also say that I have significant concerns --
9 although I am not going to rule on this, I will flag it
10 for the Eighth Circuit. I have significant concerns that
11 under TransUnion and Spokeo, the recent Supreme Court
12 cases on this issue, that Ms. Hammett does not actually
13 have a concrete injury that flows from the oral or written
14 communications of the existence of this debt or the
15 amount.

16 Let me start with the amount. To the extent that Ms.
17 Hammett is saying that the amount of the debt is incorrect
18 but there was some debt, there's basically zero concrete
19 injury -- or there is zero concrete injury that could --
20 that could flow from that because, if it was \$1,900
21 instead of \$2,300, there's -- there's nothing that -- that
22 happened to Ms. Hammett even on her own -- on her own
23 telling. There's nothing that happened to Ms. Hammett
24 because she was told the wrong number. And that's
25 especially true, of course, since, basically, a month or

1 so or maybe a little bit after that, after she was first
2 told of the existence and the amount of the debt, it was
3 then marked down to zero by the company -- by PRA.

4 To the extent that we're not talking about just an
5 incorrect amount, but we're talking about overall whether
6 or not Ms. Hammett had the debt at all, it strikes me that
7 there's no injury directly tied to that.

8 And recall, here, we're not talking about the large
9 number of calls she got prior to -- prior to February of
10 2018. We're not talking about letters she -- that were
11 sent to her but never received by her. We are really
12 talking about the -- at most even, if one includes the
13 February 18 call, we're talking about the February 18
14 call, we're talking about the -- the dispute letter which,
15 again, as I've said before, did not have an animating
16 purpose to collect a debt. And then pretty quickly after
17 that, the debt was marked down to zero. So we're really
18 only talking about whether injury flows from the February
19 18, 2020, call.

20 And my point here is, I don't think under what Spokeo
21 and TransUnion have said that there's any sort of similar
22 in-kind traditional common law tort that would -- that
23 would -- that sort of evokes the same injuries as the
24 injuries we're talking about here.

25 Obviously, there's no monetary injury here. I mean,

1 I understand that Ms. Hammett decided to file a lawsuit,
2 but that was Ms. Hammett's choice. There was no sort of
3 litigation or collecting -- of trying to collect a debt on
4 the part of PRA. So it's not like Ms. Hammett had to --
5 had to defend a lawsuit. There's -- there's really no
6 suggestion of any injury in terms of monetary value. And
7 in terms of physical -- of physical injury or emotional
8 injury, I don't really know of any common law sort of
9 similar injury where it comes from somebody merely lying
10 to you when there are no other consequences.

11 I mean, I understand there's the tort of false --
12 false pretenses and there are misrepresentation torts, but
13 all of those, there's some kind of consequence of somebody
14 -- you know, of the person who is being faked out losing
15 money or paying money or having some other injury. And I
16 don't think there's -- there's a tight enough correlation
17 here.

18 I accept, of course, that Congress can sort of make a
19 de facto injury into a de jure injury and can sort of
20 expand -- well, maybe not expand. They can emphasize or
21 bring up something that might have only been a -- a sort
22 of very negligible injury into a statutory injury, but
23 they can't create the injuries where there were none to
24 begin with.

25 So I do have significant standing concerns here. I'm

1 not basing my ruling on that, but, obviously, that doesn't
2 matter because the Eighth Circuit has an independent
3 obligation to -- to look at jurisdictional issues here
4 anyway.

5 I think what I've said is probably enough to explain
6 why I am granting the summary judgment motion.

7 On to the motion for reconsideration. I am going to
8 deny the motion for reconsideration. And I will say,
9 basically and primarily the reason I'm denying it is
10 because almost everything that Ms. Hammett argues is not
11 new evidence. It's essentially re-argument of issues that
12 the Court has already decided. I don't think it's
13 appropriate for reconsideration. Even if it was
14 appropriate for reconsideration, I don't think any of
15 those arguments are persuasive and suggest that I made a
16 mistake.

17 As I've said -- I've already explained sort of the
18 two things that Ms. Hammett pointed out that I thought
19 were important and I've addressed them: namely, the one
20 sort of writing -- drafting error that I made and why that
21 doesn't matter; and then, number two, that instead of
22 saying she believes, now she says she knows, but I've
23 already explained why that doesn't matter either.

24 The -- again, the only other issue here is the
25 potentially new evidence of the -- I want to make sure I

1 say it right -- the Mejia case and the other documents
2 that Ms. Hammett provided very recently in the -- in the
3 last couple of days, you know, so the 2023 consent order
4 and -- and submissions around that.

5 I really don't think that is evidence of anything.
6 It obviously doesn't paint PRA in a good light and it
7 obviously suggests that -- that, in other instances at
8 least, PRA has done some things wrong, but I don't believe
9 that it really has any relevance at all to our case, at
10 least it has not in my view been sufficiently explained
11 how it directly bears on our case, and I'm -- I can't
12 assume that this happened in our case because it happened
13 in Mejia -- or I can't assume bad things happened in our
14 case because bad things happened in Mejia potentially.
15 Obviously, you know, there was a significant settlement in
16 Mejia, but also just as obviously, in terms of the consent
17 order, I understand that the defendants there did not --
18 or I should say, PRA there did not admit liability, for
19 whatever that's worth. Just, quite frankly, I don't think
20 it's very relevant to the issues here.

21 So given all of that, I am going to -- like I said,
22 I'm denying the motions for reconsideration. I'm granting
23 the defendant's supplemental motion for summary judgment.
24 And as you all know because I've said it earlier, I am
25 granting Ms. Hammett's motion to disclose the expert

1 report as I've discussed it.

2 Would you all please hold on one moment.

3 Okay. As to the summary judgment motion and the
4 motion for reconsideration, I am -- I've concluded my oral
5 order. Let me ask this -- and this is not a time for
6 re-argument. If you go beyond my question, either of you,
7 I'm going to make it very clear you shouldn't.

8 Let me start with PRA's counsel. Is there anything
9 that I didn't address in that order that specifically you
10 think I need to address?

11 MR. KOMISIN: Your Honor, the one potential
12 issue is the motion to compel arbitration contained within
13 the first motion to reconsider, Docket Number 194.
14 However, I believe, absent any showing of the terms and
15 conditions, that that's functionally been mooted at this
16 point, but that's the only potential hanging chad, so to
17 speak.

18 THE COURT: That's -- that's fair. You're
19 talking about the alternative ground from the motion for
20 reconsideration. To the -- to the extent that's still a
21 live issue, I'm going to deny it.

22 We don't have the contract. I don't see the
23 contract. The contract is not in the record. I
24 understand Ms. Hammett's arguments about it from the
25 briefing real well, but I don't think there is anything I

1 can do absent it not being -- absent it being in the
2 record. And, of course, we are way past sort of the point
3 for arbitration motions at this point.

4 Anything else, Mr. Komisin?

5 Look, the reason I'm asking you -- and I'm going ask
6 Ms. Hammett the same question. But at least from your
7 side, the reason I'm asking you is because you're going to
8 be the ones defending this order when it goes up on
9 appeal. So is there anything I haven't addressed that
10 you'd like me specifically to address?

11 MR. KOMISIN: No, Your Honor. I believe Your
12 Honor's ruling was very clear and specific, and I
13 appreciate the time you put into it.

14 THE COURT: Okay. Ms. Hammett, I'm sure you're
15 not happy. I understand that. We -- you and I obviously
16 have a disagreement on the law here that's applicable and
17 the facts, and that's fair and that will -- that will sort
18 of work itself out at the Eighth Circuit. And if the
19 Eighth Circuit sends it back, I will deal with the case
20 with all deliberate speed.

21 But I want to know if there's something -- and
22 please, this is -- again, this is not a chance to sort of
23 have -- do like a monologue, but is there something, a
24 particular piece of evidence that you think I haven't
25 sufficiently addressed; again, not whether you agree with

1 how I've addressed it, but you want me to address it one
2 way or the other?

3 MS. HAMMETT: The issue of whether it was a
4 violation of the Fourth Amendment right to privacy to
5 continue to call me and demand that I give them
6 information about myself before I knew who they were.

7 THE COURT: I am -- I am happy to address that.
8 The Fourth Amendment is not applicable to private
9 corporations. It only constrains the government.

10 Anything else?

11 MS. HAMMETT: No. I have a question that -- are
12 you asking about the Rule 11 motion?

13 THE COURT: Well, no. We're going to get to
14 that in a second. I'm asking if there's -- if there's
15 anything specifically in the -- in the decision I just
16 made on the motions I just made that you -- you think I
17 didn't talk about a particular thing that is really
18 important to talk about and you need -- you feel like you
19 need a ruling on it from me.

20 MS. HAMMETT: I understand you.

21 THE COURT: Okay. So I'm going to take that as
22 a no.

23 MS. HAMMETT: Correct.

24 THE COURT: Okay. Very good.

25 Now we can talk about other things that are still

1 pending. So Mr. -- I'm terrible. I'm sorry. It is
2 Komisin or Komisin?

3 MR. KOMISIN: It's Komisin, Your Honor.

4 THE COURT: Komisin. Look at that. Okay. I
5 don't feel that bad because everybody butchers my last
6 name.

7 So, Mr. Komisin, I think there are some outstanding
8 motions, but I don't really know if they're sort of moot
9 now, at least -- at least some of them. For example, I
10 think there is a motion to -- to quash a subpoena.

11 Do you recall that one?

12 MR. KOMISIN: I believe that's been ruled upon,
13 Your Honor. I can pull up the docket entry, but if I'm
14 not mistaken, it's the subpoena that was issued to
15 Verizon, Ms. Hammett's cellphone provider. Ms. Hammett
16 stated that she spoke with them and that they said they
17 have nothing responsive to give. And so, essentially,
18 that -- it's ruled as a moot motion. I can find that
19 order that --

20 THE COURT: No. I think I -- I think I'm
21 talking about something different. I think I'm talking
22 about Document 133. There's a motion to quash from Jana
23 Perry about some kind of audio recording in Searcy county.

24 MR. KOMISIN: Yes. I believe that's mooted by
25 Your Honor's ruling. And I think the subpoena was in all

1 candor for evidence in a separate case anyway. But I
2 believe with the summary judgment being granted, there's
3 no longer any plausible scenario where that evidence could
4 be beneficial here.

5 THE COURT: Ms. Hammett, your thoughts.

6 MS. HAMMETT: Not unless we're moving forward,
7 that would be moot.

8 THE COURT: I'm going to find then that Document
9 133, the motion to quash, is moot.

10 So I think then that leaves, Ms. Hammett, your
11 sanctions motion, correct?

12 MS. HAMMETT: Correct.

13 THE COURT: That one, if I remember correctly, I
14 said we are -- we're -- we're not moving forward on until
15 14 days after I lift the stay, which I would lift after
16 I've decided summary judgment.

17 Mr. Komisin, any reason I shouldn't at this point, at
18 least after I enter the text orders, any reason I
19 shouldn't lift the stay and then have you respond to the
20 sanctions motion within 14 days?

21 MR. KOMISIN: No, Your Honor.

22 THE COURT: All right. Ms. Hammett, any problem
23 with me proceeding that way?

24 MS. HAMMETT: If I'm understanding you, you're
25 just giving them 14 days?

1 THE COURT: Well, yeah. So I'm going to enter
2 -- I'm going to enter the text orders that will dispose of
3 this case in terms of summary judgment and also dispose of
4 the other motions. I'm going to enter them either today
5 or tomorrow morning, and then I will lift the stay and
6 give them 14 days to respond to your sanctions motion, at
7 which point I will either decide it on the briefs or I
8 will ask for another hearing.

9 MS. HAMMETT: Yes. That sound reasonable.

10 THE COURT: Okay. Anybody else have any other
11 motion or anything we need to talk about?

12 Let me start with Mr. Komisin.

13 MR. KOMISIN: Your Honor, I believe there's one
14 last motion. It's Ms. Hammett's motion in limine to limit
15 Dr. Adhia's proposed testimony, Docket Number 70. I
16 believe Your Honor took that under advisement until the
17 remaining pending motions were resolved. PRA's position
18 is that has been mooted by --

19 THE COURT: I think that's probably right, but
20 let me ask Ms. Hammett for her thoughts.

21 MS. HAMMETT: That's been mooted.

22 THE COURT: Okay. So then to the extent I
23 haven't already done something on it, I will find that to
24 be mooted.

25 MS. HAMMETT: I have a question, just because

1 I'm not an attorney and this is all new to me.

2 So if you moot something but then the appellate court
3 says, come back, and, you know, we're going to redo this,
4 then do I have to -- do I have to do those motions all
5 over again?

6 THE COURT: You do. You do.

7 MS. HAMMETT: Or do we take the moot out?

8 THE COURT: No. You'll need to do them all over
9 again. I mean --

10 MS. HAMMETT: Oh.

11 THE COURT: That's -- that's just the way those
12 things go.

13 MS. HAMMETT: Oh. Then I'd have to consider for
14 a moment whether that is actually good for either the
15 Perry -- Perry quashing that, because I don't want to
16 quash it and I don't know what the next statute of
17 limitations are and --

18 THE COURT: Well, really right -- really right
19 now I just want you -- I just want to give you the ability
20 to give me your thoughts on whether these are mooted or
21 not and then I'm going to decide.

22 MS. HAMMETT: Oh, okay. Then I'll let you do
23 that research because I don't know the answer to that, but
24 that -- I would hate to --

25 THE COURT: I understand you don't -- I got it.

1 You don't want to concede that they're mooted. That's
2 fine. I under -- I understand that. I -- I believe they
3 are both mooted in this situation so I am going to moot
4 both of -- both of those motions.

5 Mr. Komisin, from your side, anything else?

6 MR. KOMISIN: No, Your Honor.

7 THE COURT: Okay. Ms. Hammett, anything else in
8 terms of something you think I haven't decided or
9 anything?

10 MS. HAMMETT: No, Your Honor.

11 THE COURT: Okay. We are -- we are adjourned.

12 (Proceedings adjourned at 1:34 p.m.)

13 * * * * *

14 REPORTER'S CERTIFICATE

15 I, Valarie D. Flora, FCRR, RPR, certify that the
16 foregoing is a correct transcript of proceedings in the
17 above-entitled matter.

18 Dated this the 14th day of June, 2023.

19 /s/ Valarie D. Flora, FCRR

20 -----

21 United States Court Reporter

22

23

24

25

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix F

Order granting Costs to Defendant

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Bohemian_books@yahoo.com
Petitioner In Pro Persona

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA LYNN HAMMETT

PLAINTIFF

v.

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

PORTFOLIO RECOVERY
ASSOCIATES LLC

DEFENDANT

ORDER

Pending before the Court is Defendant PRA's Motion for Taxable Costs.¹ Pursuant to Rule 54(d)(1) and 28 U.S.C. § 1920, PRA requests \$8,356.18 in costs. Plaintiff makes numerous arguments as to why the Court should not impose the requested costs. Plaintiff's arguments are not persuasive. Accordingly, the Court GRANTS PRA's Motion.²

Some of Plaintiff's arguments can be quickly dispatched. Plaintiff argues that Defendant is not entitled to costs because Plaintiff is the real prevailing party.³ For the reasons set forth in Section II of Defendant's Reply Brief,⁴ Plaintiff is wrong. Defendant is the prevailing party in this case.⁵ Plaintiff argues that Rule 54(d)(1) and 28 U.S.C. § 1920 are "preempted" by 15 U.S.C. §

¹ Def.'s Mot. for Taxable Costs (Doc. 240).

² The Court stays enforcement of this Order until the Eighth Circuit resolves the summary judgment decision currently on appeal (as well as this costs decision if the Plaintiff decides to appeal it). To be clear, the Court's decision to award costs is a final and immediately appealable order. If Plaintiff wishes to appeal it, she must do so within 30 days of the date of this Order. *See Fed. R. App. P. 4(a)(1)(A)*. But enforcement of the Order is stayed for now. Defendant is ordered to submit a status report to the Court as soon as the Eighth Circuit resolves the summary judgment decision currently on appeal.

³ *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2.

⁴ *See* Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 2. For this document, the page number cited in this Order is the actual number at the bottom of the page rather than the number in the ECF stamp at the top. This document is the only one where those two numbers are different.

⁵ *See* Aug. 16, 2022 Consolidated Order (Doc. 173).

1692k(a)(3).⁶ For the reasons set forth in Section I of the Defendant's Reply Brief,⁷ Plaintiff is wrong. Rule 54(d)(1) and 28 U.S.C. § 1920 are applicable with respect to costs in the instant case. Plaintiff makes several different arguments about Rule 68.⁸ All of those arguments are basically irrelevant. The request for costs here does not come under the auspices of Rule 68.⁹ It is true that Defendant's Motion mentioned Rule 68, but it did so only in passing and seemingly as background information.¹⁰ Finally, Plaintiff argues that the cost request for the Pivot production is too high.¹¹ For the reasons set forth in Section III of the Defendant's Reply Brief,¹² Plaintiff is wrong.¹³

Plaintiff's remaining arguments are best understood as several facets of one unified, overarching argument: that awarding Defendant costs in this case would be inequitable. In the Eighth Circuit, as in many other circuits, "there is a strong presumption that a prevailing party shall recover" taxable costs "in full measure."¹⁴ In order to overcome that strong presumption, a

⁶ See Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 5. Plaintiff mostly cites to 15 U.S.C. § 1692(k). But that appears to be a mistake, because § 1692 does not have a subsection (k). See 15 U.S.C. § 1692. She means § 1692k. Also, "preempted" really isn't the right word here. But the Court understands the Plaintiff's point.

⁷ See Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 1; *see supra* note 4.

⁸ See Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 6–10.

⁹ See Def.'s Mot. for Taxable Costs (Doc. 240).

¹⁰ See Def.'s Br. in Supp. of Def.'s Mot. for Taxable Costs (Doc. 242) at 1–3.

¹¹ See Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 19.

¹² See Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 2–4; *see supra* note 4.

¹³ The Court has reviewed all the evidence supporting Defendant's costs request, as well as the evidence referenced in Plaintiff's opposition to the costs request. In summary, the Court concludes that all of the \$8,356.18 falls within 28 U.S.C. § 1920's definition of taxable costs. As to the Pivot production issue specifically, the copies made by Defendant were "necessarily obtained for use in the case" as that phrase is used in § 1920 and explained in cases like *Concord Boat Corp. v Brunswick Corp.*, 309 F.3d 494, 498 (8th Cir. 2002).

¹⁴ See *Concord Boat Corp.*, 309 F.3d at 498 (citations omitted).

“losing party bears the burden of making the showing that an award is inequitable under the circumstances.”¹⁵ Plaintiff has not met that burden.

First, Plaintiff argues that Defendant multiplied the costs of litigation.¹⁶ The Court does not agree. As a threshold matter, it is not clear exactly what Plaintiff is saying Defendant did during the litigation that causally resulted in specific taxable costs which were avoidable. That is, Plaintiff does not link up Defendant’s alleged wrongful conduct with a specific taxable cost. In any event, nearly all of Plaintiff’s assertions concerning the wrongfulness of Defendant’s litigation conduct are unsubstantiated. For example, Plaintiff’s assertion that Defendant altered business documents is rank speculation.¹⁷ For another example, Plaintiff’s assertion that Defendant paid its expert doctor to lie about Plaintiff remains unproven.¹⁸ It is true that Defendant has aggressively defended against Plaintiff’s claims. But it is just as true that Plaintiff has aggressively prosecuted her claims. Both parties are entitled to do so. And, while each side has at times put a foot very close to the out-of-bounds line, nothing suggests Defendant was vexatiously, intentionally, or even accidentally running up costs.

Second, Plaintiff argues that she is in dire straits financially. Although it is a little hard to follow the entire financial story told by Plaintiff, the bottom line appears to be that Plaintiff says

¹⁵ *Id.* (quoting *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 462–63 (3d Cir. 2000)). Following the *Paoli* citation backwards in time suggests that this standard was gleaned from an older version of Rule 54(d)(1), which noted that “costs . . . shall be allowed as of course to the prevailing party unless the court otherwise directs.” *Paoli*, 221 F.3d at 462. Courts emphasized the phrase “as of course” to support the judicially-developed standard. *See* 10 James Moore, *Moore’s Federal Practice* § 54.101 (Daniel Coquillette et al. eds., 3d ed. 2023). In 2007, the “as of course” language was dropped from the Rule. *Compare* Fed. R. Civ. P. 54(d)(1) (2007) *with* Fed. R. Civ. P. 54(d)(1) (2006). But the Advisory Committee Notes explain that the relevant 2007 Amendments were “intended to be stylistic only.” *Id.* There has been no suggestion that the relevant wording changed in Rule 54(d)(1) vitiates the binding force of the Eighth Circuit’s pre-2007 caselaw on this topic.

¹⁶ *See* Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252) at 10.

¹⁷ *See id.* at 11.

¹⁸ *See id.* at 13.

she has income of only \$639 per month.¹⁹ But she does not note what her expenses are. And she appears to concede that she has assets of at least \$70,000 in a capital account.²⁰ Overall, Plaintiff has not shown that she is currently so destitute that awarding taxable costs would be inequitable.

Third, Plaintiff argues that she has already been forced to spend a lot of money in this litigation based on the Court’s “unconstitutional” refusal to allow her to use the electronic filing system.²¹ To the extent it needs saying, the Constitution does not require electronic filing—which is a good thing since electronic filing wasn’t possible for the first 200-plus years of federal court operations. And electronic filing rules distinguishing between counsel (who are officers of the court and members of the bar) and *pro se* parties (who are not) easily survives rational basis scrutiny for purposes of the Equal Protection Clause. As to Plaintiff’s point that she has already had to pay a lot of money to pursue this lawsuit, that is the nature of the beast. She chose to bring this lawsuit and to pursue it vigorously.²² And, as noted in the preceding paragraph, she has not shown herself to be in such awful financial circumstances (even after the money she has spent in the litigation) that awarding costs to the Defendant would be inequitable.

Finally, Plaintiff argues about the relative financial resources of the parties.²³ Certainly it is true that Defendant has immeasurably greater resources than Plaintiff. It is also true that Defendant would miss the \$8,000-plus dollars far less than Plaintiff would. But the caselaw cited by Defendant teaches that this resource gap is not, absent unusual or special circumstances, a fair

¹⁹ See Pl.’s Aff. in Supp. of Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 253) at 16. Plaintiff elsewhere states that her monthly income is \$630. See Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252) at 19.

²⁰ See Pl.’s Aff. in Supp. of Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 253) at 12; see also Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252) at 18.

²¹ See Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252) at 2.

²² See generally *Hammett v. Portfolio Recovery Assoc., LLC*, Case No. 4:21-cv-00189-LPR (E.D. Ark.).

²³ See Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252) at 24.

reason to cast aside the strong presumption in favor of awarding costs to the prevailing party.²⁴ And there is nothing special about this case that convinces the Court to bend that principle. In this regard, it is worth noting that this is not a case where a non-litigious, destitute person turned to the courts for the first time and only as a last resort to avoid a major catastrophe. Plaintiff acknowledges that she has “filed about 12 lawsuits and arbitrations” over the course of her life.²⁵ That’s a lot compared to the average person. There is nothing wrong with insisting on one’s rights through court action or in arbitral forums. But it certainly cuts against the idea that awarding costs to the prevailing party here is somehow unexpected or will dissuade Plaintiff from filing lawsuits in the future.

The foregoing addresses the most prominent of Plaintiff’s arguments. For certain, in her winding 26-page Response and 17-page Affidavit, Plaintiff raises a bevy of other arguments.²⁶ To the extent the Court has not explicitly addressed all such arguments, the Court notes that none of them—individually or collectively with all the other arguments—meets Plaintiff’s burden of showing an award of costs to Defendant would be inequitable here. Accordingly, the Court GRANTS Defendant’s Motion for Costs and orders Plaintiff to pay to Defendant \$8,356.18. The full amount is immediately due and payable.²⁷

²⁴ See Def.’s Reply in Supp. of Def.’s Mot. for Taxable Costs (Doc. 259) at 6 (collecting cases); *see supra* note 4.

²⁵ See Pl.’s Aff. in Supp. of Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 253) at 2.

²⁶ See Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 252); Pl.’s Aff. in Supp. of Pl.’s Resp. to Def.’s Mot. for Taxable Costs (Doc. 253).

²⁷ But *see* note 2. While the Court is confident in its summary judgment ruling, the appeal is not frivolous. Because Defendant’s resources suggest it does not need the money at present, the wiser course of action is to stay enforcement of this Order until the date on which the appeal of the summary judgment issue is resolved (and the appeal of this Costs Order is resolved, assuming Plaintiff appeals from this Order within 30 days). *See* Fed. R. App. P. 4(a)(1)(A).

IT IS SO ORDERED this 23rd day of August 2023.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix G

Transcript of Hearing Referred to in Text Entry Onlys Doc 88 to 93

Laura Lynn Hammett
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Petitioner In Pro Persona

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

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

LAURA LYNN HAMMETT,)
)
 PLAINTIFF,)
)
 -v-)
)
 PORTFOLIO RECOVERY)
 ASSOCIATES, LLC,)
)
 DEFENDANT.) Little Rock, Arkansas
) February 18, 2022, 10:00 a.m.
)

TRANSCRIPT OF TELEPHONIC HEARING PROCEEDINGS

BEFORE THE HONORABLE LEE P. RUDOFSKY

UNITED STATES DISTRICT JUDGE

Appearances:

16 FOR THE PLAINTIFF Laura Lynn Hammett, Pro se

17 FOR THE DEFENDANT David S. Mitchell, Jr.
18 Rose Law Firm
120 East Fourth Street
Little Rock, AR 72201

19 -and- James K. Trefil, ESQ., and
20 John Komisin, ESQ.
21 Troutman Sanders, LLP
1001 Haxall Point
Richmond, VA 23219

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

1 (Call to the order of the Court.)

2 THE COURT: Good morning, everybody. Thank you for
3 jumping on this call. My guess is this call will probably
4 take an extended amount of time, so if folks need to take a
5 break at some point and I haven't called for one, I'm very
6 happy for you to tell me that people need a break for whatever
7 reason, and we'll take five or 10 and then reconstitute
8 ourselves.

9 For the record, this is Hammett versus Portfolio
10 Recovery Associates, LLC, et al., 4:21-CV-00189. We are here
11 on a large number of motions, so I'm not going to, at this
12 point, spell them all out. We will deal with them one by one
13 as we go.

14 The plaintiff, Ms. Hammett, is here representing
15 herself. I understand for Portfolio Recovery Associates, LLC,
16 Mr. Mitchell is here, Mr. Trefil is here and Mr. Komisin is
17 here. Is there anybody who I did not mention on the line?
18 I'm going to take silence as a "no," so that is a good thing.

19 Let me start out by sort of setting a couple of
20 ground rules. You all may remember me saying last time that
21 we have basically the equivalent of 1980s technology here at
22 the courthouse, at least when we're dealing with phone calls,
23 and so I would like you all to take pity on both me and my
24 staff and the court reporter, who is with us, and make sure
25 that you all speak very slowly, very clearly and very loudly

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1 when you speak.

2 Additionally, if I do not call on you by name -- and
3 if I don't, I'll apologize in advance for that -- if I don't
4 call on you by name, please, when you start speaking,
5 introduce yourself again. That will let our court reporter
6 get a good, clean record.

7 Also, and this is particularly important since we
8 have so many motions that we're going to go back and forth on,
9 please everybody try not to speak over each other. I will
10 make sure to let both sides get an opportunity to speak on
11 each issue that we are discussing, but let's make sure we do
12 it in an orderly fashion. I will try to follow all of these
13 rules, too, although, you know, wearing the robe lets me speak
14 over y'all sometimes. I guess that's one perk.

15 Anyway, I have asked our court reporter that if, for
16 some reason, either I or you all don't follow these rules, to
17 jump in and tell us, or if, for some other reason, he can't
18 get a good record, he should jump in and tell us. So if he
19 jumps in and says to do something, please understand that he's
20 doing it at my request and with my blessing.

21 Given all of the outstanding motions, what I would
22 like to do is start by going one by one, and I have ordered
23 them in a way that I make sense, or at least that makes sense
24 to me. However, if, for some reason, I start addressing a
25 motion that you all think is either related to another motion

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1 or dependent on another motion or something like that, please,
2 when I give you the chance to speak, tell me that and suggest
3 that we should either handle them together or that I should
4 defer talking about a particular motion until after we've
5 spoken about another one. I'm certainly amenable to that.

6 Having said that, I would like to start with where I
7 think we basically left off either the last time we were
8 together, or I can't remember now if we had been together
9 twice, and this might have been the time before that. But
10 anyway, this is Document 24. It is Ms. Hammett's motion to
11 compel substantial compliance with FRCP 26(a), and I think
12 particularly we're talking about the initial disclosures.

13 When we all spoke that previous time about this
14 motion, one of the things we had said is, look, now that
15 there's going to be a protective order in place, and things
16 may have been a little more clear about what Ms. Hammett was
17 concerned she thought she hadn't got, so we all, I think,
18 basically agreed that we were going to see if the post-
19 discussion disclosures essentially made things better such
20 that Ms. Hammett no longer had any objections to the initial
21 disclosures, or in her view lack thereof.

22 What I would like to ask about this FRCP 26(a)
23 motion, I'd like to first ask Ms. Hammett if this is still a
24 live motion, meaning is Ms. Hammett still complaining -- and I
25 don't use that in a bad sense, I use that in the neutral

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1 sense -- is Ms. Hammett still complaining about any particular
2 initial disclosure issue?

3 Ms. Hammett?

4 MS. HAMMETT: Thank you, sir.

5 Yes, I am. The initial disclosures did not include
6 documents that were then, I'm sorry for my vernacular, but
7 popped on me when I filed my motion for partial summary
8 judgment, and then shockingly enough, they came in with
9 another document that should have been found in the
10 prelitigation investigation into my dispute with the debt, and
11 they said, oh, you know, it took us eight months because it's
12 an old document, and it makes no sense.

13 I don't -- I doubt the veracity of the document
14 itself, like it might have been manufactured, but if it's not,
15 it wasn't authenticated in any way by PRA, because like
16 impliedly it was made by Capital One, and Capital One did not
17 give any kind of affidavit that document is legitimate.

18 THE COURT: Okay. So let me stop you there.

19 MS. HAMMETT: Okay.

20 THE COURT: And I'll give you a chance to go on and
21 talk about other things in a second, but let me ask you about
22 those two documents that you mentioned. Do I understand that
23 you now have both of those documents?

24 MS. HAMMETT: Yes.

25 THE COURT: Okay. So there would be nothing for me

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1 to compel, given that you have it. Now, you may think, at
2 least you may think that you should get to strike those
3 documents because they weren't part of the initial disclosures
4 and you think they should have been, but that strikes me as a
5 different question. Are you asking for something related to
6 the initial disclosures that either you don't have or you
7 want?

8 MS. HAMMETT: Yes.

9 THE COURT: What is that?

10 MS. HAMMETT: They still have not provided the name
11 or account information, anything that I could use on a
12 subpoena to subpoena their telephone records from a third
13 party. So I only have what data they're giving me, and I have
14 reason to believe that the data they're giving me has been
15 altered and spoliated. I don't know if that's a true word,
16 but spoliation of evidence. So they have refused to give me
17 certain tapes that I know dispute the -- which tapes those
18 are, and they have given some, like, PRANet reports that don't
19 show all of the communication, and then the recordings --

20 THE COURT: So let me -- Ms. Hammett, let me stop
21 you.

22 MS. HAMMETT: Okay.

23 THE COURT: Those are -- I think those are discovery
24 issues, if you asked for them and for some reason they didn't
25 give them to you. Maybe you have a right to them, maybe not,

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1 but I don't know that any of what you've just discussed is
2 something that they have to give you as part of the initial
3 disclosures. I want to make sure we're -- we're going to talk
4 about some of your motions on discovery later on, but I want
5 to make sure on this one you're thinking about specifically
6 the initial disclosures, and I'm trying to figure out what it
7 is that they didn't put into their initial disclosures that
8 you think they had an obligation to and why you think that.

9 MS. HAMMETT: Okay. I'm sorry. I need a moment to
10 think.

11 They -- by not providing adequate initial
12 disclosures, they have not given me the vocabulary or what --
13 like the people that I need to ask about. So I have solved my
14 own interrogatories. Knowing I only have 25 of them, I wanted
15 to use them to the most advantageous questions, but because
16 their initial disclosure did not give me specific categories,
17 it didn't -- I mean, it was just so general, like I did
18 provide you with a copy of it, and you can see that, you know,
19 they basically just said, oh, we're going to give you our
20 business records, but we're going to use our business records.
21 Well, they didn't tell me which business records.

22 So, like back to the, you know, latest statement
23 from Capital One, they should have at the initial disclosure
24 told me that they had that statement, because that's something
25 that they need to use to prove their defense, and they knew

1 they were going to use it if they had it, and they didn't
2 provide it.

3 THE COURT: So --

4 MS. HAMMETT: So I didn't know what their defenses
5 were.

6 THE COURT: So at this point do you want me to
7 compel them to supplement their initial disclosures?

8 MS. HAMMETT: Yes.

9 THE COURT: And when you ask that, specifically if
10 you could tell me maybe in three sentences specifically what
11 would you like them to supplement, to supplement their initial
12 disclosures with or on?

13 MS. HAMMETT: All documentation that they will be
14 using to support their defense of that they're claiming that I
15 owed the alleged debt, and so what are they basing that
16 allegation on. So far they've given us a couple of pieces,
17 but very slowly, and not enough. So if they have any other
18 documentation that shows that I owed a debt, I would like to
19 know what that documentation is.

20 THE COURT: Okay. Defendants, or defendant, what
21 are your thoughts on all this?

22 MR. MITCHELL: Your Honor, this is David Mitchell,
23 and I will speak to this motion or this issue.

24 So, Your Honor, I think the -- as Your Honor
25 observed at the beginning of today's call, we did have a

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1 hearing, I believe it was November 10th, a telephonic hearing,
2 at which time, you know, we discussed the initial disclosures
3 that were made by Portfolio Recovery Associates. At that
4 time, Ms. Hammett expressed some concern about our initial
5 disclosures, and also, you know, pending at that time was our
6 motion for entry of a protective order, which was ultimately
7 entered.

8 Following the entry of that protective order, PRA
9 did supplement its initial disclosures. We certainly submit
10 that we have completely fulfilled any -- all obligations under
11 Rule 26(a)(1). Particularly, Your Honor, I think what may be
12 the disconnect here is Rule 26(a)(1), (ii) specifically, which
13 is the section of Rule 26 that deals with documents in terms
14 of initial disclosures, it explicitly allows a party, rather
15 than, you know, making a document, a completely, you know,
16 100 percent document production of every document that may
17 ever be used in the case, you know, at that early juncture it
18 allows a party to identify by category the types of documents
19 or the nature of the documents that it may use in the case.
20 That is what Portfolio Recovery Associates did here. We
21 identified by category the documents that we expect we may
22 use.

23 I think Ms. Hammett's concern or her objection is
24 that we did not actually make our document production at that
25 time. But, Your Honor, I am confused on this, because

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1 Ms. Hammett has served request for productions and
2 interrogatories on Portfolio Recovery. Those were served back
3 in the November timeframe. We have responded to those
4 document requests and interrogatories, provided all documents,
5 yet -- and have -- you know, frankly I don't believe there's
6 anything else on the docket following, you know, relating to
7 any alleged deficiencies with respect to our document
8 productions. And so I'm --

9 THE COURT: Let me ask you this: Have you all or
10 did you all provide the names of people who are likely to have
11 discoverable information supporting your defenses? And here's
12 why I'm asking. At least in the document I have in front of
13 me -- and this may be the old disclosure, not the new
14 disclosure -- it -- it's a little vague there, present or
15 former employees of representatives. I guess one of the
16 things I hear Ms. Hammett saying is, look, you don't have
17 people's names here, and she, at the very least, needs
18 people's names or is entitled to people's names who you might
19 call or who have discoverable information.

20 What can you tell me about that?

21 MR. MITCHELL: Yes, Your Honor. I think the
22 document you have is the, what I'll call the first round of
23 initial disclosures. We did supplement those and identify
24 names. I don't believe, because there has not been, you know,
25 a motion with respect to the initial disclosures that were

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1 provided after the protective order was entered, that the
2 Court has a copy of those initial disclosures, unless I'm
3 mistaken.

4 THE COURT: No, I think you're not mistaken.

5 MR. MITCHELL: Okay. And I also believe that in the
6 interrogatories and, you know, the general discovery request
7 that Ms. Hammett has made, that individuals have been
8 identified. And so I'm -- I don't believe, you know, to the
9 extent there was an alleged deficiency in, you know, with
10 respect to the initial disclosures, which we deny, I believe
11 that any deficiency, you know, was corrected by those
12 supplemental disclosures, and certainly we're well on our way
13 in discovery. We produced a lot of documents and responded to
14 interrogatories at this point all relating back.

15 So, again, I think there is a fundamental disconnect
16 here, and what I think Ms. Hammett is arguing is, they have
17 given me documents now, but I should have had those documents
18 before. We deny that, but I'm also not sure where that leads
19 us today, particularly since there's no motion that I'm aware
20 of regarding the rather extensive discovery that's been
21 conducted.

22 THE COURT: I have what I need on this.

23 MS. HAMMETT: May I please respond?

24 THE COURT: Ms. Hammett, you can have two minutes,
25 but we have a lot of motions to get to. So in general we're

1 only going to have one opportunity for each side to speak, but
2 if you want on this one you can have two minutes to respond.

3 MS. HAMMETT: Thank you.

4 Yes, he is just lying to you. They have not given
5 me any names except for Ms. Dreno (phonetic). I would like
6 for him to give us particulars, because he's saying, we've
7 produced these documents, but they have not produced the
8 documents. And then pursuant to FRE 106, they have not
9 produced entire documents. So they've given me pages of the
10 PRA, but they refuse to let me inspect the PRANet documents.
11 I offered to go to Virginia, and they said, no, you can't come
12 to Virginia to look at the PRA documents, because we have
13 millions of people's records here, and we don't want you near
14 them.

15 So, and I offered to go to Rose Law Firm and let
16 them do it remotely, but they've given no interrogatory
17 responses at all. And my interrogatories were made too late
18 for the 30-day period. By the time that their interrogatory
19 responses are due, I will not have the ability to go to you
20 for help to get them to supplement their responses.

21 THE COURT: Okay. Given what I've heard, I am going
22 to deny the motion to compel initial disclosure. I think most
23 of what Ms. Hammett raises are discovery issues that are
24 non-initial disclosure-related issues. I think that the
25 defendants have complied with the letter of the initial

1 disclosure requirement. I understand that Ms. Hammett is
2 concerned about certain documents and certain other
3 information, but I think to the extent there is a concern, it
4 is not a concern that entitles her to get me to compel
5 additional initial disclosures, certainly not at this point.
6 There may be discovery concerns that are valid, and we can
7 deal with those if I have a proper motion in front of me, but
8 as to the initial disclosure motion to compel, I'm going to
9 deny it.

10 We are now going to go on to the next motion I have
11 in front of me, which is Ms. Hammett's motion to modify the
12 subpoena to exclude text messages and electronic mail, and
13 this is Document 49. I will tell you, as I was reading
14 through this, it strikes me that there really is no actual
15 disagreement here, and the disagreement was perhaps
16 Ms. Hammett not understanding what the defendants were asking
17 for in this particular subpoena. Having said that, I will
18 certainly let Ms. Hammett tell me if that is wrong or if that
19 is right, and then, of course, I will give everybody a chance
20 to make their arguments.

21 Ms. Hammett.

22 MS. HAMMETT: I'm not sure that I understand you.

23 THE COURT: What is it that you don't understand,
24 Ms. Hammett?

25 MS. HAMMETT: What you just said. I don't

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1 understand what you -- you said that I -- my misunderstanding
2 of it is.

3 THE COURT: Yes. So if you read your motion and the
4 defendant's response, at least the way I took it is you didn't
5 want certain content of your messages to be released, and they
6 were not asking for the content of those messages. So I -- I
7 thought I understood that maybe what you were worried about or
8 upset about was actually not what they were asking for.

9 MS. HAMMETT: And the whole point might be moot,
10 because I've called Verizon, and they said that they do not
11 have the objectionable material. But when PRA responded.
12 They said, we aren't really trying to get that material, but
13 we want to be able to ask for those things later. So I don't
14 have their motion in front of me or their response in front of
15 me, so I'm paraphrasing it, but my understanding is that they
16 want to keep the door open to having all my text messages to
17 everybody I know, and --

18 THE COURT: But hold on a second, Ms. Hammett. Let
19 me stop you.

20 MS. HAMMETT: Yes.

21 THE COURT: That is correct in some sense, although
22 I don't think they want that information from Verizon. But
23 you're right, they're keeping the door open to getting that
24 information in another way, but that's not the issue of this
25 particular motion. If they try to get that information in

1 some other way and you're unhappy about it or anything else,
2 then there will need to be discussion and a motion about that.

3 But as I understand it, this motion is about what
4 they want from Verizon, and they've agreed that they're not
5 getting that information from Verizon.

6 MS. HAMMETT: Okay. And I would like the same
7 information. Like, I would expect the same exact subpoena as
8 them, just without the text messages and e-mails. So I have
9 no problem with the subpoena. I want them to have that
10 subpoena fulfilled.

11 THE COURT: Okay. Defendants?

12 MR. KOMISIN: Judge, this is John Komisin.

13 It sounds like there's no disagreement on what the
14 subpoena's calling for at this point. It's my understanding
15 that they independently confirmed that that material can't be
16 produced anyway. So I don't believe there's a lot of
17 controversy at this point.

18 THE COURT: I agree. I am finding this motion moot.
19 It will either come up as a denial for mootness or simply just
20 a finding it as moot. I obviously understand there might be a
21 question out there later on about whether or not the
22 defendants can, if they try to get the information they say
23 they want and if Ms. Hammett is unhappy about it, there might
24 be a question for me to resolve later on, but that is not at
25 issue in this motion.

1 Okay. The third one that I have now is
2 Ms. Hammett's motion for reconsideration of the order filed
3 December 13, 2021, allowing Portfolio Recovery Associates
4 leave to file three documents under seal, and this is Document
5 54.

6 It's Ms. Hammett's motion, so Ms. Hammett, I'm happy
7 to let you explain to me what it is you want and why you think
8 you want it.

9 MS. HAMMETT: Okay. So Portfolio Recovery is making
10 an attempt to make this a Star Chamber. They want everything
11 to be considered confidential, and I think that they've abused
12 the protective order that I hesitantly agreed to in our last
13 hearing, and they have just abused it, and then they've
14 rewritten it, and they keep saying or repeatedly that the
15 protection order says that we're supposed to file everything
16 under seal.

17 My understanding of that section of the protective
18 order -- I think it's Section 12, I might be wrong -- that
19 that section says that we're supposed to redact pursuant to
20 5.2, and that, you know, where you can't redact and accomplish
21 the goal of keeping confidential information confidential,
22 then you can ask the Court to put it under seal. But you
23 still have to show a need for it to be, you know, like they
24 still should have to show that the information that they're
25 calling confidential should be under seal. Because my

1 understanding is that even if it's confidential, I can still
2 use it in open court as long as it is necessary. I'm not, you
3 know, just trying to blab all their private stuff out to the
4 public, but if I'm -- you know, if I need to talk about one of
5 their procedures and it's in their procedure manual, then I
6 think that they're keeping these proceedings from the view of
7 the public by saying, our entire procedure manual is just
8 confidential, and that includes anything that we do to the
9 public on a daily basis. So not confidential, because
10 everybody knows they do it, but they want to still keep that
11 confidential. So I'm just trying to limit their abuse of the
12 filing under seal, and in particular their procedure manuals.
13 Which, you know, I don't need the whole procedure manual --

14 THE COURT: So let me stop you here, because I want
15 to make sure we're talking about the same thing on this
16 motion. The way I read your motion, you were talking
17 specifically about three documents. One is the bill of sale
18 from 2013, another one is an affidavit of sale from 2013, and
19 a third one is an untitled account summary with plaintiff's
20 whole name and information. Why do you think those should not
21 be filed under seal?

22 MS. HAMMETT: Okay. Those are only half of what I
23 was asking for. I would call these the half that are -- the
24 confidentiality belongs to me rather than them. So if they --
25 if they were required to keep those under seal, it's not to

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1 protect their trade secrets, it's to protect my privacy. And
2 while I am a very private person and would not want my
3 information out there, I think that it's necessary as part of
4 my complaint, and that if it's kept under wraps, then the
5 public is not gonna know whether or not the rulings that come
6 from the Court are substantiated. It's not going to form any
7 kind of precedent, like it just goes up through the appellate
8 clerk -- which it very well might -- then, you know, the
9 public is not going to know what we were discussing, what
10 information, you know. It just kind of looks like nobody's
11 gonna know that the documents have the wrong interest rates on
12 them.

13 So like one of the documents that you mentioned, the
14 data loading, they put the interest rate of zero. Well, on
15 the statement from Capital One, the interest rate is
16 24.9 percent annually. And so I think that if the public is
17 looking at the record, they're not going to understand or know
18 who to believe unless they see with their own eyes that, hey,
19 here's a document, it's very simple, the interest rate says
20 000 16 times, decimal .00, and then here's another document,
21 it's very simple, it's a Capital One statement, and it says
22 interest rate 24.9 percent. So I'm just looking for
23 transparency for the public.

24 THE COURT: Okay. Defendants, specifically with
25 respect to Document 54 what's your argument?

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1 MR. TREFIL: James Trefil for Portfolio, Your Honor.

2 I think this is one of those situations where there
3 are multiple motions that are intertwined. These -- Docket 54
4 and Docket 77 are two of Ms. Hammett's challenges to motions
5 for filing under seal, but they're also related directly to
6 her blanket challenge to PRA's confidentiality designations,
7 which is Document 68, and PRA did a full and complete response
8 in Docket 71 identifying the basis for confidentiality for all
9 of the documents that are currently at issue here.

10 Docket 77 is actually for PRA's summary judgment
11 motion, so I'm not sure that is ripe yet. That has not been
12 fully briefed. So the three documents in Document 54, bill of
13 sale, affidavit of sale and the screen capture from PRANet of
14 plaintiff's account information, those are directly addressed
15 in various sections of our opposition to the blanket challenge
16 to all of PRA's confidentiality designations. I don't know if
17 you'd like me to --

18 THE COURT: Can I just ask for your high -- the high
19 level on these three exhibits? Can I just ask for the
20 high-level reason you think that they are properly filed under
21 seal?

22 MR. TREFIL: Certainly, Your Honor.

23 The affidavit of sale and bill of sale are our sale
24 documents related to the sale of Ms. Hammett's account from
25 Capital One to PRA. PRA engages in periodic purchases of

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1 pools of assets from different creditors, Capital One
2 included, but there are many others, and it is engaged in
3 ongoing negotiations with the original creditors on a periodic
4 basis to purchase assets over time.

5 The affidavit of sale and bill of sale are documents
6 resulting from that sales transaction. The negotiations are
7 between private parties. There is no public interest in their
8 disclosure. And in particular, public disclosure of the sale
9 of -- public disclosure of PRA sale documents, meaning the
10 documents that it negotiates with creditors, would dampen
11 PRA's ability to negotiate favorable terms effectively going
12 forward and would disclose to PRA's competitors PRA's business
13 strategy with respect to purchasing these pools of assets.

14 PRA's not the only debt buyer out there. Together
15 with several others, they form the liquid market for creditors
16 to offset the expense from delinquent debtors, and PRA's
17 closest competitors I'm sure would be more than happy to take
18 a look at documents that PRA negotiates at arm's length with
19 creditors for its own purchases.

20 Disclosure would -- disclosure of PRA's sale
21 documents of Capital One in this instance would also, in
22 addition to disadvantaging PRA competitively with respect to
23 its competitors, would put other creditors on notice of the
24 terms PRA has with Capital One, thereby disadvantaging with
25 respect to not only its creditors, but its potential customers

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1 going forward.

2 There is no public interest in this, in disclosing
3 these terms. Ms. Hammett says that she has no interest in
4 sort of broadcasting PRA's confidentiality documents, but I
5 can tell you that she's told us something quite the opposite.
6 She has made clear of her intention to, in her words, get loud
7 and try to disclose as much of PRA's proprietary information
8 as she possibly can. She has a blog that she contributes to
9 repeatedly and has had several articles relating to PRA, and
10 I'm certain it is her intent, if these confidentiality
11 designations are -- these documents are de-designated, it's
12 her intent to use that either as settlement leverage against
13 PRA or simply to harm PRA's competitive, neither of which is
14 legitimate for purposes of confidentiality here.

15 THE COURT: You may have said this, and if you did I
16 apologize, but could you just talk a little bit about C again
17 and why C is problematic for you all?

18 MR. TREFIL: The --

19 THE COURT: The untitled account summary.

20 MR. TREFIL: The account information is a screenshot
21 of PRANet. Now, PRANet is PRA's system of record. It is --
22 it has been developed over time. It is the way PRA keeps
23 track of different customer accounts. It's the way it
24 monitors those accounts to most effectively negotiate -- most
25 effectively implement its collection strategy, and PRANet

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1 generally has never been disclosed to anybody else, it is only
2 accessible on PRA's premises. It is highly guarded, and it's
3 developed at great cost and expense by PRA.

4 And while the specific information relating to
5 Ms. Hammett, you know, as she points out, it's relating to
6 her, it's the formatting and presentation of the way that
7 information is collected and maintained in PRANet is PRA's
8 information. That is PRA's intellectual property. That is
9 how it manages accounts.

10 I don't know for certain, because I've never seen
11 competitors' systems of record, but I'm sure it differs from,
12 say, Midland, and PRA thinks it has a significant competitive
13 advantage from the way it organizes and maintains its
14 information in PRANet and has a strong interest in not making
15 that information public.

16 THE COURT: Okay. I understand your position.

17 Ms. Hammett, I'll give you two minutes to respond on
18 any of that, but just two minutes, because we do have to get
19 to a lot.

20 MS. HAMMETT: Thank you.

21 I believe that we're discussing form over content.
22 I do not care to post a form that they collect their
23 information or data in. I do want to be able to discuss the
24 content, especially the content as it pertains to the
25 particular account they've assigned to me. And it is not my

1 intent to be loud about PRA's business model. I am only going
2 to try to expose their violation of the FDCPA and make the
3 courts more accessible to other litigants who don't have my
4 resources and who don't have the resources that are required
5 to fight PRA, who wins by default on 80 to 90 percent of all
6 the cases they file, which is 3000 per week, I think,
7 nationwide. So I -- you know, I'm not publishing anything
8 that is a trade secret. All I'm publishing is the thing about
9 the affidavit.

10 Which, by the way, all of these same documents,
11 except for the PRANet, are published over and over again,
12 because they often use them. Like I would say every time that
13 they take someone to court, they file similar bills of sale.
14 And all they need to do is redact, which they did anyways.
15 They redacted the sales price that they gave for the alleged,
16 you know, portfolio that they bought from Capital One.

17 THE COURT: Okay. I am going to deny -- as to
18 Document 54, I'm going to deny the motion for reconsideration.
19 I do think the exhibits themselves are properly marked
20 confidential. Whether or not the contents from those exhibits
21 can be used by Ms. Hammett in a different forum is a different
22 question. I think the documents themselves are appropriately
23 marked as confidential.

24 Ms. Hammett, in terms of the use of the content, if
25 you want to use any of the content of these documents, you're

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1 going to need to file your own motion with the Court and
2 explain what content you would like not to be confidential and
3 explain it with specificity. But as for the documents
4 overall, I think they are appropriately marked confidential.

5 Now, we are dealing with what I have in front of me,
6 I guess the fourth thing I have in front of me. This is
7 Document 60, but I think it may be dealt with from Document
8 61, meaning it may be moot. So Document 60 I have is a
9 handwritten motion from Ms. Hammett that says, motion to order
10 redaction. Defendant filed an exhibit as Document 56-1 in
11 which Portfolio Recovery Associates gave plaintiff's
12 unredacted Social Security number. But then on Document 61, I
13 think I understand that Portfolio Recovery Associates filed a
14 correction and a replacement in which they redacted out the
15 date of birth and Social Security numbers.

16 Ms. Hammett, do you still -- I mean, is Document 60,
17 this Social Security issue, are we done with that because of
18 their corrected filing, or is there something that you're
19 still concerned about is out on the open record that has your
20 Social Security number?

21 MS. HAMMETT: They more recently filed another
22 document, and they left -- it was in their motion for summary
23 judgment -- they left -- in the brief they left open account
24 numbers and my birth date. I'd prefer not to have my birth
25 date out there. I don't care about the account numbers so

1 much, but I would hope that they stopped doing that. They
2 keep putting my stuff out there that's confidential and then
3 saying, so sorry, it was an accident. Then on the other hand
4 they consider that all of their data's completely accurate and
5 that they know that I owe this money because they have the
6 data that says so. But, so they're going ahead and
7 continually putting my private confidential information out
8 there, and then if I just happen to go down to the courthouse
9 and pull up the PACER and see that they've done that, then
10 they say, oh, sorry, accident.

11 THE COURT: I asked a bad question. Let me ask a
12 different question. As to Document 56-1, which is what you
13 were complaining about in Document 60, do you agree that this
14 request is now moot because they have fixed it in Document 61?

15 MS. HAMMETT: That particular event has been
16 corrected.

17 THE COURT: Okay.

18 MS. HAMMETT: I would hope that they don't continue
19 to do the same mistake over and over again.

20 THE COURT: Okay. I am going to find the request in
21 Document 60 moot.

22 Defendants, I assume that I don't have to tell you
23 all that I expect you to be as careful as you can possibly be
24 and make sure that you do not file things with unredacted
25 Social Security numbers and other unredacted personally

1 identifying information. You're all more than welcome to say
2 something for the record if you want, but I assume you can
3 take my direction.

4 MR. MITCHELL: Your Honor, David Mitchell.

5 Yes, Your Honor, absolutely. I will take
6 responsibility. There was, as Ms. Hammett pointed out, an
7 accident. It was purely an oversight with the voluminous
8 filings we've had. We have put in, taken extra caution and
9 put in extra procedures to make sure it does not happen again.
10 And as soon as we were notified of the issue, we corrected it.
11 But I certainly understand Your Honor, and we were -- will be
12 extra vigilant to ensure there are not additional oversights.

13 THE COURT: Okay. I should say in addition to
14 finding Document 60 moot, I am going to grant Document 61,
15 which then obviously makes Document 60 moot.

16 So we shall go on.

17 I now have in front of me Document 62, which is
18 defendant Portfolio Recovery Associates' motion for leave to
19 file under seal and the plaintiff's opposition. Just for the
20 record, the defendant, Portfolio Recovery Associates, is
21 asking for the following: In response to plaintiff,
22 Ms. Hammett's, reply to partial motion for summary judgment,
23 PRA will be filing its motion to strike brief on December 22nd
24 and will be attaching exhibits and disclosing information from
25 materials that have been designated as confidential under the

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1 protective order. The protective order states that any
2 confidential materials disclosed in any motion, brief, exhibit
3 or filing with the Court should be filed under seal. And so
4 you're asking for permission to file the motion to strike
5 brief and -- or to file under seal the confidential exhibits
6 in the motion to strike brief.

7 Let me start out here with defendant, since it's
8 their motion. Obviously you all have, I think -- well, you
9 should tell me. Did you all ever go ahead and file this
10 motion to strike brief?

11 MR. MITCHELL: Yes, Your Honor. I believe in Docket
12 64 it was tendered to the clerk's office. So I think I'll
13 stop there, but I think the answer is "yes."

14 THE COURT: Okay. That makes sense. I just wanted
15 to make sure. We were having a little internal debate about
16 that.

17 Okay. So let me just ask you to give me the
18 30,000-foot view of why you think the exhibits that you've
19 asked to be sealed should be sealed.

20 MR. MITCHELL: Yes, Your Honor. David Mitchell.

21 The protective order -- and I will try not to rehash
22 the comments made by Mr. Trefil earlier, which I think are,
23 you know, similar to this issue here; they overlap. But
24 there's a protective order in the case that allows parties to
25 designate documents as confidential if they believe, you know,

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1 they are subject or appropriate for protection, you know,
2 based on various interests. That protective order -- excuse
3 me, the protective order provides a procedure for the other
4 party to challenge a confidentiality designation in the event
5 that they disagree with it, and there's a procedure to do
6 that. It requires a response or a meet and confer process
7 within 10 days, and then an appropriate motion if that is not
8 resolved between the parties.

9 With respect to the exhibits here, Your Honor, they
10 were designated as confidential in the, you know, pursuant to
11 the protective order. There was no objection or challenge to
12 those designations, and therefore under the protective order I
13 think Portfolio Recovery is obligated by the Court's order to,
14 you know, treat the documents that it has designated as
15 confidential, as confidential.

16 THE COURT: Let's assume for a second that I'm
17 willing to give the pro se plaintiff a break on following the
18 exact process in the protective order. What about the
19 substance?

20 MR. TREFIL: Your Honor, James Trefil. I apologize
21 for jumping in, but if I can speak to that.

22 This is referencing a situation where Ms. Hammett
23 identified or characterized, did not quote, but characterized
24 information from PRA's internal policies specifically relating
25 to its policies regarding issuance of 1099s for the waiver of

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1 debt. We point out that this is kind of a -- this is really a
2 side issue. PRA often, not always, but often, when a consumer
3 files suit against it, it will often waive the debt,
4 essentially treating it as uncollectible, much the same way
5 Capital One did with Ms. Hammett's account when it charged it
6 off back in 2011.

7 MS. HAMMETT: I object.

8 THE COURT: Hold on.

9 MS. HAMMETT: I'm sorry.

10 THE COURT: Ms. Hammett, this is not your turn to
11 speak.

12 Go ahead, defendants.

13 MR. TREFIL: A question arose regarding the issuance
14 of a 1099 for that waiver of debt. Specifically, Ms. Hammett
15 asked us directly whether PRA intended to issue a 1099 or not.
16 The approach PRA takes with this is as follows: When debt is
17 waived, there is something called a contested liability
18 doctrine, which essentially says if a debtor contests the
19 existence of a debt in good faith, no 1099 be issued.

20 Typically PRA gives its consumers the benefit of the
21 doubt, and when they contest it, they do not issue a 1099.
22 That was PRA's position at the time. We can certainly speak
23 about that, although it's largely irrelevant. Ms. Hammett
24 surmises that because PRA's not issuing a 1099, then she must
25 have never owed the debt in the first place.

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1 But in any event, in her particular motion, she
2 essentially characterized the information from PRA's internal
3 policy regarding the issuance of a 1099. In complete candor,
4 I will say that this is not a huge issue, but given the
5 litigious nature of the situation, PRA is not willing to just
6 sit by and let a breach of confidentiality take place in the
7 pleadings and move to have the document filed under seal.

8 THE COURT: Okay. Ms. Hammett?

9 MS. HAMMETT: Since PRA does file 1099s for -- under
10 their policy, like it's in their policy and procedure manual,
11 it says that they're going to issue a 1099. And they have a
12 special department that they transfer people to. I think that
13 it's a policy that's known. Also, it's a requirement. So
14 they're saying, you know, we're required to give this form,
15 but we want to keep that confidential.

16 And so I just don't see why that that would be a
17 trade secret or something that people don't -- wouldn't
18 otherwise know about. So they're just trying to keep it
19 confidential for non-transparency to make it as difficult as
20 possible for me to get this information out to the public.
21 And, you know, the whole point of asking for punitive damages
22 is to deter them from doing the same thing to other people.

23 THE COURT: Ms. Hammett, let me ask you, is PRA
24 right that you did not object to the material being identified
25 as confidential within the appropriate timeframe?

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1 MS. HAMMETT: I'm sorry, I didn't understand that.

2 THE COURT: Sure. Under the protective order, you
3 have a certain amount of time to object to PRA's designation
4 of material as confidential, and there's a certain way you're
5 supposed to do that. Is PRA correct that you didn't timely do
6 that?

7 MS. HAMMETT: No, they are not correct. I did
8 make -- within the 10 days I objected to their
9 confidentiality, and I've done that every time.

10 THE COURT: So when you say within the 10 days you
11 did that, when did they first mark this as confidential, and
12 when did you object?

13 MS. HAMMETT: I don't know which ones we're talking
14 about right now, I'm sorry. I'm not -- let me see if I can
15 even bring it up.

16 So I don't know which packet. I could tell you that
17 the December 1st -- I mean, the December 8th packet, which was
18 their first confidential one, I responded to within 10 days
19 and --

20 THE COURT: Well, I guess my question is: Are you
21 talking about responding to their motion for leave filing
22 within 10 days, or are you talking about responding --
23 objecting to when they first gave you the documents that are
24 at issue and marked them confidential?

25 MS. HAMMETT: The second.

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1 THE COURT: Okay.

2 MS. HAMMETT: I have objected within 10 days of
3 being served any production of documents that have designated
4 documents as confidential. Within 10 days I have responded
5 with an objection. They have then come back and said, we
6 don't agree with your objection, go to court, go ask the
7 Judge.

8 THE COURT: Okay. Defendants, can you give me your
9 view and just explain to me sort of a little more clearly why
10 you say Ms. Hammett didn't object within the timeframe she
11 needed to?

12 MR. TREFIL: Yes, Your Honor.

13 MR. MITCHELL: Certainly, Your Honor.

14 THE COURT: Only one of you, and tell us your name.

15 MR. MITCHELL: Sorry, Jim, I'll start. But David
16 Mitchell, Your Honor.

17 Ms. Hammett I believe has -- every time we've
18 produced documents that we've identified as confidential, we
19 generally receive a response objecting to that, and we've had
20 discussions. My comment earlier -- and I wasn't clear on this
21 or misstated it, I apologize -- but that the protective order
22 then, if the parties disagree, require the non-designating
23 party to seek relief from the Court so the Court can make a
24 determination as to the appropriateness of the confidentiality
25 designation. That has never been done here.

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1 And with respect to the documents at issue in Docket
2 Number 63, Ms. Hammett advised us that she disagreed with our
3 objections. We -- our confidentiality designations. We
4 explained that they were confidential and that she's required
5 to comply with the Court's protective order, but then, rather
6 than doing that or seeking relief from the Court, she
7 unilaterally made the determination that they were not
8 confidential or should not be subject to confidentiality and
9 then disclosed in her papers the substance of the documents
10 that had been designated.

11 So, Your Honor, Ms. Hammett, again, you know, rather
12 than seeking relief from the Court to address this issue, just
13 unilaterally made that determination herself over PRA's
14 objections and filed the -- you know, filed her papers,
15 including, you know, paraphrasing from PRA's policies related
16 to the 1099 issue that was discussed.

17 THE COURT: Okay.

18 MS. HAMMETT: May I have one minute?

19 THE COURT: You may.

20 MS. HAMMETT: The disclosure of substance was in
21 dispositive pleadings or just dispositive opposition to
22 motions, and so that's it.

23 THE COURT: Okay. I'm going to take the
24 plaintiff's -- I'm going to take the defendant's motion for
25 leave to file under seal, which is Document 62, and the

1 defendant's motion to strike or file under seal plaintiff's
2 reply to the opposition, I'm going to take those under
3 advisement. I just want to look at those a little more
4 closely to make sure I understand everything that's going on
5 before I rule on them. However, I will try to get you all a
6 ruling very quickly on them.

7 Let me ask defendants, is there any concern at this
8 point in the -- that there's something out there that I need
9 to quickly take away or anything like that? The one thing is
10 I don't want to -- I don't want my delay in ruling on this to
11 cause some type of prejudice that I'm not seeing. Or is it a
12 situation where I can take a couple of more days to think
13 about these?

14 MR. TREFIL: James Trefil, Your Honor.

15 As I mentioned previously when I discussed this,
16 this is not a critical issue. It is disclosing PRA's
17 confidential information, but there's no need for haste.

18 And just to clarify one point, plaintiff made two
19 timely objections under the protective order to PRA's initial
20 confidential production, which is the vast majority of
21 documents we're talking about here. One has to do with
22 redactions that are not currently at issue. The other was
23 specific to PRA's FDCPA policy. That has nothing to do with
24 the 1099 issue. She did not timely object to PRA's policy
25 containing the 1099 information.

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1 THE COURT: Okay. I appreciate that.

2 As I said, I'm going to take that one under
3 advisement and look at it a little more closely. I just have
4 a few questions that I need to run down.

5 Okay. Now, I am looking at Document 68, which is
6 Ms. Hammett's motion to file some exhibits designated
7 confidential by defendant under seal as an exhibit to
8 discovery motion, and a discovery motion to remove the
9 designation and revise the protective order.

10 Ms. Hammett, would you like to talk about that one?

11 MS. HAMMETT: I'm sorry, Your Honor. I -- I missed
12 that again.

13 Let me tell you, I was very anxious before we
14 started, and I took a very small dose of clonazepam, but I
15 haven't taken it for maybe three months, and it seems like
16 it's fogging my mind a little bit. But I just blanked out
17 when you were speaking, I'm sorry.

18 THE COURT: That's okay.

19 Let me stop for a second, then, and let me get
20 defendant's thoughts on whether we need to continue this
21 motion or this hearing to another time in light of what the
22 plaintiff just said.

23 MR. TREFIL: James Trefil, Your Honor.

24 I think in light of Ms. Hammett's last statement, I
25 think it might be best to table the remainder of the

1 discussion. I would just as soon not have an argument come
2 back at my client that Ms. Hammett was unable -- you know, an
3 attack on an order based on any alleged inability to respond
4 during the hearing.

5 THE COURT: I agree.

6 MS. HAMMETT: Your Honor, may I add something,
7 please?

8 THE COURT: You may.

9 MS. HAMMETT: I appreciate that, and, you know,
10 probably -- and I understand their point; it's very valid.

11 There's some issues that I was excited to discuss,
12 because they have effect to the pending motion for summary
13 judgment, and the things that you've discussed already brought
14 up a question for me about that motion on summary judgment,
15 which is due -- my response is due on the 22nd. And so if I
16 may, I'd like to ask for your guidance on that so that I
17 don't, you know, proceed and then really mess up on a very
18 important motion.

19 My question is that besides the fact that it's a
20 very long motion with, I don't know, a hundred case laws that
21 I have to read and, you know, analyze, and then 72 statements
22 of undisputed fact that I have to dispute, I am intending to
23 include quite a bit of documentation, of course, and most of
24 the documentation they have filed under seal. So now I think
25 I'm confused, because now I have to file a motion to use

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1 documents that are filed under seal. And correct me if I'm
2 wrong, because I have never done this before. This is
3 literally my first federal discovery.

4 THE COURT: Well, so first you need to understand,
5 Ms. Hammett, that I can't give you legal advice. What I can
6 tell you --

7 MS. HAMMETT: Okay.

8 THE COURT: What I can tell you, given the
9 protective order, is if that there are any documents that you
10 are using or referring to or quoting from or paraphrasing that
11 are confidential -- and when I say, "are confidential," at
12 this point I mean are marked as confidential. It doesn't
13 matter whether you agree with that or not. If they are marked
14 as confidential and I have not made a ruling that takes that
15 designation away, then whatever you are going to file, you
16 need to file under seal, both the exhibits that are
17 confidential and any discussion in your brief of the
18 confidential exhibits.

19 Now, you could, of course, redact from the public
20 version of the brief whatever information is confidential and
21 then file a private -- a private version that doesn't have the
22 redactions. And when I say, "private," I mean under seal.
23 But that's what you have to do.

24 MS. HAMMETT: Then I basically need to file the
25 entire thing under seal.

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1 THE COURT: Then that's what you have to do.

2 I understand that you were excited about or wanted
3 to get to some other motions, and I can certainly understand
4 that. Quite frankly, I shared the desire to want to get
5 through a bunch of other motions, and I'm sure, to be fair,
6 defendants shared that desire, as well. However, given what
7 you told the Court, I have a responsibility to make sure we
8 don't proceed when there's a question as to whether you can
9 provide a full, you know, a full and fair position for
10 yourself.

11 MS. HAMMETT: I'm not sharp.

12 THE COURT: And so I don't think at this point we
13 can proceed.

14 And so what we are going to do is we are going to
15 reschedule a -- or schedule another hearing to deal with the
16 remainder of the outstanding motions. I am unavailable next
17 week, but I would like to schedule a hearing for the week
18 after. Although my courtroom deputy is shaking her head, so
19 maybe she'll say we don't have time. But my point is I would
20 like to schedule this for the soonest possible time that we
21 can, because I want to get through all of these outstanding
22 motions.

23 The good news is that by that time, I feel -- I
24 should feel confident one way or another about the motion that
25 I just held in abeyance, so I'll be able to give you all an

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1 answer on that one, as well.

2 I'm going to have you all offline talk to Heather
3 about scheduling a new hearing, but I would like that hearing,
4 as I've said, to occur as soon as possible given everybody's
5 schedule.

6 Defendants --

7 MS. HAMMETT: Your Honor --

8 THE COURT: Hold on, Ms. Hammett.

9 Defendants, do you have anything else you'd like to
10 say?

11 MR. TREFIL: James Trefil, Your Honor.

12 Only one thing I'd like to add, and this is not ripe
13 yet because we have not seen Ms. Hammett's opposition, but we
14 anticipate that we will likely need to request an extension.
15 We expect that the opposition will be lengthy, and it will
16 take some time to digest and assimilate before we will be able
17 to put together our opposition and reply to the Court. So I
18 just wanted to make sure nobody was caught unawares when we
19 requested that. I assume Ms. Hammett will not contest the
20 extension, but we will likely be moving for one.

21 THE COURT: I understand you laying that marker
22 down. Obviously when you all move for one, and Ms. Hammett
23 will have a chance to respond if she wants, and then I'll
24 decide that issue. But thank you.

25 Anything else from defendants before I go to

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1 Ms. Hammett?

2 MR. TREFIL: James Trefil. No, Your Honor.

3 THE COURT: Ms. Hammett, what would you like to say?

4 MS. HAMMETT: I am going to have an almost
5 impossible time complying with the answering the -- or, I'm
6 sorry, the opposition to the MSJ in -- by next Tuesday, this
7 coming Tuesday. I am working on it diligently, but there's
8 only one of me. As PRA has told you, I have several other
9 lawsuits, one of them in which I'm a defendant and I have no
10 control over. The other ones I've been ignoring completely.
11 It is physically impossible for me to respond in that amount
12 of time, and so, I mean, I have --

13 THE COURT: Ms. Hammett, Ms. Hammett, I've already
14 given you an extension, and, in fact, I think twice. Right?

15 MS. HAMMETT: No, no. One you gave me I think 10
16 days, and that was 10 days from their first service, which did
17 not include the statements of material facts and/or undisputed
18 material facts, and have you -- I hope that you've looked at
19 their motion and seen it's 51 pages on just the brief itself,
20 which is --

21 THE COURT: Ms. Hammett, how much more time would
22 you like?

23 MS. HAMMETT: A week.

24 THE COURT: Defendants, how do you feel about that?

25 MR. TREFIL: James Trefil, Your Honor.

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1 So we would be looking at a request for a March 1st.
2 The problem that -- I mean, the problem that I see, Your
3 Honor, is that the discovery cutoff here is March 2nd. We've
4 noticed Ms. Hammett's deposition for the 2nd. You know, I
5 understand Ms. Hammett's frustration in dealing with a lengthy
6 document. I will point out that the reason that the summary
7 judgment motion is as long as it is is because the complaint
8 is as long as it is, and there are so many claims that have
9 been brought. So to a certain extent this is a problem of
10 Ms. Hammett's own making.

11 Having said that, PRA consents to March 1st.

12 THE COURT: Okay. I think that's a wise decision,
13 and I appreciate that.

14 Ms. Hammett, you now have 'til March 1st to file
15 your brief and other related documents. Okay?

16 MS. HAMMETT: Thank you. Thank you, Your Honor.

17 THE COURT: Okay. Anything else, Ms. Hammett?

18 MS. HAMMETT: No. I thank you for understanding.
19 I'm having a nervous breakdown, so I'll try and take care of
20 myself.

21 THE COURT: Ms. Hammett, first of all, first of all,
22 it's no problem. Second of all, you know, look, cases are
23 important, and I get that, but they're not as important as
24 your mental health and your life. So I understand you care a
25 lot about this; you should. I get that. From your

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1 perspective, PRA has done something that you really have
2 problems with. Now, I understand their perspective, too, but
3 putting myself in your shoes, I understand how important this
4 is to you. But at the end of the day, you do need to
5 understand this is a case, and it is not -- it's not worth
6 your mental health, and it's not worth certainly anything more
7 than that.

8 So I think one thing I want to say before I get off
9 the phone is if you are really having a mental issue, I want
10 you to make sure as soon as you get off the phone you get help
11 from somebody. Do you understand that?

12 MS. HAMMETT: Yes. I'm very good about taking care
13 of my mental health, and I will do that immediately.

14 THE COURT: Okay. Very good. We are adjourned, and
15 we will reconvene at a time where Heather and the parties can
16 find the mutually convenient date to do it.

17 MR. TREFIL: Thank you, Your Honor.

18 MS. HAMMETT: Thank you, Your Honor.

19 MR. MITCHELL: Thank you, Your Honor.

20 (Proceedings concluded at 11:14 a.m.)

21 * * * * *

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Telephonic Motion Hearing

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(None.)

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CERTIFICATE OF REPORTER

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

Dated this 2nd day of MARCH, 2022.

14

15

/s/Stephen W. Franklin

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Stephen W. Franklin, RMR, CRR

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No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix H

Final Judgment Pursuant to All Orders Through June 15 2023

Laura Lynn Hammett
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Petitioner In Pro Persona

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LAURA LYNN HAMMETT

PLAINTIFF

v.

Case No. 4:21-CV-189-LPR

PORTFOLIO RECOVERY ASSOCIATES, LLC

DEFENDANT

FINAL JUDGMENT

Pursuant to all Orders entered in this case through today, it is CONSIDERED, ORDERED, and ADJUDGED that summary judgment is entered on all claims in favor of Defendant Portfolio Recovery Associates, LLC.

IT IS SO ADJUDGED this 15th day of June 2023.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix I

Constitutional and Statutory Provisions Involved

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§1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title. (June 25, 1948, ch. 646, 62 Stat. 929 ; Oct. 31, 1951, ch. 655, §48, 65 Stat. 726 ; Pub. L. 85-508, §12(e), July 7, 1958, 72 Stat. 348 ; Pub. L. 97-164, title I, §124, Apr. 2, 1982, 96 Stat. 36 .)

§1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928 ; Pub. L. 100-352, §2(a), (b), June 27, 1988, 102 Stat. 662 .)

Constitution of the United States of America Amendment XIV Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United Nations Universal Declaration of Human Rights Article Two

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, **property, birth or other status.**”

(Bold added for emphasis)

Eighth Circuit Court of Appeals Local Rule 47A Summary Disposition

(a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice. However, in an *in forma pauperis* appeal in which a certificate of appealability has been issued, the court will afford 14 days' notice before entering summary disposition if the briefs have not been filed.

The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the questions presented do not require further consideration.

The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. See 8th Cir. R. 47A(a)"; or "ENFORCED. See 8th Cir. R. 47A(a)."

(b) **On Motion of Parties.** The appellee may file a motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction. Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction must be filed within 14 days after the court has docketed the appeal.

On expiration of the time allowed for filing or express waiver of the right to file a response, or on receipt of the response, the clerk will distribute to the court the briefs filed, the record on appeal, and the motion and response. The court will consider the motion and enter an appropriate order. Except as the court orders, the filing of a motion to dismiss does not toll the time limitations set forth in the Federal Rules of Appellate Procedure or these rules.

RULE 47A: SUMMARY DISPOSITION

(a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice. However, in an *in forma pauperis* appeal in which a certificate of appealability has been issued, the court will afford 14 days' notice before entering summary disposition if the briefs have not been filed.

The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the questions presented do not require further consideration.

The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. See 8th Cir. R. 47A(a)"; or "ENFORCED. See 8th Cir. R.47A(a)."

(b) **On Motion of Parties.** The appellee may file a motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction. Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction must be filed within 14 days after the court has docketed the appeal.

On expiration of the time allowed for filing or express waiver of the right to file a response, or on receipt of the response, the clerk will distribute to the court the briefs filed, the record on appeal, and the motion and response. The court will consider the motion and enter an appropriate order.

Except as the court orders, the filing of a motion to dismiss does not toll the time limitations set forth in the Federal Rules of Appellate Procedure or these rules.

**Eighth Circuit Court of Appeals Local Rule 47B Affirmance or Enforcement
Without Opinion**

A judgment or order appealed may be affirmed or enforced without opinion if the court determines an opinion would have no precedential value and any of the following circumstances disposes of the matter submitted to the court for decision:

- (1) a judgment of the district court is based on findings of fact that are not clearly erroneous;
- (2) the evidence in support of a jury verdict is not insufficient;
- (3) the order of an administrative agency is supported by substantial evidence on the record as a whole; or
- (4) no error of law appears.

The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. See 8th Cir. R. 47B"; or "ENFORCED. See 8th Cir. R. 47B."

Federal Rules of Civil Procedure– Summary Judgment – Rule 56(a)

"Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment 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. The court should state on the record the reasons for granting or denying the motion."

12 U.S.C. § 5562(a) - Investigations and Administrative Discovery - Dodd-Frank Wall Street Reform and Consumer Protection Act

"The Bureau may conduct investigations to determine whether any person is or has been engaged in conduct that violates any Federal consumer financial law. The Bureau may require the attendance and testimony of witnesses, and the production of relevant documents, electronically stored information, or other materials, in connection with such investigations."

12 U.S.C. § 5562(b) - Hearings and Adjudicative Proceedings

"The Bureau may hold hearings and adjudicative proceedings to ensure compliance with Federal consumer financial law."

12 U.S.C. § 5562(c) - Civil Investigative Demands

"Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation of any Federal consumer financial law, the Bureau may, before the institution of any proceedings, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying, to submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony."

26 CFR § 1.6050P-1 Information reporting for discharges of indebtedness by certain entities

(a)(1) "*In general.* Except as provided in paragraph (d) of this section, any applicable entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least \$600 during a calendar year 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, except as provided in paragraph (b)(3) of this section, if and only if there has occurred an identifiable event described in paragraph (b)(2) of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred.”

An identifiable event under (b)(2)(i)(G) is “A 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.”

**In the United States District Court for the Eastern District of Arkansas, In the
Matter of the Implementation of Case Management/Electronic Case Filing
(CM/ECF), Amended General Order 53**

“The CM/ECF Administrative Policies and Procedures Manuals for Civil and Criminal Filings have been approved by the Court. It is recognized that these Manuals may require occasional revisions, which will be made necessary with the approval of the Court. // IT IS SO ORDERED this 1st day of December, 2018.”

LOCAL RULE 5.1

FILING OF DOCUMENTS BY ELECTRONIC MEANS

A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause.

Generally, the only exception to the mandatory electronic filing requirement are case - initiating documents (complaints, petitions, notices of removal and indictments). Additional exceptions in the Eastern District are sealed records and any document that adds a party to an action.

A person not represented by an attorney is generally not allowed to electronically file and must submit paper for filing. Electronic filing is only permitted by court order.

Adopted and effective December 1, 2018
Amended November 5, 2020

15 U.S.C. 1692 et seq. sections involved in the case

15 U.S. Code § 1692 - Congressional findings and declaration of purpose

(a)Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b)Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c)Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d)Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where

abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(Pub. L. 90-321, title VIII, § 802, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874.)

15 U.S. Code § 1692a - Definitions

As used in this subchapter—

- (1) The term “Bureau” means the Bureau of Consumer Financial Protection.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the

extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting

as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C)any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D)any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E)any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F)any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7)The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8)The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90-321, title VIII, § 803, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99-361, July 9, 1986, 100 Stat. 768; Pub. L. 111-203, title X, § 1089(2), July 21, 2010, 124 Stat. 2092.)

15 U.S. Code § 1692b - Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such

attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90-321, title VIII, § 804, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that

attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90-321, title VIII, § 804, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

15 U.S. Code § 1692c - Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3)where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d)“Consumer” defined

For the purpose of this section, the term “consumer” includes the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90–321, title VIII, § 805, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

15 U.S. Code § 1692d - Harassment or abuse

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.

Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1)The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2)The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3)The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) [1] of this title.

(4)The advertisement for sale of any debt to coerce payment of the debt.

(5)Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6)Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90-321, title VIII, § 806, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

15 U.S. Code § 1692e - False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1)The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2)The false representation of—

(A)the character, amount, or legal status of any debt; or

(B)any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3)The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4)The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5)The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6)The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A)lose any claim or defense to payment of the debt; or

(B)become subject to any practice prohibited by this subchapter.

(7)The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8)Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9)The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court,

official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10)The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11)The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12)The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13)The false representation or implication that documents are legal process.

(14)The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15)The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16)The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90-321, title VIII, § 807, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104-208, div. A, title II, § 2305(a), Sept. 30, 1996, 110 Stat. 3009-425.)

15 U.S. Code § 1692f - Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1)The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2)The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3)The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4)Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5)Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6)Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A)there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B)there is no present intention to take possession of the property; or

(C)the property is exempt by law from such dispossession or disablement.

(7)Communicating with a consumer regarding a debt by post card.

(8)Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90-321, title VIII, § 808, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

15 U.S. Code § 1692g - Validation of debts

(a)Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following

information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1)the amount of the debt;
- (2)the name of the creditor to whom the debt is owed;
- (3)a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4)a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5)a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b)Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or

name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c)Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d)Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e)Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of

data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(Pub. L. 90-321, title VIII, § 809, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879; amended Pub. L. 109-351, title VIII, § 802, Oct. 13, 2006, 120 Stat. 2006.)

15 U.S. Code § 1692k - Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)

(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3)in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b)Factors considered by court

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1)in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2)in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c)Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d)Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90-321, title VIII, § 813, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 111-203, title X, § 1089(1), July 21, 2010, 124 Stat. 2092.)

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of such failure;
- (2)

(A)in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B)in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3)in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b)Factors considered by court

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1)in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2)in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c)Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d)Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e)Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90-321, title VIII, § 813, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 111-203, title X, § 1089(1), July 21, 2010, 124 Stat. 2092.)

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d).

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

(Pub. L. 90-321, title VIII, § 814, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101-73, title VII, § 744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102-242, title II, § 212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102-550, title XVI, § 1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104-88, title III, § 316, Dec. 29, 1995, 109 Stat. 949; Pub. L. 111-203, title X, § 1089(3), (4), July 21, 2010, 124 Stat. 2092, 2093.)

15 U.S. Code § 1692m - Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

(Pub. L. 90-321, title VIII, § 815, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 882; amended Pub. L. 111-203, title X, § 1089(1), July 21, 2010, 124 Stat. 2092.)

15 U.S. Code § 1692n - Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90-321, title VIII, § 816, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix J

Affidavit of Laura Lynn Hammett in Support of Leave to File Electronically

Laura Lynn Hammett
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

APR 14 2021

JAMES W. McCORMACK, CLERK
By: 
DEP CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

LAURA LYNN HAMMETT, an
individual,

) Case No.: 4:21-CV-00189-KGB

)

)

Plaintiff,

) **Affidavit of Laura Lynn Hammett in
Support of Motion for Leave for the
Non-Attorney Plaintiff to File
Electronically**

vs.
PORTFOLIO RECOVERY
ASSOCIATES, LLC, a Limited
Liability Company; DOES 1-99

)

)

)

Defendants

)

)

)

I, Laura Lynn Hammett, Plaintiff in pro se, affirm that the following is true and correct to the best of my knowledge and where facts are not personally known to me, on information and belief:

1. I have reviewed the requirements for e-filing set out in the CM/ECF Policies and Procedures Manual for Civil Filings and agree to abide by them.

2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
 - a. A computer with internet access;
 - b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system;
 - c. A scanner to convert documents that are only in paper format into electronic files;
 - d. A printer or copier to create required paper copies such as chamber's copies;
 - e. A word processing program to create documents; and
 - f. A pdf reader and pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.
4. The detriment to me if denied of use of the e-filing system is that I must rely on the mail. I live in a rural area and my mailbox is not secure, so I must drive to a post office to mail my documents. Alternatively, and what I prefer, is to drive from Conway to Little Rock and file at the courthouse. All the driving is billable at 57.5 cents per mile, according to the GSA.

5. My use of the electronic filing system will also reduce costs to the defendants, who will not need to mail paper copies and to the Court clerk.
6. Further, I intend to keep a meticulous record of the file with frequent copies of the docket. The e-filing system allows me one free copy of each stamped document. If I use my PACER account, I will be billed 10 cents per page up to \$3.00 per document. If I am only charged for making copies of the docket, I will not reach the minimum threshold and I will not be billed at all.
7. I have experience using the CM/ECF system in two courts and use the E-flex system for the Circuit Court of Faulkner County Arkansas on two cases.

I swear to the foregoing under penalty of perjury according to the laws of the United States of America.

April 13. 2021



Laura Lynn Hammett

Laura Lynn Hammett
500 Amity Road, Suite 5B #306
Conway, Arkansas 72032
(760) 966-6000
TheNext55Years@Gmail.com

Plaintiff in Pro Se

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix K

Consent Order In the Matter of Portfolio Recovery Associates LLC

Laura Lynn Hammett
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0023

In the Matter of:

Portfolio Recovery Associates, LLC

CONSENT ORDER

The Consumer Financial Protection Bureau (“Bureau”) has reviewed the practices of Portfolio Recovery Associates, LLC (“Respondent”) regarding its purchase of charged-off consumer debts from original creditors and other debt buyers, and its subsequent collection efforts including filing lawsuits against consumers, and has identified violations of sections 1031(a) and 1036(a)(1) of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1), and sections 807, 807(2)(A), 807(5), and 807(10) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692e, 1692e(5) and 1692(e)(10)). Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I.

Jurisdiction

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563 and 5565 as well as under section 814(b) of the FDCPA, 15 U.S.C. § 1692l(b).

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III.

DEFINITIONS

The following definitions must apply to this Consent Order:

3. “Affidavit” means those affidavits, declarations, verifications, or any sworn statements that are used in Legal Collection.

4. "Board" means the duly elected and acting Board of Directors of Respondent's parent company, PRA Group, Inc.

5. "Charge-off" means the treatment of a receivable balance by a Creditor as a loss or expense because payment is unlikely.

6. "Charge-off Balance" means the amount alleged due on an account receivable at the time of Charge-off.

7. "Clearly and Prominently" means:

a. as to written information, written in a type size and location sufficient for an ordinary consumer to read and comprehend it, and disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure appears on the first page;

b. as to information presented orally, spoken and disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.

8. "Consumer" means any natural person obligated or allegedly obligated to pay any Debt.

9. "Creditor" means any person who was owed a Debt which was not in default at the time it was obtained by such person.

10. “Debt” means any obligation or alleged obligation of a Consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

11. “Debt Collection Lawsuit” means any lawsuit filed by Respondent, or on behalf of Respondent by a Law Firm, against any Consumer for the purpose of collecting any Debt.

12. “Effective Date” shall mean the date on which the Consent Order is issued.

13. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegatee.

14. “Law Firm” shall refer to those third-party law firms retained by Respondent for the purpose of conducting debt collection activities on Respondent’s behalf, including litigation.

15. “Legal Collection” means any collection efforts made by Respondent’s internal legal department or a Law Firm to collect Respondent’s Debt, including but not limited to sending letters on Law Firm letterhead and filing Debt Collection Lawsuits.

16. “Original Account-Level Documentation” means:

- a. any documentation that a Creditor, or that Creditor’s agent (such as a servicer) provided to a Consumer about a Debt; or

- b. a complete transactional history of a Debt created by a Creditor, or that Creditor's agent (such as a servicer); or
- c. a copy of a judgment, awarded to a Creditor.

17. "Portfolio" means a collection of Debt sold to Respondent in a single transaction.

18. "Related Consumer Action" shall mean a private action by or on behalf of one or more consumers or an enforcement action by another government agency brought against Respondent based on substantially the same facts as set forth in Section IV.

19. "Relevant Time Period" means the period from July 21, 2011 to the Effective Date.

20. "Respondent" means Portfolio Recovery Associates, LLC and its successors and assigns.

21. "Restitution Eligible Consumer" means any Consumer who made a payment, directly or indirectly, to Respondent:

- a. during the Relevant Time Period on judgments obtained from Time-Barred Debt Collection Lawsuits ("Time-Barred Debt Restitution"), or

b. between July 21, 2011 and July 17, 2014, within 60 days of receiving a call from PRA's Litigation Department and after agreeing to make a payment where (1) the Debt had not yet been placed with an attorney; and (2) the Consumer was not informed during the call that the Debt had not been reviewed by an attorney ("Litigation Department Calls Restitution").

22. "Seller" means any person that sells any Portfolio to Respondent.

23. "Time-Barred" when used to describe a Debt means any Debt that is beyond an applicable statute of limitations for a Debt Collection Lawsuit.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

24. PRA is a debt purchaser and collector headquartered in Norfolk, VA. PRA is one of the nation's largest buyers of defaulted loans, credit card accounts, car loans and other debts, which it purchases from creditors at a substantial discount to the face value of the debts. PRA has also purchased in the past from other debt buyers. It then attempts to collect these debts.

25. PRA collected Debt related to consumer financial products or services. Accordingly, PRA is a "covered person" as defined by the CFPA, 12 U.S.C. § 5481(6). *See also* 12 U.S.C. § 5481(5) and (15)(A)(x). PRA is also a "debt collector" as defined in Section 803(6) of the FDCPA. 15 U.S.C. § 1692a(6).

26. In 2013, PRA purchased more than \$4.7 billion of charged-off Debts from banks, consumer and auto finance companies, and retail merchant finance companies.

PRA'S DEBT BUYING PRACTICES

27. Prior to PRA purchasing a Debt Portfolio, PRA typically receives an electronic file ("Sale File"), from the Seller that includes information about the Consumers and the Debts, including, but not limited to, name, address, social security number, as well as the current balance, contract interest rate, and dates of origination, last payment, and charge-off.

28. PRA is aware that significant inaccuracies may exist in the Sale Files it purchases, including that some Debts' balances were not reduced by a consumer's subsequent payments. For instance, when a PRA senior manager raised a concern about the poor quality of sellers' balance information and asked how PRA can know actual balances owed if it does not receive information on post charge-off payments, PRA's Vice President for Collections responded, "We don't. 90% of our cases are default judgments. We show the judge the math and if no one disputes we get our judgment. Debtor has the right to defend and prove us wrong. If they show payments we've missed we amend the complaint."

29. Language in PRA's purchase agreements puts PRA on notice that information in the Sale File might be inaccurate, incomplete, or otherwise unreliable. For example, a debt seller may have specifically disclaimed the accuracy of information in the Sale File, notified PRA that documentation is unavailable, or notified PRA that a

percentage of accounts in a portfolio are disputed or barred by the applicable statute of limitations. For example, a 2009 purchase agreement with one large bank explicitly stated that account balances are “approximate” and “may not reflect credits for payments made by or on behalf of the [consumer] prior to the cut-off date.”

30. The purchase agreements stated that PRA was purchasing the loans based on PRA’s independent examination, study, inspection and knowledge of the loans. However, PRA did not routinely check the account information in the Sale Files it purchased against the original creditor’s records before contacting consumers, even when it knew or should have known the Sale File contained unreliable information.

31. Some of PRA’s purchase agreements put limitations on the availability of account-level documents, thus putting PRA on notice that it may not be able to access account-level documentation on all accounts purchased that would enable it to perform proper due diligence on Sale Files whose accuracy PRA has reason to doubt, investigate consumer disputes, or prove its case in contested litigation. Limitations on the availability of account-level documents in PRA’s contracts included:

- a. notifying PRA that supporting documents may only be available for a percentage of the accounts, but not identifying which accounts lacked documentation;
- b. charging PRA a fee for each supporting document it requested;
- c. increasing the per-document fee after PRA requests a certain percentage of documents from that Debt Portfolio or requests documents after a certain

date (e.g., \$1 per document after year one, \$5 per document after year two);

or

- d. prohibiting PRA from contacting the original creditor for information or supporting documents.

32. A Seller's failure to provide media has never led PRA to terminate a contract or renegotiate its terms.

PRA'S PRACTICES RELATED TO CONSUMER DISPUTES

33. PRA did not monitor its portfolios of debts for accuracy. PRA relied primarily on consumer disputes to determine whether a portfolio was unreliable and would assume its accuracy unless consumers came forward with evidence of problems in material numbers. However, until March 2012, PRA did not even track consumer disputes by Seller to determine whether a particular portfolio of loans it purchased was unreliable.

34. Prior to February 2013, PRA did not routinely request account-level documentation if a Consumer disputed the Debt in writing more than 30 days after PRA sent a notice of debt pursuant to section 809 of the FDCPA, 15 U.S.C. § 1692g. Rather, PRA's policy stated that "ordering documents will be at the discretion of the dispute department since it is not mandated that we order them" and that PRA was "under no obligation to investigate" the disputed debt's validity before continuing collection.

35. PRA does not investigate oral disputes. If consumers do not put their oral disputes in writing within 14 days, PRA will continue to demand payment without

determining the Debt's legitimacy.

36. PRA did not alter its collection practices when collecting on Portfolios that it knew or should have known contained unreliable information. Consumers receiving collection attempts from PRA had no way of knowing that PRA had reason to suspect the accuracy of the information.

PRA'S PRACTICES RELATED TO OBTAINING CONSENT TO COMPUTER DIAL CONSUMERS' CELL PHONES

37. PRA representatives sometimes use a computer dialing system to place calls to phone numbers associated with PRA accounts. Federal law prohibits using an auto-dialer to dial a Consumer's cell phone without that Consumer's express consent.

38. For approximately a year, and ending in August 2013, PRA gained or attempted to gain consumers' consent by representing to Consumers that they can only prevent collection calls to their cell phones before 9 a.m. if they consent to receive computer dialing system calls on their cell phones. If a representative manually dials a Consumer's cell phone and reaches the Consumer, PRA's policy until August 2013 was to require the representative to ask for the Consumer's consent to add the cell phone number to the computer dialing system in return for preventing calls to the Consumer's cell phone before 9 a.m. PRA penalized representatives who failed to adhere to this policy.

39. The FDCPA currently contains a provision prohibiting debt collectors from calling Consumers at an "unusual" or "inconvenient" time, presumed to be before 8 a.m. or after 9 p.m. local time. 15 U.S.C. § 1692c.

PRA'S PRACTICES RELATED TO LEGAL COLLECTIONS

40. PRA represented to Consumers expressly or by implication that their Debts have been selected for legal action based on a review by an attorney. In fact, PRA used a computerized scoring model to select Debts for Legal Collections. This scoring model selected approximately 4.5% of PRA's Debts for referral to Legal Collections. The 4.5% of Debts that entered this channel were the source of 28% of PRA's total collections revenue. PRA collected approximately \$319 million through its legal collections channel in 2013 alone.

41. Once PRA refers a Debt for Legal Collection, specialized collectors contact the Consumer and attempt to arrange a settlement of the Debt. In most instances, no attorney has reviewed these Debts prior to these settlement efforts.

42. On numerous occasions, these collectors, who identify themselves as the Litigation Department, made statements to Consumers such as “[PRA] will move forward with [its] litigation process” unless the consumer makes a payment to “stop the lawsuit.” When Consumers hesitated to accept the payment plan, the Litigation Department collectors on numerous occasions countered with statements such as “You know that this is the Litigation Department, right?” or stated that the purpose of the call is “to see if we can get this resolved without the matter going to court.” Prior to July 17, 2014, Collectors from the Litigation Department did not disclose whether or not an attorney had reviewed the Consumer’s Debt.

43. Despite repeated references to “litigation” during the legal collections process, PRA in numerous instances had not reviewed or decided whether to file suit at the time collectors make those statements.

PRA’S LITIGATION PRACTICES

44. PRA uses dozens of law firms across the country to file approximately 3,000 suits every week. Consumers respond to less than six percent of those actions. In 2012 alone, PRA’s internal and external counsel filed over 160,000 Debt Collection Lawsuits in state and local courts.

45. PRA’s recovery rate for post-suit collections is three times larger than PRA’s recovery rates from other collection channels.

46. Over a three year period, PRA placed tens of thousands of Debts with Law Firms staffed by fewer than five attorneys. For example, PRA placed approximately 27,000 Debts with a New York law firm employing just three attorneys and 21,000 Debts with a North Carolina law firm employing only five attorneys. PRA does not set a limit on the number of Debts it will place with a Law Firm based on the number of attorneys employed by the firm.

47. PRA did not require its Law Firms to review account-level documents prior to filing suit. PRA prohibited them from contacting the original creditor or debt sellers directly to request such documents. PRA does not review pleadings before outside counsel files them.

48. PRA did not inform its Law Firms when an original creditor or debtor has specifically disclaimed the accuracy or validity of the Debt, has notified PRA that documentation is unavailable for some Debts, or notified PRA that a percentage of Debts in a portfolio are disputed or barred by the applicable statute of limitations.

PRA'S MISLEADING COLLECTION AFFIDAVITS

49. In many jurisdictions, PRA has been able to obtain a settlement or a default judgment against a Consumer using an Affidavit as its only evidence. PRA also uses Affidavits as proof in contested matters.

50. In Affidavits used to support PRA Debt Collection Lawsuits, PRA's affiants on many occasions represented that they have personal knowledge of original creditors' account-level documentation corroborating consumers' debts when in fact they did not. For example, PRA affiants testified:

- a. "This affidavit is based upon my personal knowledge . . . and my review of . . . the business records transferred to Account Assignee from [Account Seller]";
- b. "I am authorized to make the statements . . . herein, and do so based upon a review of . . . account records transferred to Account Assignee from [Account Seller]";

c. "According to the records transferred to the Account Assignee from Account Seller, and maintained in the ordinary course of business by the Account Assignee, there was due and payable from [Consumer] to the Account Seller the sum of \$[Debt] with respect to [account number], as of [date of sale] with there being no known uncredited payments, counterclaims or offsets against the said debt as of the date of the sale."

51. In numerous instances, affiants made the representations discussed in the preceding paragraph after merely reviewing a computer screen containing the scant information produced by Sellers in data files and not after a review of any account level documents such as account applications, terms and conditions of contracts, payment histories, monthly credit card statements, or charge slips.

52. PRA's affiants on numerous occasions represented that the terms and conditions document attached to the Affidavit specifically applied to the Consumer's Debt.

53. In fact, in numerous instances, the attached terms and conditions were often generic and did not necessarily apply to the Consumer's Debt.

54. In numerous instances, PRA through its affiants represented directly or indirectly, expressly or by implication that they have knowledge of the content of an account agreement.

55. In fact, in certain instances the affiants could not have such knowledge because in the same filings, PRA represented it was unable to locate the agreement the affiant would have to review to gain that knowledge.

PRA'S COLLECTION OF TIME-BARRED DEBT

56. PRA occasionally threatened or filed suit on Debt that was past the applicable statute of limitations.

57. After learning that it had obtained judgments on Debts that were beyond the statute of limitations, PRA did not move to vacate these judgments or otherwise remediate those Debts that had already been reduced to judgment.

58. In numerous instances from at least January 1, 2009 to March 1, 2012, PRA collected Time-Barred Debt by falsely representing that Consumers had a legally enforceable obligation to pay the Debt.

59. In numerous instances prior to March 1, 2012, PRA sent letters containing time-limited settlement offers that failed to disclose that the debt it was collecting was too old for litigation. PRA's letters seeking to settle Time-Barred debt contained statements such as, "These savings won't last long . . . , " "CALL NOW to take advantage of these limited time offers," "Your first payment must be received NO LATER than . . . , " and "Your account will be considered 'Settled in Full' after your final payment is posted."

Violations of the Consumer Financial Protection Act

60. Covered persons are prohibited from engaging “in any unfair, deceptive, or abusive act or practice” in violation of the CFPA. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

61. Respondent is a “covered person” within the meaning of the CFPA, 12 U.S.C. § 5481(6).

62. Respondent made numerous misrepresentations to Consumers in connection with attempting to collect Debts, a Consumer financial product or service.

**False or Unsubstantiated Representations About Owing a Debt,
in Violation of the CFPA**

63. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that Consumers owed Debts to Respondent with certain unpaid balances, interest rates, and payment due dates. Respondent further represented to Consumers directly or indirectly, expressly or by implication, that Respondent had a reasonable basis for representing that Consumers owed the claimed Debts to Respondent.

64. In truth and in fact, in numerous instances the representations set forth in Paragraph 63 were false or were not substantiated at the time the representations were made, including but not limited to where:

- a. Consumers disputed, challenged, or questioned the validity or accuracy of the Debt and Respondent failed to review information that would have been necessary to have a reasonable basis to continue collecting on that Debt; or
- b. Respondent had knowledge or reason to believe, based on contractual terms or past performance of accounts sold by a seller, that a specific portfolio of accounts contained unreliable data, but Respondent failed to obtain and review information that would have been necessary to have a reasonable basis to collect on the Debt.

65. The representations are material because they are likely to affect a Consumer's choice or conduct regarding how to respond to an allegedly outstanding Debt and are likely to mislead Consumers acting reasonably under the circumstances.

66. The representations set forth in Paragraph 63 are false or misleading and constitute deceptive acts or practices in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Misrepresenting that PRA Intends to Prove the Debt,
If Contested, in Violation of the CFPA

67. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers through litigation or threats of litigation, Respondent represented, directly or indirectly, expressly or by implication, that PRA intends to prove its claims, if contested.

68. In truth and in fact, in numerous instances, Respondent did not intend to prove its claims, if contested.

69. These representations are material because they are likely to affect a Consumer's choice or conduct regarding whether to pay the Debt or contest the lawsuit and are likely to mislead Consumers acting reasonably under the circumstances.

70. The representations set forth in Paragraph 67 are false or misleading and constitute deceptive acts or practices in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Filing Misleading Collection Affidavits in Violation of the CFPA

71. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, in Affidavits filed in courts across the country, Respondent represented directly or indirectly, expressly or by implication, that:

- a. PRA affiants had reviewed account-level documentation from the original creditor corroborating the Consumer's Debt;
- b. Documents attached to affidavits were specific to the Consumer; or
- c. PRA affiants were familiar with the content of account agreements.

72. In truth and in fact, in numerous instances:

- a. PRA's affiants had not reviewed account-level documentation from the original creditor corroborating the Consumer's Debt;
- b. Documentation attached to affidavits was not specific to the

Consumer; or

- c. PRA affiants were not familiar with the content of account agreements because, for example, the account agreements at issue were no longer available for affiants to review.

73. These representations are material because they are likely to affect a Consumer's choice or conduct regarding how to respond to a lawsuit and are likely to mislead Consumers acting reasonably under the circumstances.

74. The representations set forth in Paragraph 71 are false or misleading and constitute a deceptive act or practice in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Misrepresentations Regarding Time-Barred Debt, in Violation of the CFPA

75. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt that is beyond the applicable statute of limitations from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that Consumers had a legally enforceable obligation to pay the Debt.

76. In truth and in fact, Consumers do not have a legally enforceable obligation to pay Debt that is beyond the applicable statute of limitations.

77. These representations are material because they are likely to affect a Consumer's choice or conduct regarding how to respond to an allegedly outstanding Debt claim and are likely to mislead Consumers acting reasonably under the circumstances.

78. The representations set forth in Paragraph 75 are false or misleading and constitute a deceptive act or practice in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Misrepresentations Regarding Attorney Review

79. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt, Respondent represented to Consumers, directly or indirectly, expressly or by implication, that an attorney has reviewed the Consumer's Debt or that the collector is calling on the attorney's behalf.

80. In truth and in fact, an attorney had not reviewed the Consumer's Debt and the collector was not calling on behalf of an attorney.

81. These representations are material because they are likely to affect a Consumer's choice or conduct regarding how to respond to an allegedly outstanding Debt and are likely to mislead consumers acting reasonably under the circumstances.

82. The representations set forth in Paragraph 79 are false or misleading and constitute a deceptive act or practice in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Misrepresentations of Imminent Litigation

83. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt, Respondent represented to Consumers, directly or indirectly, expressly or by implication, that litigation was planned, imminent, or even underway.

84. In truth and in fact, litigation was not planned, imminent, or underway because PRA had not decided whether to file suit.

85. These representations are material because they are likely to affect a Consumer's choice or conduct regarding how to respond to an allegedly outstanding Debt and are likely to mislead consumers acting reasonably under the circumstances.

86. The representations set forth in Paragraph 83 are false or misleading and constitute a deceptive act or practice in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Misrepresentations about Computer Dialing System Calls

87. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt, Respondent represented to Consumers, directly or indirectly, expressly or by implication, that consumers cannot prevent collection calls on their cell phones before 9 a.m. local time unless they consent to receiving computer dialing system calls on their cell phones.

88. In truth and in fact, in numerous instances, consumers can prevent collections calls on their cell phones before 9 a.m. local time even if they do not consent to receiving computer dialing system calls on their cell phones. Under Section 805(a)(1) of the FDCPA, PRA is prohibited from calling consumers at any time PRA knows or should know is inconvenient to consumers. Consumers can simply tell PRA that it is inconvenient to call before 9 a.m. local time and PRA is prohibited from doing so. Further, absent information to the contrary, Section 805(a)(1) requires debt collectors to

assume that the convenient time for communicating with consumers is after 8 a.m. local time.

89. These representations are material because they are likely to affect a consumer's choice or conduct regarding whether to provide consent to receive computer dialing system calls on a cell phone and are likely to mislead consumers acting reasonably under the circumstances.

90. The representations set forth in Paragraph 87 are false or misleading and constitute a deceptive act or practice in violation of Sections 1031(a) and 1036(a) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a).

Violations of the Fair Debt Collection Practices Act

91. Section 807 of the FDCPA, 15 U.S.C. § 1692e, prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A) specifically prohibits the false representations of the character, amount, or legal status of any debt. Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5) specifically prohibits the threat to take any action that cannot legally be taken or that is not intended to be taken. Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10), prohibits using false representations or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

92. Respondent is a "debt collector" within the meaning of the FDCPA, 15 U.S.C. § 1692a(6).

93. Respondent made numerous representations to consumers in connection with attempting to collect debts arising out of transactions primarily for personal, family, or household purposes.

False or Unsubstantiated Representations About Owing a Debt,
in Violation of the FDCPA

94. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that Consumers owed Debts to Respondent with certain unpaid balances, interest rates, and payment due dates. Respondent further represented to Consumers directly or indirectly, expressly or by implication, that Respondent had a reasonable basis for representing that Consumers owed the claimed Debts to Respondent.

95. In truth and in fact, in numerous instances the representations set forth in Paragraph 94 were false or were not substantiated at the time the representations were made, including but not limited to where:

- a. Consumers disputed, challenged, or questioned the validity or accuracy of the Debt and Respondent failed to review information that would have been necessary to have a reasonable basis to continue collecting on that Debt; or
- b. Respondent had knowledge or reason to believe, based on contractual terms or past performance of accounts sold by a seller, that a specific portfolio of accounts contained unreliable data, but Respondent

failed to obtain and review information that would have been necessary to have a reasonable basis to collect on the account.

96. The representations set forth in Paragraph 94 are false or misleading and constitute deceptive acts or practices in violation of Sections 807 and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(10).

**Misrepresenting that PRA Intends to Prove the Debt,
If Contested, in Violation of the FDCPA**

97. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers through litigation or threats of litigation, Respondent represented, directly or indirectly, expressly or by implication, that PRA intends to prove its claims, if contested.

98. In truth and in fact, in numerous instances, Respondent did not intend to prove its claims, if contested.

99. The representations set forth in Paragraph 97 are false or misleading and constitute deceptive acts or practices in violation of Sections 807, 807(5), and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10).

Filing Misleading Collection Affidavits, in Violation of the FDCPA

100. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, in affidavits filed in courts across the country, Respondent represented directly or indirectly, expressly or by implication, that:

- a. PRA affiants had reviewed account-level documentation from the original creditor corroborating the consumer's debt;
- b. Documents attached to affidavits were specific to the consumer; or
- c. PRA affiants were familiar with the content of account agreements.

101. In truth and in fact, in numerous instances:

- a. PRA's affiants had not reviewed account-level documentation from the original creditor corroborating the consumer's debt;
- b. Documentation attached to affidavits was not specific to the consumer; or
- c. PRA affiants were not familiar with the content of account agreements because, for example, the account agreements at issue were no longer available for affiants to review.

102. The representations set forth in Paragraph 100 are false or misleading and constitute a deceptive act or practice in violation of Sections 807, and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(10).

Misrepresentations Regarding Time-Barred Debt, in Violation of the FDCPA

103. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt that is beyond the applicable statute of limitations from Consumers, PRA represented, directly or indirectly, expressly or by implication, that Consumers had a legally enforceable obligation to pay the Debt.

104. In truth and in fact, Consumers do not have a legally enforceable obligation to pay Debt that is beyond the applicable statute of limitations.

105. The representations set forth in Paragraph 103 are false or misleading and constitute a deceptive act or practice in violation of Sections 807, 807(2)(A), 807(5), and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10).

Misrepresentations of Attorney Review

106. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that an attorney has reviewed the Consumer's Debt or that the collector is calling on the attorney's behalf.

107. In truth and in fact, an attorney had not reviewed the Consumer's Debt and the collector was not calling on behalf of an attorney.

108. The representations set forth in Paragraph 106 are false or misleading and constitute a deceptive act or practice in violation of Sections 807 and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(10).

Misrepresentations of Imminent Litigation

109. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that litigation is planned, imminent, or even underway.

110. In truth and fact, litigation was not planned, imminent, or underway because PRA had not decided whether to file suit.

111. The representations set forth in Paragraph 109 are false or misleading and constitute a deceptive act or practice in violation of Sections 807, 807(2)(A), and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10).

Misrepresentations about Computer Dialing System Calls

112. In numerous instances during the Relevant Period, in connection with collecting or attempting to collect Debt from Consumers, Respondent represented, directly or indirectly, expressly or by implication, that consumers cannot prevent collection calls on their cell phones before 9 a.m. local time unless they consent to receive computer dialing system calls on their cell phones.

113. In truth and in fact, in numerous instances, consumers can prevent collections calls on their cell phones before 9 a.m. local time even if they do not consent to receiving computer dialing system calls on their cell phones. Under Section 805(a)(1) of the FDCPA, PRA is prohibited from calling consumers at any time PRA knows or should know is inconvenient to consumers. Consumers can simply tell PRA that it is inconvenient to call before 9 a.m. local time and PRA is prohibited from doing so. Further, absent information to the contrary, Section 805(a)(1) requires debt collectors to assume that the convenient time for communicating with consumers is after 8 a.m. local time.

114. The representations set forth in Paragraph 112 are false or misleading and constitute a deceptive act or practice in violation of Sections 807 and 807(10) of the FDCPA, 15 U.S.C. § 1692e, 1692e(10).

V.

Conduct Provisions

IT IS ORDERED, under Sections 1053 and 1055 of the CFPA, that:

115. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate Sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1); and Sections 807, 807(2)(A), 807(5), and 807(10) of the FDCPA, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692(5), 1692(8), and 1692(10).

VI.

PROHIBITION AGAINST COLLECTING DEBTS WITHOUT A REASONABLE BASIS

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Consent Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

116. Making any representation, expressly or by implication, that a Consumer owes a Debt to Respondent or as to the amount of a Debt unless, at the time of making the representation, Respondent can substantiate the representation. Without limiting the

foregoing, such substantiation must include reviewing Original Account-Level Documentation reflecting the Consumer's name and the claimed amount excluding any post Charge-off or post-judgment payments (unless the claimed amount is higher than the Charge-off Balance or judgment balance, in which case Respondent must 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 is authorized by the agreement creating the Debt or permitted by law) under any of the following circumstances:

- a. The Consumer disputed orally or in writing, the accuracy or validity of the Debt;
- b. The Debt was purchased, after the Effective Date, through a purchase agreement without meaningful and effective representations and warranties as to the accuracy or validity of the Debt;
- c. The Debt was purchased, after the Effective Date, through a purchase agreement without meaningful and effective commitments to provide Original Account-Level Documentation during the time period in which Respondent is collecting the Debt;
- d. The Debt was purchased in a Portfolio, after the Effective Date, which Respondent knows includes unsupported or materially inaccurate information about any Debt, based on either of the following factors:

- i. At any time during the preceding twelve months, a Consumer disputed, orally or in writing, the accuracy or validity of a Debt in the Portfolio and Respondent sought but was unable to obtain Original Account-Level Documentation reflecting the amount of the Debt or the identity of the person responsible for the Debt, unless (i) Respondent can establish, based on a documented and thorough review of Original Account-Level Documentation concerning a sample of other Debts in the Portfolio, that the inability to obtain Original Account-Level Documentation to support the Debt in the Portfolio was an anomaly; or (ii) the inability to obtain Account-Level Documentation reflecting the amount of the Debt was caused by a documented balance adjustment made by a Creditor after Respondent acquired the Portfolio containing the Debt (for example, balance adjustments caused by a Creditor's audit or restitution);
- ii. Original Account-Level Documentation produced to Respondent, by a Seller or a Consumer, reflected information about the amount of the Debt or the identity of the person responsible for the Debt that was inconsistent and irreconcilable with information previously provided to

Respondent by the seller, unless (i) Respondent can establish, based on a documented and thorough review of Original Account-Level Documentation concerning a sample of other Debts in the Portfolio, that the production of inaccurate or inconsistent information concerning the Debt in the Portfolio was an anomaly; or (ii) the inconsistency was caused by a documented balance adjustment made by a Creditor after Respondent acquired the Portfolio containing the Debt (for example, balance adjustments caused by a Creditor's audit or restitution).

117. Notwithstanding the foregoing, Respondent is not required pursuant to this Paragraph to (i) refuse to accept any payments voluntarily submitted by Consumers; (ii) suspend collections for Consumers who have acknowledged the Debt and agreed to make payments; or (iii) refuse to communicate with a Consumer who affirmatively contacts Respondent (or Respondent's agents) or requests contact from Respondent (or Respondent's agents) to discuss the Consumer's Debt.

VII.

PROHIBITION AGAINST SELLING DEBT

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

118. Reselling Debt to anyone other than (i) the entity that initially sold the Debt to Respondent or to the Creditor; (ii) to a subsidiary or affiliate of Respondent that is subject to the terms of this Consent Order (either by operation of law or by agreement); (iii) to any entity that is subject to the terms of this Consent Order as part of an acquisition or merger with Respondent, or purchase of all or substantially all of Respondent's assets; or (iv) Respondent's (or its affiliates') creditors or any agent of such creditors (in each case, solely in their capacity as such) in settlement or satisfaction of any claims under, or in connection with the default or remedial provisions of, any relevant loan or lending agreement.

VIII.

PROHIBITION AGAINST THREATENING OR FILING COLLECTION LAWSUITS WITHOUT AN INTENT TO PROVE THE DEBT, IF CONTESTED

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Consent Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

119. Initiating any Debt Collection Lawsuit unless in possession of the following:
 - a. Original Account-Level Documentation reflecting, at a minimum, the Consumer's name, the last four digits of the account number associated with the Debt at the time of Charge-off, the claimed amount excluding any post Charge-off payments (unless the claimed amount is higher than the Charge-off Balance or judgement balance, in which case Respondent must possess (i) Original Account-Level Documentation reflecting the Charge-off Balance and (ii) an explanation of how the claimed amount was calculated and why such increase is authorized by the agreement creating the Debt or permitted by law), and, if Respondent is suing under a breach of contract theory, the contractual terms and conditions applicable to the Debt;
 - b. A chronological listing of the names of all prior owners of the Debt and the date of each transfer of ownership of the Debt, beginning with the name of the Creditor at the time of Charge-off;
 - c. A certified or other properly authenticated copy of each bill of sale or other document evidencing the transfer of ownership of the Debt at the time of Charge-off to each successive owner, including Respondent. Each of the bills of sale or other documents evidencing the transfer of ownership of the Debt must include a specific reference to the particular Debt being collected upon, which can be done by referencing an exhibit

attached to each bill of sale or other document transferring ownership of the Debt that is represented or warranted by a Seller to be a list all Debts acquired in that Portfolio; and

d. Any one of the following:

- i. A document signed by the Consumer evidencing the opening of the account forming the basis for the Debt; or
- ii. Original Account-Level Documentation reflecting a purchase, payment, or other actual use of account by the Consumer.

120. Engaging in any Legal Collection without providing the Consumer with certain information about the Debt, unless previously provided, including but not limited to, the following information:

- a. the name of the Creditor at the time of Charge-off, including the name under which that Creditor did business with the Consumer;
- b. the last four digits of the account number associated with the Debt at the time of Consumer's last monthly account statement, or if not available, at the time of Charge-off;
- c. the Charge-off Balance;
- d. Respondent's method of calculating any amount claimed in excess of the Charge-off Balance; and

- e. a statement that the Consumer may request, in writing, copies of the documentation referenced in Paragraph 119 and Respondent or Respondent's agent will, within 30 days of such request, provide the documentation at no cost.

IX.

PROHIBITION AGAINST FILING FALSE OR MISLEADING AFFIDAVITS

IT IS FURTHER ORDERED that in connection with any lawsuit to collect a Debt, Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Consent Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

121. Submitting any Affidavit:

- a. In which the affiant represents, expressly or by implication, that the Affidavit has been notarized if the Affidavit was not executed in the presence of a notary;
- b. Containing an inaccurate statement, including but not limited to a statement that attached documentation relates to the specific Consumer being sued when that is not the case;

- c. In which the affiant represents, expressly or by implication, that any attached or unattached documents or records concerning the Debt forming the basis for the lawsuit have been reviewed by the affiant, when that is not the case; or
- d. In which the affiant represents, expressly or by implication, that the affiant has personally reviewed the Affidavit, when that is not the case.

X.

**PROHIBITION AGAINST FALSE OR MISLEADING
REPRESENTATIONS**

IT IS FURTHER ORDERED that, in connection with the collection of debt, Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Consent Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

122. Making any material misrepresentation or omission or assisting others in making any material misrepresentation or omission, expressly or by implication, including but not limited to misrepresentations:

- a. To obtain a Consumer's consent to receive calls from a computer dialing system, including but not limited to, representations that the only means by which a Consumer can avoid collection calls during certain time periods is through consent to receiving calls to his or her cell phone.
- b. That an attorney has reviewed a Consumer's Debt, where an attorney has not done so;
- c. That a Debt Collection Lawsuit has been filed against the Consumer, where a Debt Collection Lawsuit has not been filed previously;
- d. That a Debt Collection Lawsuit may be filed against the Consumer unless a payment is received, where an attorney has not previously reviewed and approved the Debt for suit.

123. Using its "Litigation Department" or any similarly named office or group to collect or attempt to collect a Debt through solicitation, including but not limited phone calls or through writing, unless:

- a. An attorney has personally reviewed the Debt; or
- b. The solicitation or writing Clearly and Prominently discloses that no attorney has reviewed the Debt when in fact an attorney has not done so.

124. Using outside Law Firms to collect or attempt to collect a Debt, through solicitation including but not limited to phone calls or through writing, unless

- a. An attorney has personally reviewed the Debt; or

- b. The solicitation or writing Clearly and Prominently discloses that no attorney has reviewed the Debt when in fact an attorney has not done so.

XI.

PROHIBITION AGAINST DECEPTIVELY COLLECTING TIME-BARRED DEBT

IT IS FURTHER ORDERED that Respondent, Respondent's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Consent Order, whether acting directly or indirectly, are permanently restrained and prohibited from:

125. Collecting or attempting to collect any Time-Barred Debt through litigation or arbitration.

126. Collecting or attempting to collect any Time-Barred Debt through any means, including but not limited to telephone calls and written communications without Clearly and Prominently disclosing to the Consumer:

a. For those Time-Barred Debts that generally cannot be included in a consumer report under the provisions of the FCRA, 15 U.S.C. § 1681c(a), but can be collected through other means pursuant to applicable state law, Respondent will include the following statement: "The law limits how long you can be sued on a debt and how long a debt can appear on your credit report. Due to the age of this debt, we will not sue you for it or report payment or non-payment of it to a credit bureau;" and

b. For those Time-Barred Debts that can be collected through other means pursuant to applicable state law, and may be included in a consumer report under the provisions of the FCRA, 15 U.S.C. § 1681c(a), Respondent will include the following statement: "The law limits how long you can be sued on a debt.

Because of the age of your debt, we will not sue you for it."

127. Making any representation or statement, or taking any other action that interferes with, detracts from, contradicts, or otherwise undermines the disclosures required in Paragraph 126 of this section.

128. Respondent will be deemed to have complied with the disclosure requirements of Paragraph 126 if it makes a disclosure to Consumers in a specific jurisdiction that (1) is required by the laws or regulations of that jurisdiction, (2) complies with those laws or regulations, and (3) is substantially similar to the disclosure required by Paragraph 126.

XII.

COMPLIANCE PLAN

129. Within 60 days from the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's Debt collection practices comply with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum

- a. Comprehensive, written policies and procedures designed to prevent violations of applicable Federal consumer financial protection laws and prevent associated risks of harm to consumers;
- b. Comprehensive, written policies and procedures designed to ensure that Respondent conducts due diligence regarding the accuracy of the information it acquires from Creditors;
- c. Comprehensive, written policies and procedures designed to insure that Law Firms engaged by Respondent to collect Debt do not violate any applicable Federal consumer financial protection laws that must include at a minimum:
 - i. An analysis to be conducted by Respondent, prior to Respondent entering into a contract with the Law Firm, of the ability of the Law Firm to perform its obligations in compliance with all applicable Federal consumer financial laws and Respondent's related policies and procedures;
 - ii. For new and renewed contracts, a written contract between the Respondent and the Law Firm, which sets forth the responsibilities of each party, including:
 1. the Law Firm's specific performance responsibilities and duty to maintain adequate internal controls;

2. the Law Firm's duty to provide adequate training on compliance with all applicable Federal consumer financial laws and Respondent's related policies and procedures;
3. the Law Firm's duty to alert Respondent whenever a Consumer submits an oral or written dispute or asserts a defense to a Debt Collection Lawsuit, including but not limited to a dispute concerning the accuracy or validity of the Debt or any assertion that the Debt was Time-Bared;
4. Respondent's authority to conduct periodic onsite reviews of the Law Firm's controls, performance, and information systems related to Debt collection on behalf of Respondent; and
5. Respondent's right to terminate the contract if the Law Firm materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph; and

iii. Periodic review by Respondent of Law Firm's controls, performance, and information systems related to Debt Collections.

- d. An effective training program that includes regular, specific, comprehensive training in consumer protection laws commensurate with individual job functions and duties for appropriate employees, including all employees having responsibilities that relate to consumer protection laws, senior management and the Board;
- e. An enhanced and well-documented internal risk-focused monitoring process incorporated into the daily work of Respondent's employees that is designed to detect and promptly correct compliance weaknesses of the Respondent and its service providers, particularly weaknesses that impact Consumers;
- f. An effective consumer complaint monitoring process, including the maintenance of adequate records of all written, oral, or electronic complaints from Consumers or inquiries, formal or informal, received by Respondent and its service providers and the resolution of the complaints and inquiries; and
- g. Effective independent audit coverage of the Compliance Program and Respondent's compliance with all Federal consumer protection laws and internal policies and procedures.

130. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. In the event that the Enforcement Director directs Respondent to revise the Compliance Plan, Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days.

131. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

132. Notwithstanding the foregoing, Respondent must take whatever steps necessary to fully implement all of the requirements and restrictions described in Paragraphs 116 and 119-120 within 180 days of the Effective Date and all of the requirements and restrictions described in Paragraphs 121 and 125-128 within 90 days of the Effective Date.

XIII.

ROLE OF THE BOARD

IT IS FURTHER ORDERED that:

133. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.

134. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Enforcement Director, the Board 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.

135. In each instance that this Consent Order required the Board to ensure adherence to, or undertake to perform certain obligations of Respondent, the Board must:

- a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
- b. Require timely reporting by management to the Board on the status of compliance obligations to be taken under the terms of this Consent Order; and
- c. Require timely and appropriate corrective action to remedy any material non-compliance with and any failures to comply with Board directives related to this Section.

XIV.

ORDER TO PAY REDRESS

IT IS ORDERED that:

136. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account an amount not less than \$19,045,443 for the purpose of providing redress to Restitution Eligible Consumers as required by this Consent Order.

137. For the 837 Restitution Eligible Consumers eligible for Time-Barred Debt Restitution, Respondent must provide full restitution, expected to total approximately \$860,607, of all payments made, directly or indirectly, during the Relevant Time Period.

138. For the 38,246 Restitution Eligible Consumers eligible for Litigation Department Calls Restitution, Respondent must refund all such payments, expected to total approximately \$18,184,836, made between July 21, 2011 and July 17, 2014.

139. For the judgments obtained during the Relevant Time Period from Time-Barred Debt Collection Lawsuits that have yet to be paid, expected to total approximately \$3,411,094, Respondent must within 90 days of the Effective Date:

- a. Withdraw, dismiss, or terminate all pending Time-Barred Debt Collection Lawsuits;
- b. Release or move to vacate all judgments obtained during the Relevant Period in Time-Barred Debt Collection Lawsuits;
- c. Cease post-judgment enforcement activities and cease accepting settlement payments related to any Time-Barred Debt Collection Lawsuit;
- d. Request that the consumer reporting agencies amend, delete, or suppress information regarding any Time-Barred Debt Collection Lawsuits, and associated judgments, as applicable.

Redress Plan

140. Within 30 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for

providing redress consistent with this Consent Order (“Redress Plan”). The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Redress Plan, Respondent must make the revisions and resubmit the Redress Plan to the Enforcement Director within 30 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes set forth in the Redress Plan.

141. With respect to redress paid to Restitution Eligible Consumers, the Redress Plan must include: (1) the form of the letters (“Redress Notification Letters”) to be sent notifying Restitution Eligible Consumers of the redress; and (2) the form of the envelope that will contain the Redress Notification Letter. The Redress Notification Letter sent to Restitution Eligible Consumers receiving Time-Barred Debt Restitution must include language explaining the manner in which the amount of redress was calculated; a statement that the provision of the refund payment is in accordance with the terms of this Consent Order; and a statement that accepting payment of redress will not subject the Consumer to any new Debt collection or credit reporting activities for that Debt. The Redress Notification Letters sent to Restitution Eligible Consumers receiving Litigation Department Calls Restitution must include language explaining the manner in which the amount of redress was calculated; a statement that the provision of the refund payment is in accordance with the terms of this Consent Order; and may include a statement that

Respondent is not waiving its right to collect the remaining amount of the Debt, if any, in excess of any refund payment made under this Consent Order. Respondent must not include in any envelope containing a "Redress Notification Letter" any materials other than the approved letters and redress checks, unless Respondent has obtained written confirmation from the Enforcement Director that the Bureau does not object to the inclusion of such additional materials.

142. The Redress Plan must include a description of the following:

- a. methods used and the time necessary to compile a list of potential Restitution Eligible Consumers;
- b. methods used to calculate the amount of redress to be paid to each Restitution Eligible Consumers as required herein;
- c. procedures for issuance and tracking of redress to Restitution Eligible Consumers;
- d. methods and procedures used and the time necessary to withdraw, dismiss, move to vacate, terminate, or release the Time-Barred Debt Collection Lawsuits and associated judgments, or to cease enforcement activities on Time-Barred Debt Collection Lawsuit judgments;
- e. procedures for monitoring compliance with the Redress Plan
- f. the process for providing restitution for Restitution Eligible Consumers, which shall include the following requirements:
 - i. Respondent must mail a check to any Restitution Eligible Consumer along

with a Redress Notification Letter;

ii. Respondent must send the check by United States Postal Service first-class mail, address correction service requested, to the Restitution Eligible Consumer's last known address as maintained by Respondent's records.

iii. Respondent must make reasonable attempts to obtain a current address for any Restitution Eligible Consumer whose Redress Notification Letter and/or restitution check is returned for any reason, using the National Change of Address System, and must promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the check for any Restitution Eligible Consumer is returned to Respondent after such second mailing by Respondent, or if a current mailing address cannot be identified using National Change of Address System, Respondent must retain the restitution amount of such Restitution Eligible Consumer for a period of three-hundred sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Restitution Eligible Consumer upon appropriate proof of identity. After such time these monies will be deposited into the U.S. Treasury as disgorgement.

143. The Redress Plan shall allow for a reduction in the amount of any payments previously refunded to a Restitution Eligible Customer by Respondent prior to the Effective Date.

144. If Respondent claims to have made any restitution prior to the Effective Date of this Consent Order that complies with the requirements of this Consent Order, Respondent must provide appropriate proof of such restitution to the Enforcement Director.

145. After completing the Redress Plan, if the amount of redress provided to Restitution Eligible Consumers is less than \$19,045,443, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Restitution Eligible Consumers and \$19,045,443.

146. The Bureau may use these remaining funds to pay additional redress to Restitution Eligible Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

147. Respondent must not condition the payment of any redress to any Restitution Eligible Consumer under this Consent Order on that person's agreement to any condition, such as the waiver of any right.

Assessment of Redress

148. Respondent must retain at its own expense the services of an independent

certified accounting firm ("Firm"), within 15 days after the Enforcement Director's non-objection pursuant to Paragraph 140, to determine compliance with the Redress Plan. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

149. Prior to engagement, and no later than 60 days from the Effective Date, Respondent must submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Enforcement Director for non-objection. Within 15 days after submission of the Firm's name, the Enforcement Director must notify Respondent in writing of the Bureau's objection or non-objection thereto.

150. The Firm must prepare a detailed written report of its assessment of Respondent's compliance with the terms of the Redress Plan ("Restitution Report"). The Restitution Report must include an assessment of the Redress Plan and the methodology used to determine the population of Eligible Consumers, the amount of redress for each Restitution Eligible Consumer, the procedures used to issue and track redress payments, and the work of any independent consultants that Respondent has used to assist and review its execution of the Redress Plan.

151. The Firm must submit the Restitution Report to the Enforcement Director and the Board within 90 days after Respondent completes implementation of the Redress Plan.

XV.

ORDER TO PAY CIVIL MONEY PENALTIES

IT IS FURTHER ORDERED that:

152. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$8,000,000 to the Bureau.

153. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

154. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

155. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent must not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty that Respondent pays under this Consent Order; or
- b. Seek or accept, directly or indirectly, reimbursement or

162. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which has been approved by the Board, which, at a minimum:

- a. Describes in detail the manner and form in which Respondent has complied with this Consent Order; and
- b. Attaches a copy of each Consent Order acknowledgment obtained under Section XVIII of this Order, unless previously submitted to the Bureau.

XVIII.

ORDER DISTRIBUTION AND ACKNOWLEDGEMENT

IT IS FURTHER ORDERED that:

163. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and each executive officer, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

164. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure as set forth in Section XVII, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

165. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

XX.

RECORD KEEPING

IT IS FURTHER ORDERED that:

166. Respondent must create, for at least 5 years from the Effective Date, the following business records:

- a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau; and
- b. All documents and records pertaining to the Redress Program, as set forth in Section XIV above.

167. Respondent must retain the documents identified in Paragraph 166 for at least 5 years.

168. Respondent must make the documents identified in Paragraph 166 available to the Bureau upon the Bureau's request.

XX.

NOTICES

169. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this

Consent Order in writing, with the subject line, "In re Portfolio Recovery Associates, File No. 2015-CFPB-[Docket #] and send them:

- a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 I Street, N.W.
Washington D.C. 20006; or

- b. By U.S. first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XXI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, to monitor Respondent's compliance with this Consent Order:

170. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

171. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

176. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

177. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

178. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this

Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

179. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

180. Should Respondent seek to transfer or assign all or part of its operations or assets that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

181. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

182. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

183. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

SO ORDERED this 8th day of September, 2015.

Richard Cordray
Richard Cordray

No. _____

In the

Supreme Court of the United States

LAURA LYNN HAMMETT,

Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, a limited liability company, et al.,

Respondents.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the

Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Appendix L

CFPB Complaint for Permanent Injunction and Other Relief

Laura Lynn Hammett
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com
Petitioner In Pro Persona

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Consumer Financial Protection Bureau,
Plaintiff,
v.
Portfolio Recovery Associates, LLC,
Defendant.

Case No.: 2:23-cv-110

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
RELIEF**

The Consumer Financial Protection Bureau (Bureau) brings this action against Portfolio Recovery Associates, LLC (PRA) and alleges the following:

INTRODUCTION

1. PRA is a debt collector whose principal purpose is the collection of debts. PRA also furnishes consumer information to consumer-reporting agencies (CRAs).
2. PRA collected millions of dollars using illegal debt-collection practices and engaged in unlawful credit-reporting practices that have impacted at least hundreds of thousands of consumers.
3. This is the second enforcement action that the Bureau has brought against PRA. In the first, the Bureau found that PRA violated multiple provisions of “Federal consumer financial law,” including the Consumer Financial Protection Act of 2010 (CFPA) and the Fair Debt Collection Practices Act (FDCPA), through its debt-purchase and collection practices. The Bureau resolved those findings through an order, to which PRA consented, issued on September 9, 2015 in *In re Portfolio Recovery Associates*,

LLC (Administrative Proceeding File No. 2015-CFPB-0023) (the Order). The Order required PRA to abide by certain conduct provisions.

4. Since the Order went into effect, PRA's debt-collection practices have violated numerous Order provisions, along with the CFPA and the FDCPA. 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. PRA collected on numerous debts without informing consumers the debts were too old to legally enforce or report to a CRA. When notifying consumers that they could be sued, PRA failed to offer to provide consumers with certain required documents. On hundreds of occasions, PRA failed to timely provide the documents it did offer. PRA's failure to offer and timely supply the requisite documents likely affected consumers' decision-making about whether to pay allegedly outstanding debts. And PRA sued thousands of consumers when it lacked proper documentation about the debt, and at times sued on debts that were too old.

5. Through these illegal practices, PRA collected millions of dollars from consumers.

6. Because inaccurate reporting can negatively affect a consumer's financial opportunities, the Fair Credit Reporting Act (FCRA) and its implementing Regulation V require furnishers like PRA to promptly and adequately respond when a consumer disputes the accuracy of a debt. In violation of these requirements, PRA failed on numerous occasions to timely respond or reasonably investigate when consumers disputed debts. For a period, PRA's operations for processing and recording Direct Disputes were insufficient, resulting in thousands of disputes being ignored for months. On at least tens of thousands of additional occasions, PRA did not timely investigate and

resolve Direct Disputes or timely notify consumers when it would not investigate because it believed the disputes were frivolous. And on numerous occasions, PRA conducted inadequate investigations of fraud and identity theft disputes. Consumers who were unable to correct errors on their reports may have paid more for credit or been denied credit, employment or housing.

7. The Bureau brings this action under the CFPA, 12 U.S.C. §§ 5531, 5536(a), 5564, 5565; the FDCPA, 15 U.S.C. §§ 1692a, 1692e, 1692l; FCRA, 15 U.S.C. § 1681s-2; and Regulation V, 12 C.F.R. §§ 1022.42-1022.43, to stop PRA's unlawful conduct, to obtain redress for harmed consumers and an appropriate penalty, and to obtain all other appropriate relief.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over this action because it is brought under "Federal consumer financial law," 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

9. Venue is proper because PRA is located, resides, or does business in this district. 12 U.S.C. § 5564(f).

PARTIES

10. The Bureau is an independent agency of the United States charged with regulating the offering and provision of consumer-financial products and services under "Federal consumer financial law." 12 U.S.C. §§ 5491(a), 5563, 5564.

11. The Bureau has independent litigating authority to enforce these laws. 12 U.S.C. § 5564(a), (b).

12. PRA, a wholly owned subsidiary of publicly traded PRA Group, Inc., is one of the largest debt collectors in the United States. Its principal place of business is in Norfolk, Virginia. At all times relevant to this Complaint, PRA has transacted business in this district.

13. At all times relevant to this Complaint, PRA has collected debt related to consumer-financial products or services and is therefore a “covered person” under the CFPB. 12 U.S.C. § 5481(6); *see also* 12 U.S.C. § 5481(5) & (15)(A)(x).

14. At all times relevant to this Complaint, PRA has been a “debt collector” within the meaning of the FDCPA. 15 U.S.C. § 1692a(6).

15. At all times relevant to this Complaint, PRA has furnished consumer-account information to CRAs for inclusion in a consumer report and has been a “furnisher” within the meaning of FCRA and Regulation V. 12 C.F.R. § 1022.41(c). The consumer-report information or other account information that PRA has collected and furnished to CRAs is used or expected to be used in connection with a decision regarding the offering or provision of a consumer-financial product or service, and furnishing this information is a service offered or provided for use by consumers primarily for personal, family, or household purposes. This activity is a consumer-financial product or service under the CFPB. 12 U.S.C. § 5481(5), (15)(A)(ix).

FACTUAL BACKGROUND

The Bureau’s Order Against PRA

16. On September 9, 2015, the Bureau entered the Order against PRA concerning PRA’s purchase and collection of debt.

17. The Order resolved claims that PRA was making false or unsubstantiated representations to consumers about owing debts; misrepresenting that PRA intended to

prove debts if consumers contested them; filing misleading affidavits in debt-collection actions; misrepresenting that PRA had legally enforceable claims to debts outside of the applicable statutes of limitations; misrepresenting that attorneys had reviewed a consumer's debt or that collectors were calling on behalf of attorneys; and misrepresenting that litigation was planned, imminent, or even underway when PRA had not decided whether to file suit. The Bureau found that PRA's practices violated the CFPB and the FDCPA.

18. The Order required PRA to pay at least \$19,045,443 in consumer redress and an \$8 million civil money penalty and to stop collections on over \$3 million worth of judgments.

19. The Order also prohibited PRA from (1) representing the amount or validity of a debt unless PRA could substantiate the representation; (2) selling debt; (3) threatening or filing collection lawsuits without an intent to prove the debt; (4) filing false or misleading affidavits in debt-collection actions; (5) making false or misleading representations; and (6) suing on Time-Barred Debt (as defined in the Order) or otherwise collecting Time-Barred Debt unless PRA complied with specified disclosure requirements.

20. The Order included numerous conduct provisions to ensure that PRA would adhere to these prohibitions.

PRA Represented the Validity or Amount of Unsubstantiated Debt

21. Paragraph 116 of the Order prohibited PRA from "making any representation, expressly or by implication, that a Consumer owes a Debt to [PRA] or as to the amount of a Debt unless, at the time of making the representation, [PRA] can substantiate the representation."

22. Paragraph 116 of the Order further provided that, whenever a consumer disputed the accuracy or validity of a debt, PRA could not make any further representations about the debt's validity or amount until it had reviewed (a) Original Account Level Documentation (OALD) "reflecting the Consumer's name and the claimed amount excluding any post Charge-off or post-judgment payments"; or (b) if the claimed amount was "higher than the charge-off balance or judgment balance," OALD "reflecting the Charge-off Balance or judgment balance and . . . an explanation of how the claimed amount was calculated and why such an increase [was] authorized by the agreement creating the Debt or permitted by law."

23. Paragraph 16 of the Order defined OALD as "(a) any documentation that a Creditor, or that Creditor's agent (such as a servicer) provided to a Consumer about a Debt; or (b) a complete transactional history of a Debt created by a Creditor, or that Creditor's agent (such as a servicer); or (c) a copy of a judgment, awarded to a Creditor."

24. From at least March 7, 2016 to September 9, 2020, PRA made at least tens of thousands of representations about an unsubstantiated debt whose amount or validity a consumer had disputed without reviewing the necessary OALD and information.

25. For some of these disputed debts, PRA did not possess and thus did not review OALD reflecting the consumer's name and claimed amount at the time of the dispute, but nonetheless resolved the dispute in its favor and renewed collections of the unsubstantiated debt.

26. For other of these disputed debts, PRA represented the amount or validity of the debt while the dispute was pending and PRA had not reviewed OALD to substantiate the debt.

**PRA Engaged in Legal Collections
Without Offering, Providing, or Possessing the Requisite Documents**

27. Paragraph 15 of the Order defined “Legal Collection” as “any collection efforts made by [PRA’s] internal legal department or a Law Firm to collect [PRA’s] Debt, including but not limited to sending letters on Law Firm letterhead and filing Debt Collection Lawsuits.”

28. Paragraph 11 of the Order defined “Debt Collection Lawsuit” as “any lawsuit filed by [PRA], or on behalf of [PRA] by a Law Firm, against any Consumer for the purpose of collecting any Debt.”

***PRA initiated Legal Collections without
offering to provide required documents.***

29. Paragraph 119 of the Order prohibited PRA from initiating a Debt Collection Lawsuit unless it possessed (a) OALD reflecting the consumer’s name, account number, and claimed amount; (b) OALD reflecting the terms and conditions applicable to the debt if the suit included a breach-of-contract claim; (c) a listing of prior debt owners; (d) “a certified or other properly authenticated copy of each bill of sale or other document evidencing the transfer of ownership of the Debt at the time of Charge-off to each successive owner”; and (e) either a signed document evidencing the opening of the account or OALD “reflecting a purchase, payment, or other actual use.”

30. Paragraph 120(e) of the Order prohibited PRA from engaging in Legal Collections without previously providing a statement to the consumer that the consumer could request and would receive within 30 days all the documents PRA would need to possess, per paragraph 119 of the Order, when initiating a Debt Collection Lawsuit.

31. From at least March 7, 2016 to September 9, 2020, PRA sent to millions of consumers, at the time of commencing Legal Collections, a form letter that offered only

some of the required documents. This letter did not offer “a certified or other properly authenticated copy of each bill of sale or other document evidencing the transfer of ownership of the Debt at the time of Charge-off to each successive owner,” and it offered to provide only “available” OALD, meaning it would not provide OALD reflecting the name and claimed amount if it did not possess such a document.

32. After initiating Legal Collections, PRA did not make any other offer to consumers to provide the documents required under paragraph 119 of the Order.

PRA misrepresented that it would provide the specified documents within 30 days.

33. Paragraph 122 of the Order prohibited PRA from making any material misrepresentation or omission or assisting others in making any material misrepresentation or omission, expressly or by implication.

34. The form letter that PRA has provided since at least March 7, 2016 when commencing Legal Collections has stated that, upon receipt of a written request from the consumer, PRA would provide within 30 days of request the documents enumerated in PRA’s letter, including “either a signed account application or account statements reflecting a purchase, payment or other use of the account.”

35. On at least hundreds of occasions since March 7, 2016, PRA did not provide to the consumer all documents offered in its form letter within 30 days of receiving a consumer’s written request for the documents.

36. PRA’s false representations about providing documents within 30 days impeded consumers’ ability to determine whether a debt was truly owed and were likely to affect consumers’ decision-making about whether and how to respond to allegedly outstanding debts.

***PRA initiated Debt Collection Lawsuits with
breach-of-contract claims without possessing
OALD reflecting the debt's terms and conditions.***

37. As noted above, paragraph 119(a) of the Order prohibited PRA from initiating a Debt Collection Lawsuit that included a breach-of-contract claim unless it possessed OALD reflecting “the contractual terms and conditions applicable to the debt.”

38. From at least March 7, 2016 to September 9, 2020, PRA initiated thousands of Debt Collection Lawsuits with a breach-of-contract claim when it did not possess OALD reflecting the contractual terms and conditions applicable to the debt.

PRA Improperly Collected on Time-Barred Debt

39. Paragraph 23 of the Order defined “Time-Barred” debt as “any Debt that is beyond an applicable statute of limitations for a Debt Collection Lawsuit.”

***PRA collected on Time-Barred Debt without
providing the required disclosure.***

40. Paragraph 126 of the Order required that, when PRA attempted to collect on Time-Barred Debt, it had to disclose to the consumer that it would not sue because of the age of the debt and, if appropriate, that it would not report the consumer’s non-payment to the CRAs.

41. When PRA purchased debt, it estimated the statute of limitations (SOL) that governed the debt, which it then tracked in its system (internally tracked SOL). PRA did not provide to the consumer the disclosure required by paragraph 126 of the Order unless the debt it was attempting to collect was beyond its internally tracked SOL.

42. On numerous occasions from at least December 8, 2015, to September 9, 2020, PRA's internally tracked SOL date reflected that the debt was not beyond the statute of limitations when, in fact, the applicable statute of limitations had expired.

43. On numerous occasions from at least December 8, 2015 to September 9, 2020, PRA attempted to collect Time-Barred Debt after the actual statute of limitations had expired without providing the disclosure required by paragraph 126 of the Order.

PRA sued on Time-Barred Debt.

44. Paragraph 125 of the Order prohibited PRA from suing on any Time-Barred debt through litigation or arbitration.

45. Since at least December 8, 2015, PRA has initiated at least dozens of Debt Collection Lawsuits for Time-Barred Debt.

**PRA Failed to Timely Resolve,
Conduct Reasonable Investigations of,
or Maintain Reasonable Written Policies and Procedures for Disputes**

46. A "Direct Dispute" is "a dispute submitted directly to a furnisher (including a furnisher that is a debt collector) by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer." 12 C.F.R. § 1022.41(b).

47. An "Indirect Dispute" is a dispute submitted to a CRA by a consumer concerning the completeness or accuracy of information provided by a furnisher to that CRA that is then forwarded to the furnisher pursuant to 15 U.S.C. § 1681i(a)(2).

48. As a data furnisher, PRA must process, investigate, and resolve Direct Disputes and Indirect Disputes pursuant to FCRA, 15 U.S.C. § 1681s-2(a)(8), (b), and its implementing Regulation V, 12 C.F.R. §§ 1022.42–43.

PRA lacked a procedure to ensure timely resolution of Direct Disputes.

49. Since at least September 9, 2015, PRA has maintained a system designed to resolve Direct Disputes within 30 days of the date marked in PRA's system as the receipt date.

50. But before January 2017, PRA recorded as the receipt date the date a Direct Dispute was entered into PRA's system, which was often several days after PRA in fact received the dispute.

51. As a result, PRA's system failed to ensure that disputes were resolved within 30 days of the receipt date.

52. Before January 2017, PRA had no other policy, procedure, or system in place to ensure that Direct Disputes were investigated and resolved within the period required by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1), which is typically 30 days from the date of receipt.

PRA failed to timely resolve or provide frivolous or irrelevant determination notices for Direct Disputes.

53. For numerous Direct Disputes submitted through January 2017 that consumers sent to PRA at an address permitted by 12 C.F.R. § 1022.43(c) and included the explanatory information and documentation required by 12 C.F.R. § 1022.43(d), PRA recorded in its system a receipt date that was later than the actual receipt date. As a result, for numerous of these Direct Disputes, PRA did not report the results of its investigation to the consumer before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1), which is typically 30 days.

54. Since at least September 9, 2015, PRA has classified as "non-specific" Direct Disputes it has received from consumers with a notice that PRA determined did

not include sufficient information to identify the account or other relationship that was in dispute and the specific information that the consumer was disputing and an explanation of the basis for the dispute.

55. With at least tens of thousands of Direct Disputes that PRA deemed “non-specific” since at least September 9, 2015, PRA neither (1) conducted an investigation of the dispute and reported its results to the consumer within the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1); nor (2) provided a notice to the consumer that indicated that PRA had determined that the dispute was “frivolous or irrelevant” and the reasons for such determination and that identified any information required to investigate the disputed information.

56. In addition, until at least September 2016, PRA’s operations for processing and recording Direct Disputes were insufficient to ensure that all Direct Disputes were entered into PRA’s system of record. Between at least June 2015 and September 2016, PRA received but failed to input into its system over 2,500 properly addressed Direct Disputes (“the backlog”). As a result, PRA did not timely respond to and, when necessary, investigate these Direct Disputes.

57. After PRA realized that it had failed to process the backlog, PRA determined that over 900 of the Direct Disputes in the backlog were “frivolous or irrelevant.” But PRA did not, within five days of such a determination, provide consumers with a notice that indicated that PRA had determined the dispute was “frivolous or irrelevant” and the reasons for such determination and that identified the information required to investigate the disputed information.

58. PRA also determined that, for over 1,500 of the backlogged Direct Disputes, PRA had an obligation to investigate because the dispute had been submitted

with a notice that included the explanatory information and documentation required by 12 C.F.R. § 1022.43(d). Because of its delayed processing, PRA failed to investigate and report the results of these disputes to the consumers before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1).

PRA failed to conduct reasonable investigations of Direct and Indirect Disputes.

59. Since at least September 2015, PRA has resolved numerous Direct Disputes and Indirect Disputes that it classified as “fraud/ID theft” in PRA’s favor—meaning that it found no fraud or identify theft—after considering only the following: (1) the consumer did not submit a PRA-approved fraud document (like a police report or notarized affidavit), (2) PRA possessed OALD reflecting the consumer’s name and claimed amount, and (3) PRA’s records reflected that the consumer previously paid on the debt.

60. As described in paragraph 58 of this Complaint, PRA had an obligation to investigate over 1,500 Direct Disputes in the backlog. Once it eventually processed these disputes, PRA resolved them using a categorical methodology based on limited criteria, including whether there was a judgment, the resolution of prior disputes, and whether the consumer had made a payment on the debt.

61. As a result of PRA’s formulaic resolution of the backlog disputes and numerous “fraud/ID theft” disputes, PRA conducted unreasonable investigations that did not appropriately evaluate relevant information. For instance, PRA failed to (a) consider whether it possessed other information supporting a finding of fraud or ID theft; (b) evaluate reasons why the consumer may have made a payment on the debt

even if she did not owe it; or (c) or identify when the payment was made before the fraud or ID theft allegedly occurred.

COUNT I: VIOLATING THE CFPA BY VIOLATING THE ORDER

62. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

63. The Order is an “order prescribed by the Bureau” and is, therefore, a “Federal consumer financial law” under the CFPA. 12 U.S.C. § 5481(14).

64. Under § 1036(a)(1)(A) of the CFPA, it is unlawful for covered persons, such as PRA, to “commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

65. PRA violated the Order by:

a. between at least March 7, 2016 and September 9, 2020, making representations about the amount or validity of unsubstantiated debt, in violation of paragraph 116 of the Order;

b. between at least March 7, 2016 and September 9, 2020, engaging in Legal Collections without offering to provide to consumers the documents required by paragraph 120 of the Order;

c. between at least March 7, 2016 and September 9, 2020, misrepresenting that it would provide within 30 days the documents specified in the form letter PRA sent when initiating Legal Collections, in violation of paragraph 122 of the Order;

d. between at least March 7, 2016 and September 9, 2020, initiating Debt Collection Lawsuits with breach-of-contract claims without possessing OALD reflecting terms and conditions, in violation of paragraph 119 of the Order;

- e. between at least December 9, 2015 and September 9, 2020, failing to disclose when it was attempting to collect Time-Barred Debt, in violation of paragraph 126 of the Order; and
- f. between at least December 9, 2015 and September 9, 2020, initiating Debt Collection Lawsuits for Time-Barred Debt.

66. By violating the Order's requirements, PRA committed acts or omissions that violated "Federal consumer financial law" and § 1036(a)(1)(A) of the CFPB. 12 U.S.C. § 5536(a)(1)(A).

**COUNT II: DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE CFPB
(Letters Sent to Consumers When Initiating Legal Collections)**

67. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

68. Section 1036(a)(1)(B) of the CFPB prohibits covered persons, such as PRA, from engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B).

69. In the letters it sent to consumers when initiating Legal Collections, PRA expressly represented that it would provide the specified documents within 30 days. In numerous instances, these representations misled or were likely to mislead consumers because PRA did not provide or could not have provided all specified documents within 30 days of request.

70. These representations were material because they were express and because they impeded consumers' ability to determine whether a debt was truly owed.

71. PRA therefore engaged in deceptive acts or practices that violated §§ 1031(a) and 1036(a)(1)(B) of the CFPB. 12 U.S.C. §§ 5531(a); 5536(a)(1)(B).

**COUNT III: VIOLATIONS OF THE FDCPA
(Letters Sent to Consumers When Initiating Legal Collections)**

72. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

73. Section 807 of the FDCPA prohibits debt collectors, such as PRA, from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692e. Specifically, § 807(10) prohibits false representations or deceptive means to collect or attempt to collect any debt. 15 U.S.C. § 1692e(10).

74. In the letters it sent to consumers when initiating Legal Collections, PRA expressly represented that it would provide the specified documents within 30 days. In numerous instances, these representations were false or misleading because PRA did not provide or could not have provided all specified documents within 30 days of request.

75. These representations were made in letters in which PRA attempted to collect debt and were therefore “in connection with the collection of any debt” within the meaning of the FDCPA. 15 U.S.C. § 1692e.

76. PRA therefore used false, misleading, or deceptive representations or means in connection with the collection of debts, in violation of § 807 and 807(10) of the FDCPA. 15 U.S.C. §§ 1692e, 1692e(10).

**COUNT IV: DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF
THE CFFPA
(Suing on Time-Barred Debt)**

77. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

78. Section 1036(a)(1)(B) of the CFPA prohibits covered persons, such as PRA, from engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B).

79. PRA sued numerous consumers on Time-Barred Debt.

80. These lawsuits represented implicitly or explicitly, directly or by implication, that consumers had legally enforceable obligations to pay these debts.

81. These representations were material because they were likely to affect consumers' choices about whether and how to respond to the allegedly outstanding debts.

82. These representations were likely to mislead consumers because they were untrue; as these debts had passed the applicable statutes of limitations, the consumers did not have legally enforceable obligations to pay these debts.

83. PRA therefore engaged in deceptive acts or practices that violated §§ 1031(a) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a); 5536(a)(1)(B).

**COUNT V: VIOLATIONS OF THE FDCPA
(Suing on Time-Barred Debt)**

84. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

85. Section 807 of the FDCPA prohibits debt collectors, such as PRA, from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692e. Specifically, § 807(2)(A) prohibits false representations of the legal status of a debt, § 807(5) prohibits threats to take action that cannot legally be taken or that is not intended to be taken, and § 807(10) prohibits false

representations or deceptive means to collect or attempt to collect any debt. 15 U.S.C.

§ 1692e(2)(A), (5), (10).

86. PRA sued numerous consumers on Time-Barred Debt.

87. Because these lawsuits were intended to collect debt, they were “in connection with the collection of any debt” within the meaning of the FDCPA. 15 U.S.C. § 1692e.

88. Whether a debt is legally enforceable concerns the character or legal status of a debt.

89. The reasonable interpretation of these lawsuits, implicitly or explicitly, directly or by implication, was that consumers had legally enforceable obligations to pay these debts.

90. These representations were false or misleading because they were untrue; as these debts had passed the applicable statutes of limitations, the consumers did not have legally enforceable obligations to pay these debts.

91. PRA therefore used false, misleading, or deceptive representations or means in connection with the collection of debts, in violation of §§ 807, 807(2)(A), 807(5), and 807(10) of the FDCPA. 15 U.S.C. §§ 1692e, 1692e(2)(A), (5), (10).

COUNT VI: VIOLATING THE CFPA BY VIOLATING THE FDCPA

92. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

93. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered persons to “commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

94. The FDCPA is a “Federal consumer financial law.” 12 U.S.C. § 5481(12)(H), (14).

95. PRA is a “covered person” under the CFPA. 12 U.S.C. § 5481(6).

96. Under § 814(c) of the FDCPA, any violation of the FDCPA is also deemed to be a violation of the CFPA. 15 U.S.C. § 1692l(c).

97. By violating the FDCPA as described in Counts III and V, PRA violated the CFPA. 12 U.S.C. § 5536(a)(1)(A); 15 U.S.C. § 1692l(c).

**COUNT VII: VIOLATIONS OF FCRA
(Untimely Resolution of Direct Disputes)**

98. The Bureau incorporates the allegations contained in paragraphs 1-61 of this Complaint.

99. For Direct Disputes addressed pursuant to 12 C.F.R. § 1022.43(c) and that include the explanatory information and documentation required by 12 C.F.R. § 1022.43(d), section 623(a)(8)(E)(i)-(iii) of FCRA and its implementing provisions in Regulation V require a furnisher to complete a reasonable investigation of the dispute and report the results of the investigation to the consumer before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1), which is normally 30 days from receipt of the dispute, unless the furnisher reasonably determines that the dispute is “frivolous or irrelevant.” 15 U.S.C. § 1681s-2(a)(8)(D)-(F); 12 C.F.R. § 1022.43(a)-(f).

100. Section 623(a)(8)(F) of FCRA and its implementing provisions in Regulation V provide that, if a furnisher reasonably determines that a Direct Dispute is “frivolous or irrelevant,” then the furnisher must notify the consumer of this determination. 15 U.S.C. § 1681s-2(a)(8)(F)(i)(I), (ii); 12 C.F.R. § 1022.43(f)(1)(i), (2). A furnisher must provide this “frivolous or irrelevant” notice not later than five business

days after making the determination, and the notice must include the reasons for such determination and identify any information required to investigate the disputed information. 15 U.S.C. § 1681s-2(a)(8)(F)(ii)-(iii); 12 C.F.R. § 1022.43(f)(2)-(3).

101. For numerous Direct Disputes that PRA was obligated to investigate and where PRA recorded a receipt date that was later than the actual receipt date, PRA did not report the results of the investigation to the consumer before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1).

102. With numerous Direct Disputes that PRA deemed “non-specific” since at least September 9, 2015, PRA neither reported the results of the investigation to the consumer before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1), nor provided a “frivolous or irrelevant” determination notice to the consumer within five business day after making the determination.

103. With over 1,500 Direct Disputes in the backlog that PRA had an obligation to investigate, PRA failed to report the results of its investigations to the consumer before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1).

104. With over 900 Direct Disputes in the backlog that PRA determined were “frivolous or irrelevant,” PRA did not provide the consumer with the required “frivolous or irrelevant” notice within five days of the determination.

105. PRA therefore violated § 623(a)(8)(E)(iii) of FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(iii), and Regulation V, 12 C.F.R. § 1022.43(e)(3), with numerous Direct Disputes recorded with the incorrect receipt date, backlogged Direct Disputes, and “non-specific” Direct Disputes for which PRA was required to report the results of the investigation before the expiration of the timeframe set by § 611(a)(1) of FCRA, 15 U.S.C. § 1681i(a)(1).

106. PRA therefore violated § 623(a)(8)(F)(ii) and (iii) of FCRA, 15 U.S.C. § 1681s-2(a)(8)(F)(ii)-(iii), and Regulation V, 12 C.F.R. § 1022.43(f)(2)-(3), with numerous “non-specific” and backlogged Direct Disputes where PRA was required to provide a “frivolous or irrelevant” determination notice.

**COUNT VIII: VIOLATIONS OF FCRA
(Failure to Conduct Reasonable Investigations)**

107. The Bureau incorporates the allegations contained in paragraphs 1-61 of this Complaint.

108. Sections 623(a)(8)(E)(i)-(ii) of FCRA and its implementing provisions in Regulation V require a furnisher to conduct a reasonable investigation of a Direct Dispute that includes a review of all relevant information provided by the consumer with the dispute notice. 15 U.S.C. § 1681s-2(a)(8)(E)(i)-(ii); 12 C.F.R. § 1022.43(a), (e)(1)-(2).

109. Similarly, § 623(b)(1)(A)-(B) of FCRA requires a furnisher to conduct a reasonable investigation of an Indirect Dispute that includes a review all relevant information provided by the CRA. 15 U.S.C. § 1681s-2(b)(1)(A)-(B).

110. Since at least September 2015, PRA has failed to conduct reasonable investigations of numerous Direct and Indirect Disputes it classified as “fraud/ID theft” by considering only that (1) the consumer did not submit a PRA-approved fraud document, (2) PRA possessed OALD reflecting the consumer’s name and claimed amount, and (3) PRA’s records reflected that the consumer previously paid on the debt.

111. Between at least June 2015 and September 2016, PRA failed to conduct reasonable investigations that included a review of all relevant information provided by

the consumer for the backlogged Direct Disputes that PRA had an obligation to investigate.

112. PRA therefore violated § 623(a)(8)(E)(i)–(ii) and 623(b)(1)(A)–(B) of FCRA, 15 U.S.C. § 1681s-2(a)(8)(E)(i)–(ii), (b)(1)(A)–(B), by failing to conduct reasonable investigations of numerous Direct and Indirect Disputes.

COUNT IX: VIOLATING THE CFPA BY VIOLATING FCRA

113. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

114. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered persons to “commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

115. The CFPA defines “Federal consumer financial law” to include most provisions of FCRA, including § 623 of FCRA, 15 U.S.C. § 1681s-2, and its implementing regulation, Regulation V. 12 U.S.C. § 5481(12)(F), (14).

116. PRA is a “covered person” under the CFPA. 12 U.S.C. § 5481(6).

117. PRA’s violations of § 623(a)(8) and (b)(1) of FCRA, described in Counts VII-VIII, constitute violations of § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

COUNT X: VIOLATIONS OF REGULATION V (Failure to Maintain Reasonable Policies and Procedures)

118. The Bureau incorporates the allegations contained in paragraphs 1-61 of this Complaint.

119. Regulation V requires a furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a CRA. 12 C.F.R. § 1022.42.

120. Since at least September 2015, PRA has failed to establish and implement reasonable written policies and procedures governing the investigation of fraud/ID theft disputes.

121. Before January 2017, PRA failed to establish and implement reasonable written policies and procedures that ensured disputes were resolved within the period required by §§ 611(a)(1) and 623(a)(8)(E)(iii) and (b)(2) of FCRA, 15 U.S.C. §§ 1681i(a)(1), 1681s-2(a)(8)(E)(iii) and (b)(2).

122. PRA therefore violated Regulation V, 12 C.F.R. § 1022.42, by failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnished to CRAs.

COUNT XI: VIOLATING THE CFPA BY VIOLATING REGULATION V

123. The Bureau incorporates the allegations set forth in paragraphs 1-61 of this Complaint.

124. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered persons to “commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

125. The CFPA defines “Federal consumer financial law” to include most provisions of FCRA’s implementing regulation, Regulation V. 12 U.S.C. § 5481(12)(F), (14).

126. PRA is a “covered person” under the CFPA. 12 U.S.C. § 5481(16).

127. PRA’s violations of Regulation V described in Count X constitute violations of § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

DEMAND FOR RELIEF

Accordingly, the Bureau requests that the Court:

- a. permanently enjoin PRA from committing future violations of the CFPA, FDCPA, FCRA, or any provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);
- b. grant additional injunctive relief as the Court deems just and proper;
- c. order PRA to pay damages, restitution, redress, or other monetary relief to consumers, including the refund of money;
- d. order the disgorgement of PRA’s ill-gotten gains or compensation for unjust compensation;
- e. award a civil money penalty under 12 U.S.C. § 5565(c);
- f. order PRA to pay the Bureau’s costs incurred in connection with prosecuting this action; and
- g. award additional relief as the Court deems just and proper.

Dated: March 23, 2023

Respectfully submitted,

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Attorneys for Plaintiff
Consumer Financial Protection Bureau

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LAURA LYNN HAMMETT

PLAINTIFF

v.

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

**PORTFOLIO RECOVERY
ASSOCIATES LLC**

DEFENDANT

ORDER

This Order addresses Ms. Hammett's Motion to Settle the Record to Correct Errors and Omissions in the Transcript of [the] December 1, 2021 Hearing.¹ Ms. Hammett asserts that there are four "errors" or "omissions" in the written transcript of the telephonic hearing that took place on December 1, 2021.²

1. Ms. Hammett asserts that the Court Reporter "omitted significant dialogue from the transcript of the 12/1/2021 hearing filed on 8/15/2023."³ And she, at least generally, pinpoints where in the transcript the allegedly omitted dialogue would have occurred: "The dialogue occurred between page 6 line 13 and page 8 line 13."⁴ Ms. Hammett's assertion of an omission is based almost exclusively on her recollection of the dialogue occurring.⁵ Mr. Mitchell, Defendant's counsel, has "no recollection of the allegedly omitted" dialogue.⁶ Neither does the Court.

¹ Pl.'s Mot. to Settle the Record (Doc. 267). The title of Plaintiff's Motion also included a reference to the Document number of the relevant transcript: Doc. 260. *See* Jan. 1, 2023 Hr'g Tr. (Doc. 260).

² *See* Pl.'s Mot. to Settle the Record (Doc. 267) at 2.

³ *See id.*

⁴ *Id.*

⁵ *But see* Pl.'s Br. in Supp. of Pl.'s Mot. to Settle the Record (Doc. 268) at 4-5.

⁶ *See* Decl. of David S. Michell, Jr. (Doc. 276-1) at 1.

For the reasons Defendant sets forth in its Response in Opposition to Plaintiff's Motion to Settle the Record,⁷ under the applicable precedent Ms. Hammett has not shown an entitlement to the relief she seeks. However, out of an extreme abundance of caution, the Court decided to double-check the portion of the transcript cited by Ms. Hammett (plus a full page before and after the page range she identified) against the audio recording. That review made clear that there was nothing missing from the transcript. Ms. Hammett's assertion—that something was said but not recorded on or around Pages 6, 7, or 8 of the transcript—is wrong. Accordingly, with respect to this request to settle the record, the Court DENIES Ms. Hammett's Motion.

2. At the December 1, 2021 hearing, there was discussion of a Motion that Ms. Hammett had made concerning Offers of Judgment.⁸ Ms. Hammett is concerned about the transcript's inclusion of "a number for the amount that [she] gave as an example of the amount of the offer of judgment[]," apparently because that number is different from the highest offer of judgment PRA actually made.⁹ Ms. Hammett acknowledges that she "may have misspoken."¹⁰ Accordingly, it is unclear to the Court whether Ms. Hammett is suggesting that the number transcribed was different from the number she actually said in the hearing, or whether Ms. Hammett is asking to change the transcript to exclude or alter the number she actually said in the hearing. If the latter, the Court will not alter the transcript. The transcript is intended to be a true reflection of what was actually said at the hearing, regardless of whether what was said was said in error. But perhaps Ms. Hammett is claiming the former.

⁷ See Def.'s Resp. in Opp'n to Pl.'s Mot. to Settle the Record (Doc. 276) at 2.

⁸ See Jan. 1, 2023 Hr'g Tr. (Doc. 260) at 15–17.

⁹ See Pl.'s Br. in Supp. of Pl.'s Mot. to Settle the Record (Doc. 268) at 6.

¹⁰ See *id.* ("The error may have been mine. I may have misspoken.")

Again, under the applicable precedent Ms. Hammett has not shown an entitlement to the relief she seeks. However, out of an extreme abundance of caution, the Court decided to double-check the portion of the transcript discussing Offers of Judgment against the audio recording. The Court listened to the portion of the audio recording that corresponds to Page 12, Line 16 through Page 20, Line 1. That review made clear that all the dollar figures/numbers transcribed were the actual dollar figures/numbers that Ms. Hammett actually said at the hearing. Accordingly, with respect to this request, the Court DENIES Ms. Hammett's Motion.

3. Ms. Hammett asserts that the word "agreed" on Page 24, Line 11 of the transcript is incorrect.¹¹ She says it "should have been 'disagreed.'"¹² It is unclear if Ms. Hammett is saying the Court Reporter mis-transcribed what she actually said at the hearing, or if Ms. Hammett is just saying that she misspoke. If the latter, the Court will not alter the transcript. The transcript is intended to be a true reflection of what was actually said at the hearing, regardless of whether what was said was said in error. But perhaps Ms. Hammett is claiming the former. If she is, the context of the rest of the transcript page certainly provides some support for the claim—enough support to require a review of the audio. So the Court went back to the audio recording to double-check this portion of the transcript.

On this one, Ms. Hammett is correct. The transcript is wrong. The Court Reporter transcribed Ms. Hammett as saying, "I believe they filed a response, and that I just agreed with it . . ." But, in the audio recording, Ms. Hammett fairly clearly says, "I believe they filed a response, and that I disagreed with it . . ." The Court Reporter must have misheard or mistyped "disagreed" as "just agreed."

¹¹ See *id.*

¹² See *id.*

This error does not have any material impact on Ms. Hammett's appeal. That's for at least two reasons. First, the rest of the transcript makes crystal clear that Ms. Hammett was not agreeing with Defendant on the substance of the point in contention. Accordingly, no one can suggest that Ms. Hammett forfeited or waived an argument. And nothing else other than forfeiture or waiver could even theoretically turn on the transcription error. Second, even if the transcription error mattered (it doesn't), the instant Court Order makes crystal clear to the parties, the public, and the Eighth Circuit what was actually said at the hearing. Accordingly, with respect to this request to settle the record, the Court GRANTS the request insofar as the Court hereby declares that Page 24, Line 11 of the December 1, 2021 hearing transcript should read "disagreed" instead of "just agreed." The Court DENIES all other relief as unnecessary.

4. Ms. Hammett's final assertion of error with respect to this transcript concerns Page 30, Lines 14–15.¹³ Here, it is pretty clear she is arguing that the Court Reporter mis-transcribed her statement by using the phrase "a hundred documents" instead of the phrase "hundreds of documents."¹⁴ The Court decided to double-check the identified portion of the transcript against the audio recording. That review made clear that Ms. Hammett actually said, "a hundred documents" at the hearing. The transcript is right. Ms. Hammett is wrong. She may have meant to say, "hundreds of documents," but that is not what she actually said. Accordingly, with respect to this request to settle the record, the Court DENIES the Motion.

IT IS SO ORDERED this 21st day of September 2023.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

¹³ See *id.* at 7.

¹⁴ See *id.*; Jan. 1, 2023 Hr'g Tr. (Doc. 260) at 30 ("And when he said that they gave me a hundred documents . . .")