Nos. 23-2638, -3093, -3432

In the United States Court of Appeals
FOR THE EIGHTH CIRCUIT

LAURA HAMMETT,
PLAINTIFF-APPELLANT,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, *and* DOES, 1–99,
DEFENDANTS-APPELLEES.

On Appeal From The United States District Court
For The Eastern District of Arkansas
Case No. 4:21-cv-00189
The Honorable Lee P. Rudofsky

BRIEF FOR DEFENDANT-APPELLEE PORTFOLIO RECOVERY ASSOCIATES, LLC

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RESPONSE TO SUMMARY OF THE CASE & STATEMENT REGARDING ORAL ARGUMENT

Plaintiff Laura Hammett ("Plaintiff"), acting pro se, brought a wide-ranging lawsuit against Defendant Portfolio Recovery Associates, LLC ("PRA"), raising claims under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., and the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq*., and state law tort claims for intentional infliction of emotional distress and outrage, negligent infliction of emotional distress, and invasion of privacy by intrusion upon seclusion, all arising out of PRA's reasonable attempts to collect on a longstanding debt Plaintiff owed to Capital One. Despite PRA closing and zeroing out her account, Plaintiff proceeded with these claims and the district court granted PRA summary judgment on all counts. Along the way, Plaintiff missed deadlines and attempted to relitigate issues, ultimately resulting in PRA receiving its taxable costs incurred. Plaintiff brings to this Court numerous meritless issues, continuing her litigation conduct. Although PRA believes affirmance in this case is straightforward and does not require oral argument, should the Court disagree, PRA believes that 15 minutes of argument per side would be sufficient, given the sheer number of issues Plaintiff raises on appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Local Rule 26.1A of the United States Court of Appeals for the Eighth Circuit, Appellee Portfolio Recovery Associates, LLC, by and through undersigned counsel, certifies that Portfolio Recovery Associates, LLC is a Delaware limited liability company and is a subsidiary of PRA Group, Inc., a publicly traded company. No publicly held corporation owns 10% or more of PRA Group, Inc. stock.

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JURISDICTIONAL STATEMENT

Plaintiff's jurisdictional statement is not complete and correct. PRA provides the following jurisdictional statement:

The district court properly maintained subject-matter jurisdiction over Plaintiff's federal law claims under 28 U.S.C. § 1331, and state law claims under 28 U.S.C. §§ 1332, 1367 (diversity jurisdiction).

This Court has jurisdiction over Plaintiff's appeal from the district court's orders granting summary judgment to PRA on all of Plaintiff's claims and entering judgment on that ground, under 28 U.S.C. § 1291 (final judgment). This Court also has jurisdiction over Plaintiff's appeal from the district court's decisions on various post-judgment motions granting PRA costs, and denying Plaintiff's request for Rule 11 sanctions, *see* R.Docs.263, 271, 282, because she timely filed supplemental notices of appeal encompassing those decisions, *see* Fed. R. App. P. 4(b)(ii). This Court does not have appellate jurisdiction over the district court's post-judgment decision denying in part Plaintiff's Motion To Settle The Record, because the district court issued that order on September 21, 2023, R.Doc.279, and Plaintiff did not file her Notice Of Appeal until November 1, 2023, R.Doc.284, 41 days later, rendering it untimely and

jurisdictionally deficient, Fed. R. App. P. 4(a)(1), (4)(b)(ii); 28 U.S.C. § 2107(a); *Miles v. Gen. Motors Corp.*, 262 F.3d 720, 722–23 (8th Cir. 2001); *Teinert v. Abdallah*, 435 F. App'x 566, 567 (8th Cir. 2011).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court properly entered summary judgment in favor of PRA on all of Plaintiff's claims. *See Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446 (8th Cir. 2001); *Heinz v. Carrington Mortg. Servs., LLC*, 3 F.4th 1107 (8th Cir. 2021); *CBM of Cent. Ark. v. Bemel*, 623 S.W.2d 518 (Ark. 1981); *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535 (8th Cir. 2020); 15 U.S.C. §§ 1692c, 1692d, 1692e, 1692g, 1692k; 47 U.S.C. § 227.

2. Whether the district court properly denied Plaintiff's motion for reconsideration of its summary judgment decisions. *See Arnold v. ADT Sec. Servs., Inc.*, 627 F.3d 716 (8th Cir. 2010); *SPV-LC, LLC v. Transmerica Life Ins. Co.*, 912 F.3d 1106 (8th Cir. 2019).

3. Whether the district court properly denied in part Plaintiff's motion to amend her first amended complaint because any such amendments would have been futile. *See Silva v. Metro. Life Ins. Co.*, 762 F.3d 711 (8th Cir. 2014); *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d

642 (2002); *Fleck v. Wetch*, 937 F.3d 1112 (8th Cir. 2019); *Dowty v. Riggs*, 385 S.W.3d 117 (Ark. 2012).

4. Whether the district court erred in denying Plaintiff's motion to compel initial disclosures. *Farmers Coop. Co. v. Bartlett Grain Co., L.P.*, No.4:09CV3252, 2011 WL 612060 (D. Neb. Feb. 10, 2011); Fed. R. Civ. P. 26(a).

5. Whether the district court erred in denying Plaintiff's motion to use electronic filing. *See Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); *Carter v. Arkansas*, 391 F.3d 965 (8th Cir. 2004); *Danker v. City of Council Bluffs*, 53 F.4th 420 (8th Cir. 2022); Fed. R. Civ. P. 83; 28 U.S.C. § 2071(a).

6. Whether the district court correctly denied Plaintiff's request to extend discovery at the close of the discovery period. *See Yang v. Robert Half Int'l, Inc.*, 79 F.4th 949 (8th Cir. 2023); *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852 (8th Cir. 1996); Fed. R. Civ. P. 16(b)(4).

7. Whether the district court abused its discretion in allowing PRA to protect its confidential information. *See Watson v. O'Neill*, 365 F.3d 609 (8th Cir. 2003); *Chi. Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001); *Procaps S.A. v. Patheon Inc.*, No.12-24356-CIV,

2013 WL 4773433 (S.D. Fla. Sept. 4, 2013); *IDT Corp. v. eBay, Inc.*, 709 F.3d 1220 (8th Cir. 2013).

8. Whether the district court committed plain error in failing to comply with conflict-of-interest rules. *See Fletcher v. Price Chopper Foods of Trumann, Inc.*, 220 F.3d 871 (8th Cir. 2000); *Pope v. Fed. Express Corp.*, 974 F.2d 982 (8th Cir. 1992); *Bolin v. Story*, 225 F.3d 1234 (8th Cir. 2000); *United States v. Phillips*, 664 F.2d 971 (5th Cir. 1981); 28 U.S.C. § 455(a).

9. Whether the district court erred in awarding PRA costs as the prevailing party. *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598 (2001); *Quiles v. Union Pac. R.R.*, 4 F.4th 598 (8th Cir. 2021).

10. Whether the district court properly held that no sanctions under Rule 11 of the Federal Rules of Civil Procedure were warranted. *See Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004 (8th Cir. 2006); *Brubaker v. City of Richmond*, 943 F.2d 1363 (4th Cir. 1991); *Burull v. First Nat'l Bank*, 831 F.2d 788 (8th Cir. 1987); Fed. R. Civ. P. 11.

11. Whether the district court erred in denying Plaintiff's motion to settle the record. *See United States v. Franklin*, 250 F.3d 653 (8th Cir.

2001); *United States v. Harris*, 966 F.3d 755 (8th Cir. 2020); Fed. R. App. P. 10(e)(1); 28 U.S.C. § 753(b).

INTRODUCTION

Following PRA's lawful efforts to collect a debt that Plaintiff owed, Plaintiff filed a complaint raising numerous federal and state law claims. The district court granted PRA summary judgment on all of Plaintiff's claims and then awarded PRA costs as the prevailing party, while denying Petitioner's meritless motions for sanctions and various other relief. On appeal, Plaintiff raises a cavalcade of issues, but each argument fails. Her primary challenge is to the district court's summary judgment decisions, but her arguments are wrong because she either failed to present any evidence raising a genuine issue of material fact on any of her FDCPA, TCPA, and state-law tort claims, or failed to defend at all against PRA's arguments in favor of summary judgment, waiving the claims. Plaintiff also raises numerous other arguments, including claiming that the district court should have disqualified itself, that local rules relating to electronic filing are unconstitutional, and that PRA should be subject to Rule 11 sanctions. All of these arguments are wrong, and this Court should affirm the district court in all respects.

STATEMENT OF THE CASE

A. Factual Background

In 2011, PRA purchased a closed Capital One Bank (USA), NA ("Capital One") account ending in -6049 with a balance of $1,916.05. R.Docs.78-6; 106-1 at 3, 5. The load data[1] for the purchase showed the debtor on the account as Laura J. Lynn, associated with an address in San Diego, California, and a phone number ending with -6000 and an area code for southern California. R.Docs.78-3; 78-6. The listed social security number and birthdate for the debtor matched those for Plaintiff, now known by the name of Laura Lynn Hammett. R.Doc.78-6; R.Doc.164 at 6:14–15 (Plaintiff acknowledging her name used to be Laura J. Lynn). With post-charge-off interest of $381.58, the total balance owed on the account was $2,297.63. R.Doc.78-6.

On December 3, 2013, PRA mailed a letter to Plaintiff at the San Diego address in the load data. R.Docs.78-6; 78-9. The letter stated that PRA had purchased the -6049 account from Capital One, the total balance due was $2,297.63, and Plaintiff had thirty days to inform PRA

[1] "Load data provides specific details about an account that a company like PRA [ ] buys from Capital One." R.Doc.173 at 3.

that she wanted to dispute the debt. R.Doc.78-9. PRA also sought to contact Plaintiff by phone, calling Plaintiff at the -6000 number on December 8, 2013. R.Doc.78-7 at 7. Plaintiff did not answer, so PRA called again on December 12, 2013. Plaintiff answered but did not identify herself, instead asserting that the -6000 number was a business line and ending the call abruptly. R.Docs.78-2 ¶ 13; 107-6 at 3; 164, Vol.I at 23:8. PRA stopped making calls to this number and began calling other numbers it believed to be associated with the -6049 account. *See* R.Doc.78-7.

When the December 3 letter returned as undeliverable, PRA corrected the formatting of the zip code and resent the letter on December 19, 2013. R.Docs.78-2 ¶ 28; 78-8 at 5. Having received no response, PRA sent another letter to the same San Diego address on February 5, 2014, which also contained information concerning PRA's purchase of the Capital One debt and Plaintiff's options for responding to the debt. R.Doc.78-9. PRA did not receive a response to the February letter either. R.Docs. 78-2 ¶ 29; 164, Vol.I at 65:10.

In 2015, Plaintiff moved from California to Arkansas and intentionally did not tell people about the move. R.Docs.6 ¶ 40; 78-22 ¶ 9.

Between March 13, 2017, and November 18, 2020, PRA tried unsuccessfully to reach Plaintiff on a landline number in Arkansas. R.Doc.78-7. On one call to the landline in August 2017, someone answered and informed the PRA representative that Plaintiff "wo[uldn't] be [there] until September." R.Doc.107-6 at 7. As of November 18, 2020, PRA had never knowingly spoken to Plaintiff on the Arkansas landline, nor at any other number. *See* R.Docs.107-6; 78-7.

On November 18, 2020, PRA decided to call the original -6000 number, and Plaintiff answered. R.Docs.78-2 ¶ 15; 107–6 at 20. On this call, PRA attempted to verify that it was speaking with Laura Lynn by asking her to confirm her birthdate, but Plaintiff would not confirm the information, and, thus, PRA could not reveal the nature of its call. R.Doc.107-6 at 14–18. Plaintiff told the PRA representative not to call her number, and PRA explained that she could send a "cease and desist" to PRA to stop the collection efforts. R.Doc.107-6 at 19–20. Being unable to verify it was speaking to the right person and in the absence of a written cease-and-desist request, PRA continued to try to reach Plaintiff at the -6000 number, making periodic calls. R.Doc.78-7. And on a couple occasions, Plaintiff repeated her request that PRA not call her or

requested that she not be recorded, but she never identified herself. R.Doc.107-6 at 25, 28. On a February 1, 2021, call, PRA acknowledged that it was possible PRA had an incorrect number for "Laura Lynn," and that it could mark the -6000 number as a wrong number if the individual on the line identified herself, but Plaintiff still did not confirm her identity. R.Doc.107-6 at 44–49.

On February 18, 2021, Plaintiff called PRA, told PRA that her name was Laura and she had received multiple calls from PRA, and asked for information about the debt PRA was attempting to collect. R.Doc.107-6 at 55. After Plaintiff verified her identity, the PRA representative disclosed that PRA was a debt collector and that PRA was attempting to collect a debt associated with a Capital One Mastercard. R.Docs.107-6 at 56; 78-2 ¶ 19. Plaintiff denied owing any debt, but provided some personal information, including an address in Arkansas. R.Doc.107–6 at 56–57. PRA informed Plaintiff that her account would be transferred to the disputes department and that she would receive "documentation in the mail in reference to the dispute." R.Doc.107–6 at 59–60.

On February 20, 2021, Plaintiff sent PRA a written cease-and-desist letter. R.Doc.164, Vol.I at 67:16–19. The call history produced by

PRA in these proceedings shows, and Plaintiff admits, that PRA made no further calls to Plaintiff following her written request. R.Docs.78-7; 164 at 67:21.

A couple of weeks later, Plaintiff received a letter from PRA dated February 19, 2021, which listed the account number ending in -6049, provided in bolded font that the communication was "made for the limited purpose of responding to [a] dispute and [was] NOT an attempt to collect a debt," and gave instructions on how a customer could "dispute an account due to issues related to fraud/identity theft." R.Doc.39-1. Attached to the letter was an affidavit a customer could execute and send back to PRA to formally dispute the debt. R.Doc.39-1. Plaintiff never executed the affidavit. R.Doc.164, Vol.II at 86:25–87:2.

The day after Plaintiff filed this lawsuit, PRA closed Plaintiff's account and waived the outstanding debt in light of the ongoing litigation. R.Doc.78-2 ¶ 17. On April 1, 2021, Plaintiff received a letter from PRA dated March 18, 2021, addressed to a consumer with a different, but similar sounding, name, which stated that PRA had "completed the investigation into [her] dispute and [her] account ha[d] been closed." R.Docs.107-6 at 82; 164, Vol.I at 69:8–25. The letter listed

an account balance of zero and stated that PRA "ha[d] closed th[e] account." R.Doc.164, Vol.I at 68:24–69:1.

B. Litigation Background

Plaintiff Hammett first filed suit against PRA on March 10, 2021. R.Doc.1. In the operative Complaint, R.Doc.6, Plaintiff alleged five causes of action against PRA for (1) violations of the FDCPA, 15 U.S.C. § 1692 *et seq.*, (2) violations of the TCPA, 47 U.S.C. § 227, (3) intentional infliction of emotional distress and outrage, (4) negligent infliction of emotional distress, and (5) invasion of privacy by intrusion upon seclusion, all related to PRA's debt-collection efforts beginning in 2013.

The district court entered a final scheduling order on September 16, 2021, setting a March 2, 2022, deadline for all discovery, and a deadline for all dispositive motions of March 17, 2022. R.Doc.23.

Plaintiff filed several pretrial motions relevant to this appeal. Soon after filing suit, Plaintiff filed a motion for leave to file documents electronically, R.Docs.7, 8, which the district court denied, explaining that "Section I.B of the CM/ECF Administrative Policies and Procedures Manual for Civil Filings adopted by General Order 53 prohibits pro se parties from participating in electronic filing," R.Doc.18 (footnotes

omitted). Plaintiff also filed a "Motion to Compel Substantial Compliance with FRCP 26(a)," R.Doc.24, which the court interpreted as a request to compel initial disclosures and denied, finding PRA had complied with its obligations under the federal rules, R.Docs.88, 98 at 12–13.

Throughout the district court proceedings, Plaintiff challenged PRA's efforts to protect its confidential information from exposure on the public record. These efforts included resisting PRA's attempts to secure entry of a standard protective order, R.Doc.27 ¶¶ 2–3; asserting a blanket challenge to every confidentiality designation PRA made in the case, R.Doc.68; and opposing numerous requests made by PRA to file confidential documents under seal or with redactions, R.Docs.50, 62, 74, 77, 105, 158, 167. The district court ultimately entered a standard protective order, R.Doc.46; denied Plaintiff's "generalized and broadside attack" on every confidentiality designation, R.Doc.124 at 16:23–17:3; and granted PRA's requests to file documents containing proprietary and personal identifying information under seal and with redactions, over Plaintiff's objections, R.Docs.51, 110, 114, 115, 119, 192.

On November 22, 2021, Plaintiff filed a motion for partial summary judgment, seeking an order declaring that PRA violated 15 U.S.C.

§ 1692e(2)(A) of the FDCPA, the section of the FDCPA that prohibits using a "false representation" regarding "the character, amount, or legal status of any debt" in "connection with the collection of any debt," by falsely asserting she owed $2,297.63. R.Doc.37. Plaintiff also filed a motion to file a second amended complaint. R.Doc.33. PRA filed its own cross-motion for summary judgment on January 28, 2022, seeking judgment in its favor on all counts. R.Doc.75.

While the summary judgment motions were pending and one day before the close of discovery, on March 1, 2022, Plaintiff filed a motion seeking to extend or compel discovery, R.Doc.97, which the district court denied as delayed and unjustified, R.Doc.140 at 1–2 (citing R.Doc.125).

On August 16, 2022, the district court granted summary judgment in favor of PRA and simultaneously denied Plaintiff's motion for partial summary judgment. R.Doc.173. The court found that Plaintiff had abandoned several of her FDCPA claims, as well as her claim under the TCPA, and rejected the others on various grounds. R.Doc.173. The court also rejected Plaintiff's partial motion for summary judgment in which she sought a finding that PRA violated 15 U.S.C. § 1692e(2)(A) of the FDCPA, noting that Plaintiff did not allege a violation of Section

1692e(2)(A) in the operative complaint but nonetheless finding that "it d[id] not appear to be genuinely disputed that Ms. Hammett owed PRA, LLC $2,297.63." R.Doc.173 at 71. The court then granted in part Plaintiff's request to amend the operative complaint and formally add a claim under 15 U.S.C. § 1692e(2)(A), providing her one more chance to prove her case. R.Doc.173 at 70. The district court denied Plaintiff's further requests for amendment. *Id.* at 58–70.

Following amendment, PRA filed a supplemental motion for summary judgment, R.Doc.188, which Plaintiff opposed, R.Doc.196. Plaintiff also filed a motion for reconsideration of the decisions on the motions for summary judgment, R.Doc.194, which she supplemented numerous times, R.Docs.201, 206, 221, 225. In the midst of these filings, Plaintiff also moved the court for sanctions against PRA and its counsel under Rule 11 based on allegedly "false statements" included in some of PRA's filings about Plaintiff's gambling habits. R.Doc.222.

On June 15, 2023, the district court again granted summary judgment in favor of PRA, R.Doc.238, and denied Plaintiff's requests for reconsideration, R.Doc.230.

PRA moved for costs under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)(1) as the "prevailing party" and sought $8,356.18 in taxable costs. R.Doc.240. In opposition to PRA's motion, Plaintiff asserted that she was the prevailing party because PRA "waived" her debt. R.Doc.252. The district court held that PRA was the prevailing party and awarded costs. R.Doc.263. While the costs motion was pending, the district court also denied Plaintiff's pending request for Rule 11 sanctions. R.Doc.243.

Plaintiff filed her first notice of appeal on July 14, 2023, seeking review of the judgment and all post-judgment orders, R.Doc.249, and a second on September 14, 2023, following the court's order granting PRA costs, R.Doc.271. On September 21, 2023, the district court granted in part and denied in part a post-trial motion to "settle the record," R.Doc.267, in which Plaintiff sought to correct some typos in a transcript, as well as to add a conversation that she asserted was missing from the transcript of a hearing on December 1, 2021, R.Doc.279. The court agreed to fix the small typos but rejected Plaintiff's request to add the entire conversation because there was no conversation missing. R.Doc.279 at 2. Plaintiff filed a third notice of appeal on November 1, 2023, from this ruling. R.Doc.284.

SUMMARY OF ARGUMENT

I. The district court properly granted PRA summary judgment on all of Plaintiff's claims.

A. The district court correctly entered summary judgment in favor of PRA on Plaintiff's non-waived FDCPA claims.

1. On the undisputed material facts, PRA did not violate Section 1692c(a)(1), based on a valid bona fide error defense. The evidence shows that PRA reasonably believed that Plaintiff resided in California, excusing two post-9:00 pm CT calls to the Plaintiff in Arkansas.

2. There was also no genuine dispute that PRA violated Section 1692d. Section 1692d generally prohibits harassing, oppressive, and abusive conduct, including use or threats of violence, obscene language, and harassing calls. The record is devoid of any evidence of such conduct, as no rational juror could find that the volume of calls made to Plaintiff, use of a recorded line, and continued collection efforts after only a verbal cease-and-desist were harassing or abusive within the meaning of the FDCPA.

3. The undisputed evidence shows that PRA did not violate Section 1692e(10) or (13) through its mailing of two letters. The first

letter, which provided instructions for how Plaintiff could dispute the claimed debt, explicitly stated it was not being sent for collection purposes. And the second stated the debt was no longer owed.

4. Plaintiff's final FDCPA claim alleged that PRA violated Section 1692e(2)(A) by falsely asserting that Plaintiff owed a debt of $2,297.63, but there is no genuine dispute that Plaintiff opened the relevant Capital One account and owed $2,297.63 on that account.

B. The district court also properly granted summary judgment to PRA on Plaintiff's intrusion upon seclusion claim, finding that the number and nature of PRA's collection calls did not rise to the intrusive and "highly offensive" type of conduct necessary for an invasion of privacy judgment under Arkansas law.

C. Plaintiff abandoned several of her claims at summary judgment, failing to respond to PRA's arguments.

D. Plaintiff's other criticisms of the district court's summary judgment decisions fail. Plaintiff provided no evidence to support claims that PRA fabricated or destroyed evidence utilized by the court at summary judgment. The court also did not err in failing to cite certain materials Plaintiff submitted for the court's consideration in its opinion.

II. The district court properly denied Plaintiff's request to reconsider its summary judgment decisions.

III. The district court also properly denied in part Plaintiff's request to amend the operative complaint as futile.

IV. The district court correctly denied Plaintiff's pretrial motions. The district court correctly determined that PRA disclosed all relevant materials per its Rule 26 obligations. The court did not violate Plaintiff's equal protection rights by denying her access to the e-filing system as a non-attorney. The court properly denied Plaintiff's request to extend discovery filed on the eve of its closure, because Plaintiff presented no good cause to do so. And the court also did not abuse its discretion in granting PRA's various motions to file records under seal or redaction to protect confidential and proprietary information.

V. The district court complied with all conflict-of-interest rules.

VI. The district court properly ruled on post-judgment issues. The court correctly held that PRA was the prevailing party. The court was also correct to deny Plaintiff's request for Rule 11 sanctions. And the court did not err in denying Plaintiff's request to settle the record, a ruling that Plaintiff failed to timely appeal in any event.

ARGUMENT

I. PRA Was Entitled to Summary Judgment On All Claims

This Court reviews a grant of summary judgment de novo. *Hustvet v. Allina Health Sys.*, 910 F.3d 399, 406 (8th Cir. 2018). Summary judgment is appropriate when, after reviewing the facts in the light most favorable to the nonmovant, "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Riehm v. Engelking*, 538 F.3d 952, 962 (8th Cir. 2008). Only "evidence, not contentions, avoids summary judgment." *Kelleher v. Wal-Mart Stores, Inc.*, 817 F.3d 624, 634 (8th Cir. 2016) (citation and brackets omitted).

A. PRA Was Entitled To Summary Judgment On Plaintiff's FDCPA Claims

The "FDCPA is designed to protect consumers from abusive debt collection practices and to protect ethical debt collectors from competitive disadvantage." *Peters v. Gen. Servs. Bureau, Inc.*, 277 F.3d 1051, 1054 (8th Cir. 2002). The act generally "prohibits certain types of collection practices, such as the use or threat of violence, obscene language,

publication of shame lists, and harassing or anonymous telephone calls." *Id.* The district court properly dismissed all of the FDCPA claims.[2]

1. The District Court Correctly Granted PRA Summary Judgment On Plaintiff's Section 1692c(a)(1) Claim

a. Section 1692c(a)(1) prohibits communications with a consumer "in connection with the collection of any debt . . . at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer," which, "[i]n the absence of knowledge of circumstances to the contrary," is defined to generally include calling after 9:00 pm and before 8:00 am "local time at the consumer's location." 15 U.S.C. § 1692c(a)(1). Section 1692k(c) of the FDCPA creates a "bona fide error defense" to various violations, including the requirements of Section 1692c(a)(1). *See Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8th Cir. 2001). Under Section 1692k(c), the FDCPA will not impose liability "if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error

[2] In addition to the provisions noted below, Plaintiff also asserted a claim under 15 U.S.C. § 1692b, but the district court found such claim was time-barred. R.Doc.173 at 25. Plaintiff does not challenge this ruling.

notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c). This defense "exists as an exception to the strict liability imposed upon debt collectors by the FDCPA," and applies to "clerical or factual mistakes." *Jerman v. Carlisle, McNellie, Rini Kramer & Ulrich LPA*, 559 U.S. 573, 587 (2010). A bona fide error is "one that is plausible and reasonable" and "made despite the use of procedures reasonably adapted to prevent that specific error." *Wilhelm v. Credico, Inc.*, 519 F.3d 416, 420 (8th Cir. 2008).

b. The district court properly found no genuine issue of material fact related to Plaintiff's Section 1692c(a)(1) claim, as PRA's two calls to Plaintiff after 9:00 pm CT were due to a bona fide time-zone error. As all the evidence showed, PRA reasonably believed that Plaintiff still resided in California at the time of those phone calls: Plaintiff's telephone number reflected an area code of 760, located in California, R.Doc.78-6; the address PRA had on file for Plaintiff at the time was in California, *id.*; after correcting of the format of the zip code, none of the letters PRA mailed to the California address were returned undeliverable, R.Doc.78–8 at 5; and, by Plaintiff's own admission, when she moved to Arkansas, she intentionally did not disclose to most people she was moving from

California to Arkansas, attempting to conceal that fact, R.Doc.6 ¶ 40. Given all of these undisputed facts, PRA's mistaken calling after 9:00 pm CT was entirely reasonable under the circumstances.

Further, undisputed evidence showed that PRA maintained "procedures reasonably adopted to avoid" this type of error, 15 U.S.C. § 1692k(c), further supporting a bona fide mistake. PRA has developed detailed policies and procedures for representatives making debt collection calls, which PRA provided to the district court as an attachment to its motion for summary judgment, R.Doc.78-11, and the district court described in its summary judgment order, R.Doc.173 at 28. These policies include specific procedures related to time-zone issues. R.Docs.78-11; 173 at 28. As the district court explained, these procedures "directly and reasonably mitigate the risk that a collection call will be made outside the statutorily prescribed window." R.Doc.173 at 28.

c. Plaintiff's contrary arguments ignore the undisputed evidence below. *Kelleher*, 817 F.3d at 634. Plaintiff argues, without evidentiary support, that PRA knew Plaintiff lived at an address in Arkansas at the time it made certain calls because it placed calls to a landline associated with an Arkansas address in 2017 and made a "soft credit inquiry," which

would have revealed the Arkansas addresses. Br.67–68. But PRA never knowingly spoke to Plaintiff when it called the landline and was told on one call in August 2017 that Plaintiff would not be available at that number until September. R.Doc.107-6 at 7. And Plaintiff offered no evidence the "soft credit inquiry" indicated that Plaintiff resided in Arkansas to PRA. R.Doc.164 at 70:7–71:4. Based on the undisputed evidence, no reasonable juror could find that PRA knew Plaintiff was residing in Arkansas in 2017, *Riehm*, 538 F.3d at 962, let alone four years later in 2021 when it placed the two disputed phone calls.

2. The Court Also Correctly Granted Summary Judgment On Plaintiff's Sections 1692d and 1692d(5) Claim Because She Presented No Evidence Of Abusive Or Harassing Conduct

a. Section 1692d of the FDCPA prohibits debt collectors from "engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt," including by "[c]ausing 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." 15 U.S.C. § 1692d(5). This provision "prohibits certain types of collection practices, such as the use or threat of violence, obscene language, publication of shame lists,

and harassing or anonymous telephone calls." *Peters*, 277 F.3d at 1054 (citing 15 U.S.C. § 1692d). This issue "ultimately turns on evidence regarding the volume, frequency, pattern, or substance of the phone calls," and summary judgment is proper when the "record establishes that no reasonable jury could find the requisite level of harassment." *Kuntz v. Rodenburg LLP*, 838 F.3d 923, 926 (8th Cir. 2016) (citation omitted). Call volume on its own is generally insufficient to create a genuine dispute regarding unreasonable debt-collection practices, *see, e.g.*, *Zortman v. J.C. Christensen & Assocs., Inc.*, 870 F. Supp. 2d 694, 707 (D. Minn. 2012), and even 28 or 74 calls per month to debtors have been insufficient to overcome summary judgment, *VanHorn v. Genpact Servs., LLC*, No.09–1047–CV–S–GAF, 2011 WL 4565477, at *1 (W.D. Mo. Feb. 14, 2011); *Carman v. CBE Grp., Inc.*, 782 F. Supp. 2d 1223, 1227, 1232 (D. Kan. 2011).

b. Here, Plaintiff's Section 1692d and 1692d(5) claims fail because she did not present any evidence establishing a genuine issue of material fact that PRA engaged in harassing behavior. *Riehm*, 538 F.3d at 962. The record does not include any allegations that PRA utilized "threat[s] of violence" or "obscene language." *Peters*, 277 F.3d at 1054. The number

of calls placed per month in the year prior to Plaintiff's filing her Complaint—17, R.Doc.78-7—falls well below the amounts that other courts have deemed insufficient for FDCPA liability. *VanHorn*, 2011 WL 4565477, at *1; *Carman*, 782 F.Supp.2d at 1227, 1232. Further, use of a recorded line is a "ubiquitous practice," and there is nothing to suggest using a recorded line is harassing, oppressive, or annoying within the meaning of the FDCPA. R.Doc.173 at 38.

c. Plaintiff's contrary arguments fail.

With respect to Section 1692d, Plaintiff complains that the court "rationalized that ignoring verbal [cease and desists] was acceptable," Br.62, but that conforms to the statutory text. The FDCPA provides an option for debtors seeking to stop collection calls: a *written* cease-and-desist letter. 15 U.S.C. § 1692c(c). The FDCPA does not require debt collectors to cease communication with the consumer in the absence of a written request. Plaintiff did not make any such written request until February 20, 2021, R.Doc.164, Vol.I at 67:16–19, with which PRA complied, R.Doc.78-7. All calls made after only verbal requests (many from an unidentified individual, as Plaintiff would not confirm her birthdate or other personal details) did not impose any obligation upon

PRA to cease its legitimate debt collection conduct, and did not amount to harassing or oppressive behavior as a matter of law.

Plaintiff's contention that PRA violated "California's two-party-consent law for call recordings," Br.63, is clearly misplaced, especially as Plaintiff expressly disclaimed any such illegality in her Complaint. R.Doc.6 ¶¶ 87–88. California Penal Code § 632 prohibits the use of "an electronic amplifying or recording device to eavesdrop upon or record [a] confidential communication" without consent, but the relevant calls were neither placed or received in California, nor "secret[ ] or surreptitious[ ] recording[s]" of conversations, *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914, 930 n.31 (Cal. 2006); *see, e.g.*, R.Doc.107-6 at 7, so this California law is inapplicable.

3. The Letters That Plaintiff Contends Violated Sections 1692e(10) and (13) Of The FDCPA Were Not Sent "In Connection With The Collection Of A Debt"

a. Section 1692e, as relevant, prohibits "use of any false, deceptive, or misleading representation or means *in connection with the collection of any debt*." 15 U.S.C. § 1692e (emphasis added). To determine the purpose of representations, courts utilize the "animating purpose test," under which "an animating purpose of the communication must be to

induce payment by the debtor." *Heinz v. Carrington Mortg. Servs., LLC*, 3 F.4th 1107, 1112 (8th Cir. 2021); 15 U.S.C. § 1692e. A communication that "does not 'demand' any payment whatsoever, but merely informs the [debtor] about 'the current status' of their account . . . is not the type of dunning letter that describes a communication related to 'the collection' of a debt." *Bailey v. Sec. Nat'l Servicing Corp.*, 154 F.3d 384, 388–89 (7th Cir. 1998). Only after a plaintiff meets the animating-purpose test does Section 1692e prohibit certain specific actions by debt collectors, including "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer," 15 U.S.C. § 1692e(10), and "[t]he false representation or implication that documents are legal process," *id.* § 1692e(13).

b. Here, the district court properly granted summary judgment in PRA's favor on Plaintiff's claims under Sections 1692e(10) and (13). The basis of Plaintiff's Section 1692e(10) and (13) claims were PRA's mailing of two letters—(1) the February 19, 2021, debt-dispute letter and (2) the March 18, 2021, letter addressed to a consumer with a different, but similar sounding, name and stating PRA had closed the account. R.Doc.6 ¶¶ 265–67, 203–17. But PRA did not send either of the letters to Plaintiff

for the purpose of collecting a debt. The debt-dispute letter acknowledged the existence of a debt, but provided instructions for Plaintiff to dispute her debt, while indicating in bold-face type that: this "communication is made for the limited purpose of responding to your dispute and is NOT an attempt to collect a debt." R.Doc.39-1. The second letter, while inadvertently addressed to a consumer with a different, but similar sounding, name, stated that PRA was closing the account and that the consumer owed no debt. R.Doc.107-6 at 82; R.Doc.164, Vol.I at 69:8–25. Thus, there was no genuine dispute that these two letters lacked the "animating purpose" of "induc[ing]" Plaintiff to make a payment, *Heinz*, 3 F.4th at 1112, and so cannot support a claim under Section 1692e.

c. Beyond arguing, without pointing to any evidence, *Kelleher*, 817 F.3d at 634, that both letters were a ruse, Br.56, Plaintiff only claims that the debt-dispute letter providing Plaintiff the opportunity to submit an affidavit was really a tool for collection, referring to a case in which PRA obtained default judgment following a debtor's execution of the affidavit. Br.57. But the FDCPA explicitly allows debt collectors to resume collection activities following a dispute if they "obtain verification of the debt" and provide such verification to the debtor, 15 U.S.C. § 1692g, and

such subsequent collection activity would not transform this prior communication into one made for the purpose of collecting a debt.

4. The District Court Also Properly Granted PRA's Supplemental Motion For Summary Judgment Following Amendment, On Plaintiff's Section 1692e(2)(A) Claim

a. Section 1692e(2)(A) prohibits "[t]he false representation of the character, amount, or legal status of any debt." 15 U.S.C. § 1692e(2)(A). A debtor violates this subsection by making "a false representation of the amount of a debt that overstates what is owed." *Coyne v. Midland Funding LLC*, 895 F.3d 1035, 1038 (8th Cir. 2018).

b. The district court properly granted PRA summary judgment on Plaintiff's Section 1692e(2)(A) claim. The basis of Plaintiff's claim was that PRA falsely asserted that she owned $2,297.63. R.Doc.174 ¶¶ 315–16. But the record established that Plaintiff did owe this amount. Plaintiff conceded in her deposition that she "probably" opened a Capital One account in 2001, R.Doc.164, Vol.I at 80:4–12, 81:15–18, 82:10, and load data and a bill of sale verified by a Capital One representative showed Plaintiff as the owner of the relevant account, R.Doc.78–6. PRA also provided an affidavit from Capital One verifying the accuracy of an account balance for the -6049 account and the bill of sale executing the

transfer of the debt from Capital One to PRA. R.Doc.106-1. The balance on the account at the time of purchase was $1,916.05, with a post-charge-off amount of $381.58, totaling $2,297.63. R.Doc.78-6. And in an unannounced cold call by Plaintiff to Capital One, Capital One directly confirmed Plaintiff had an account with it, the charged-off balance was $2,297.63, and that it sold the account to PRA. R.Doc.164 at 96:22–97:6. Thus, there was no genuine dispute of fact that Plaintiff owed $2,297.63, and Plaintiff's Section 1692e(2)(A) claim fails. Further, for the reasons discussed above, *supra* pp.27–28, none of the writings containing the $2,297.63 amount had an animating purpose of the collection of a debt, R.Doc.261 at 100, further foreclosing this claim.

c. Plaintiff first complains that the district court relied on (1) her concession in her deposition that she "probably" opened a Capital One account in 2001, R.Doc.173 at 71, n.463 (citing R.Doc.164), while omitting her statements explaining she could not find any evidence of such event within her own records, Br.60–61; and (2) a statement made in her affidavit in support of her Motion for Partial Summary Judgment, in which she stated "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," *id.*

at 59 (quoting R.Doc.39 ¶ 2), which she claims the court improperly truncated, Br.59–61. But Plaintiff admitted below that she "probably had a Capital One Account," R.Doc.261 at 54, and the district court carefully considered the "I am a consumer" statement in its full context, finding, even when complete, the explanation did not support Plaintiff's claims, *id.* at 97–98. Further, as noted above and by the district court, other evidence amply supported the court's decision. R.Doc.173 at 71 n.463.

Plaintiff next challenges the district court's conclusion that there was no genuine dispute that PRA waived her debt of $2,297.63. Br.50–52. In its consolidated order on pending motions for summary judgment, the district court held that there was no "genuine dispute of material fact" that on March 11, 2021, PRA closed Plaintiff's accounted and waived it "in light of the ongoing litigation" brought by the Plaintiff, and that Plaintiff "fail[ed] to offer any evidence" to the contrary. R.Doc.173 at 20, 20–21 n.196. Plaintiff argues that it is legally impossible for PRA to have waived her debt because PRA may only legally declare the balance on an account zero without a 1099-C if it acknowledges the debt was fraudulent, and PRA did not issue any such form. Br.50–52. But under

the contested-liability doctrine, "if a taxpayer, in good faith, disputed the amount of a debt, a subsequent settlement of the dispute would be treated as the amount of debt cognizable for tax purposes," so PRA's zeroing of the debt rendered her tax liability zero. *Zarin v. Comm'r of Internal Revenue*, 916 F.2d 110, 115 (3d Cir. 1990).

B. The District Court Properly Granted PRA Summary Judgment On Plaintiff's Intrusion Upon Seclusion Claim

1. Arkansas follows the Restatement (Second) of Torts' approach to intrusion upon seclusion claims, *McMullen v. McHughes Law Firm*, 454 S.W.3d 200, 209 (Ark. 2015), which creates liability for "[o]ne who intentionally intrudes, physically or otherwise, upon the solicitude or seclusion of another or his private affairs or concerns . . . for invasion of his privacy," but only "if the intrusion would be highly offensive to a reasonable person," Restatement (Second) of Torts, § 652B (Am. L. Inst. 1977). This tort 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." *Fletcher v. Price Chopper Foods of Trumann, Inc.*, 220 F.3d 871, 875 (8th Cir. 2000) (citation omitted). As relevant here, an intrusion only occurs "when an actor believes, or is substantially

certain, that he lacks the necessary legal or personal permission to commit the intrusive act." *Id.* (citation omitted). And collection activity is not "highly offensive" where it is "authorized by law." *Scheffler v. Messerli & Kramer P.A.*, 791 F.3d 847, 849 (8th Cir. 2015).

The Arkansas Supreme Court's decision in *CBM of Central Arkansas v. Bemel*, 623 S.W.2d 518 (Ark. 1981), assessed when debt-collection conduct could support a claim for intrusion upon seclusion under Arkansas law. *Bemel* affirmed a trial court's decision to allow an intrusion upon seclusion claim to be sent to a jury where the number of calls, 70, was a factor supporting the court's decision, but call volume was only one of several the court highlighted. *Id.* at 519. The debtor also alleged that the debt collector's representatives ignored the debtor's request to call at certain times, used fake names during collection efforts, repeatedly called the debtor at her place of work, and falsely claimed they were working with a prosecutor's office to garnish her wages. *Id.* Notably, PRA is unaware of any case holding that evidence showing the sheer number of calls, on its own, is sufficient to prove a claim for intrusion upon seclusion. *See Dunlap v. McCarty*, 678 S.W.2d 361, 364 (Ark. 1984) (describing *Bemel* as supporting a claim for intrusion upon

seclusion due to numerous calls with "some to the plaintiff's place of employment and many made at irregular hours").

2. Here, the district court properly granted PRA summary judgment on Plaintiff's intrusion upon seclusion claim, which was based upon the volume of PRA's calls, use of a recorded line, and refusal to stop calling after a verbal cease-and-desist request was made without verifying her identity or connection to the debt. R.Doc.6 ¶¶ 302–14. No rational juror could find that use of a recorded line is "highly offensive." *Scheffler*, 791 F.3d at 849.[3] And given, as noted above, that debt collectors have no legal obligation to cease collection efforts without a written request to cease and desist, *supra* pp.25–26, continuing to call after such requests is not "highly offensive" because it is "authorized by law." *Id.* Finally, the volume of calls is not enough either. *See Bemel*, 623 S.W.2d at 519; *Dunlap*, 678 S.W.2d at 364. The record contained no dispute of material fact that would allow a jury to find PRA engaged in unauthorized or illegal conduct to render the collection activities an

[3] Plaintiff argues PRA's conduct was criminal, rehashing arguments about the California Penal Code § 632, which prohibits the secret recording of calls, thus supporting her claim that the use of a recorded line was highly offensive. Br.54. This argument is meritless for several reasons, as explained in more detail above. *Supra* p.26.

"intrusion" or "highly offensive." *Fletcher*, 220 F.3d at 876; *Scheffler*, 791 F.3d at 849.

3. Plaintiff complains that her case is in fact "more severe" than *Bemel*, pointing to evidence in the record pertaining to the distress she suffered as a result of PRA's collection efforts. Br.53–54. But Plaintiff never provided evidence of PRA calling outside of requested windows, and there is no evidence in the record that PRA ever contacted her at a place of work, insinuated the debt would be garnished, utilized fictitious names during calls, or impersonated a prosecutor. *Bemel*, 623 S.W.2d at 519. PRA stopped calling Plaintiff's -6000 number in response to an assertion that the line was used for business, R.Docs.78-2 ¶ 13; 107-6 at 3; 164, Vol.I at 23:8; informed Plaintiff that she could stop the collection calls with use of a cease-and-desist letter, R.Doc.107-6 at 19–20; and took appropriate precautions to call at convenient, appropriate times, *see supra* p.22.[4]

[4] Plaintiff also complains about the district court's refusal to extend application of the Fourth Amendment to debt collectors, Br.55, but the district court was correct that the Fourth Amendment does not apply to private actors, *Carpenter v. United States*, 138 S. Ct. 2206, 2261 (2017).

C. Plaintiff Waived Her Claims Under The TCPA, For Negligent Infliction Of Emotional Distress, And Under Sections 1692e(11), 1692e(14), and 1692g(3)–5 of the FDCPA, Meriting Summary Judgment

1. "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." *Paskert v. Kemna-ASA Auto Plaza, Inc.*, 950 F.3d 535, 540 (8th Cir. 2020) (citation omitted).

2. In opposing PRA's motion for summary judgment, Plaintiff did not respond to PRA's arguments regarding her claims under the TCPA, for negligent infliction of emotional distress, or under 15 U.S.C. §§ 1692e(11), 1692e(14), and 1692g(3)–(5) of the FDCPA. *See* R.Doc.99. As the district court correctly held, R.Doc.173 at 23, PRA was entitled to summary judgment on Plaintiff's Second and Fourth Claims for Relief, which sought relief under the TCPA, 47 U.S.C. § 227, R.Doc.6 ¶¶ 280–82, and for negligent infliction of emotional distress, *id.* ¶¶ 296–301, as well as Plaintiff's First Claim for Relief to the extent it sought relief under 15

U.S.C. §§ 1692e(11), 1692e(14), and 1692g(a)(3)–(5) of the FDCPA, R.Doc.6 ¶¶ 268–69, 271–72, 273–79; *Paskert*, 950 F.3d at 540.[5]

3. Plaintiff criticizes the court's decision to find she waived certain claims by noting that the district court "acknowledged" that Plaintiff had informed the court that she "ran out of time writing her brief." Br.68. But Plaintiff received two extensions of time to file her opposition, R.Docs.84, 93, and "[i]n general, pro se representation does not excuse a party from complying with a court's orders and with the Federal Rules of Civil Procedure." *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996) (citation omitted).

D. Plaintiff's Remaining Criticisms Of The District Court's Summary Judgment Decisions Are Meritless

1. Plaintiff complains that the court relied on fabricated documents and/or incomplete information caused by PRA's spoliation of evidence, Br.81–83, but her claim is meritless. Plaintiff has not put forth any evidence of this alleged conduct, thus failing to show intentional destruction of evidence as required to obtain sanctions for spoliation in this circuit. *Sherman v. Rinchem Co.*, 687 F.3d 996, 1006 (8th Cir. 2012).

[5] Plaintiff also waived her claim under 15 U.S.C. § 1692c(c), R.Doc.99 at 12, which she does not contest on appeal.

For example, she claims certain calls are missing from PRA's provided phone logs, but her only support for such claim is speculation that calls shown on a Verizon phone log must have also been from PRA because of their short length. Br.81–82; R.Doc.164, Vol.I at 34, 46, 55–56. Plaintiff further asserts that PRA did not provide a "credit contract" for the -6049 account, Br.81, but again provides no evidence to support a claim that such a document was once in PRA's possession. Without any evidence to support her false allegations, Plaintiff has not shown spoliation of evidence, and, by extension that the court relied on inaccurate records.

2. Plaintiff also complains that the court failed to cite to or address documents she filed in support of her motion for partial summary judgment. Br.69–70. She refers to her reply brief, R.Doc.58, exhibits thereto, R.Doc.59, including recordings of three calls, the cross-examination section of Plaintiff's deposition, R.Doc.164, and Plaintiff's medical records. Br.69–70. But there is no rule that a court must explicitly address every authority or piece of evidence submitted by the parties in issuing an order. *See King v. United States*, 553 F.3d 1156, 1161 (8th Cir. 2009); *Tubbesing v. Arnold*, 742 F.2d 401, 404 n.4 (8th Cir. 1984).

The materials Plaintiff complains the court did not address would not have moved the needle on her partial motion for summary judgment, which sought to hold PRA liable for violation of Section 1692e(2)(A) due to PRA falsely asserting she owed $2,297.63. R.Doc.37 ¶ 5. Plaintiff did not plead a claim under Section 1692e(2)(A) in the operative complaint, R.Doc.6, an independent basis for denying her motion, *see Hawse v. Page*, 7 F.4th 685, 691 (8th Cir. 2021). Further, the three call recordings did nothing beyond confirm the accuracy of information already in the record. R.Doc.58 at 24, 26–27, 29 (describing recordings). The cited portions of her deposition do not provide evidence from which a jury could conclude $2,297.63 was incorrect—they included testimony regarding: the number of blog posts that she posted in a given time period, R.Doc.164, Vol.II at 149–51, *de minimis* errors in call transcripts, *id.* at 292–93, the fact that Plaintiff has never filed for bankruptcy, *id.* at 151–53, claims that Plaintiff remembers calls that do not appear on the PRA phone logs, *id.* at 155, the alleged bias of a judge in unrelated court proceedings, *id.* at 156–59, general complaints about PRA and its business, *id.* at 160–66, and the anxiety Plaintiff suffered a result of PRA's collection efforts, *id.*

at 167–72. Finally, the medical records, Br.69, had no bearing on the Section 1692e(2)(A) claim either.

II. The District Court Properly Denied Plaintiff's Motion For Reconsideration Of Its Summary Judgment Decisions

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Arnold v. ADT Sec. Servs., Inc.*, 627 F.3d 716, 721 (8th Cir. 2010) (citation omitted). This court will reverse a denial of a motion for reconsideration "only for a clear abuse of discretion." *SPV-LC, LLC v. Transmerica Life Ins. Co.*, 912 F.3d 1106, 1111 (8th Cir. 2019) (citation omitted).

In Plaintiff's final supplemental filing, she provided the court with "supplemental authority" to support her reconsideration request. R.Doc.225. This included a March 23, 2023, complaint and associated April 13, 2023, stipulated judgment in *Consumer Financial Protection Bureau v. Portfolio Recovery Associates, LLC*, No.2:23-cv-110 (E.D. Va.), as well as a case settled with PRA in 2016, *Portfolio Recovery Associates, LLC v. Mejia*, No.WD79175 (Mo. Ct. App.). Plaintiff characterized these cases as "newly discovered evidence," R.Doc.261 at 91:6–8, but the district court correctly found that they were not "evidence of anything," R.Doc.261 at 104:11. The stipulated judgment relates to a class of

unrelated disputes between customers and PRA. *See* R.Doc.225 at 12–39. *Mejia* involves a different customer and different claims and, notably, was not "new" at the time of Plaintiff's supplemental filing, having been litigated in 2016. *See Mejia*, 2016 WL 4771200. That PRA agreed to settle other cases does not mean PRA is liable in this case. Plaintiff asserts only that the cases were relevant "to the trustworthiness of PRA's" records, Br.64, and then confusingly argues, in agreement with the district court and contrary to her previous assertions, that she was "not claiming new evidence," Br.70. In any event, two separate cases do not bear on PRA's liability in *this* case.

III. Plaintiff Was Not Entitled To Amend Her Complaint Because Further Amendment Of The First Amended Complaint Was Futile

This Court reviews the denial of a motion for leave to amend for abuse of discretion and underlying legal questions of futility de novo. *United States ex rel. Roop v. Hypoguard USA, Inc.*, 559 F.3d 818, 822 (8th Cir. 2008) (citation omitted).

A. A district court may "deny motions to amend when there are compelling reasons such as . . . futility of the amendment." *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 719 (8th Cir. 2014) (citation omitted).

"Some examples of futile claims are ones that are duplicative or frivolous, or claims that 'could not withstand a motion to dismiss under Rule 12(b)(6).'" *Id.* (citations omitted).

B. The district court determined that five of Plaintiff's six requested amendments would be futile, R.Doc.173 at 58–70, and on appeal, Plaintiff challenges only two of those five rulings, Br.85–87.

First, Plaintiff complains that the district court should not have denied her request to hold PRA Group, Inc. vicariously liable for "all acts taken by its subsidiary" PRA, R.Doc.33-1 ¶ 9, thus seeking to add a defendant and pierce the corporate veil. Br.85–86. But Plaintiff's proposed second amended complaint, R.Doc.174, contained no allegations of illegal use of the corporate form sufficient to support any sort of claim for piercing the corporate veil under Arkansas law, *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 649 (8th Cir. 2002). Moreover, Plaintiff sought to hold PRA Group, Inc. liable for the same exact claims as PRA LLC, and, as the district court determined, each of Plaintiff's claims against PRA LLC were meritless, further rendering this amendment futile. *See* R.Doc.173 at 63. This Court need not consider Plaintiff's new argument, raised for the first time on appeal, *Fleck v. Wetch*, 937 F.3d

1112, 1116 (8th Cir. 2019) (citation omitted), that the court's addition of PRA Group, Inc. would not prejudice PRA, LLC because they are separate entities, Br.85–86, but regardless, it does not move the needle. Claiming that PRA Group, Inc. and PRA LLC are separate entities is necessarily inconsistent with a claim that PRA Group, Inc., should be held liable for the acts of PRA LLC through a piercing-the-corporate-veil theory. *See Epps*, 327 F.3d at 649. Adding PRA Group, Inc. as a defendant would have been futile.

Second, Plaintiff challenges the district court's decision denying her the opportunity to add a negligence claim, which she sought on the basis that PRA had a duty under the FDCPA to protect her from harm. R.Doc.33-1 ¶ 377. Arkansas requires a plaintiff to show the traditional negligence factors, including whether the defendant owed a "duty" to the plaintiff and that breach of such duty "was a proximate cause of [her] damages." *Mangrum v. Pigue*, 198 S.W.3d 496, 501 (Ark. 2004). Plaintiff does not contest the district court's finding that Arkansas law does not support a claim that a debt collector has any duties under the FDCPA. R.Doc.173 at 65–67. Instead, she rejects the court's finding that she was not physically harmed by PRA, pointing to her issues with sleep apnea

and insomnia. Br.87 (citing R.Doc.164, Vol.I at 113:15–19). But loss of sleep, without more, does not constitute a physical injury for purposes of Plaintiff's proposed negligence claim. *See Dowty v. Riggs*, 385 S.W.3d 117, 121 (Ark. 2012).

IV. The District Court Properly Denied Various Pretrial Motions

A. The Court Did Not Err In Denying Plaintiff's Motion To Compel

This Court reviews a district court's refusal to compel discovery for abuse of discretion. *Jones v. ReliaStar Life Ins. Co.*, 615 F.3d 941, 945 (8th Cir. 2010).

1. Under Federal Rule of Civil Procedure 26(a)(1)(A)(ii), all of the parties to a lawsuit must provide to the other parties "a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment." A party is only required "to make its initial disclosures based on the information then reasonably available to it." Fed. R. Civ. P. 26(a)(1)(E). A litigant can supplement its disclosures as the case progresses "if the additional

or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e)(1). Thus, failure to produce or describe certain documents in a party's initial disclosures does not bar the party from utilizing such documents at summary judgment, so long as the documents were shared during discovery. *See, e.g.*, *Farmers Coop. Co. v. Bartlett Grain Co., L.P.*, No.4:09CV3252, 2011 WL 612060, at *6 (D. Neb. Feb. 10, 2011).

2. PRA satisfied its initial disclosure obligations. Prior to entry of any protective order in the case, PRA served appropriate initial disclosures, including relevant non-confidential documents. *See* R.Doc.28 at 4. Plaintiff then moved to compel compliance with Rule 26. R.Doc.24. Following the entry of a protective order, PRA produced its confidential information. R.Doc.98 at 9. And upon that further production, the court asked Plaintiff whether she was still dissatisfied with PRA's disclosures. *Id.* at 5. Plaintiff went on to complain that particular documents she had received from PRA were not included in its initial disclosures, *id.*, and that PRA had not provided her with name or account information that she could use to "subpoena . . . telephone records" for other consumers "from a third party," *id.* at 6. She asked the

court to order PRA to supplement its initial disclosures with "[a]ll documentation that [it would] be using to support [its] defense," suggesting that certain documents should have been produced with PRA's initial disclosures. *Id.* at 8. But under Rule 26, PRA had a right to supplement, and does not need to supplement when the information and/or documents are otherwise provided in discovery. Fed. R. Civ. P. 26(e). The district correctly held that PRA had complied with Rule 26, and, in the midst of the discovery, Plaintiff's objections were not "concern[s] that entitle[d] her to get [the court] to compel additional initial disclosures" and "certainly not at th[at] point" in the proceedings. R.Doc.98 at 13.

3. Plaintiff now continues her complaints about PRA's initial disclosures, arguing that they were "worthless" and "inadequately identified documents the Court allowed PRA to use on summary judgment," Br.79, and, by extension, Plaintiff continues to misunderstand the obligations imposed by Rule 26. PRA had no obligation to produce every document it would eventually use at summary judgment in its initial disclosures. That is not what Rule 26 states and is directly contrary to the explicit language allowing parties to

supplement initial disclosures where "additional" information has not otherwise been made known. Fed. R. Civ. P. 26(e)(1); *Farmers Coop.*, 2011 WL 612060, at *6. Further, Rule 26(a)(1)(A)(ii) imposes no production obligation, explicitly permitting a party to provide a copy *or* "a description by category and location." Despite her header that reads "PRA failed to produce documents timely that it used as evidence," she has not pointed to any evidence PRA utilized in its summary judgment papers that was not previously disclosed in discovery. Br.80.

B. Plaintiff Was Not Entitled To Electronic Filing

Plaintiff also complains that she was denied the opportunity to register for and use CM/ECF for electronic filing in violation of equal protection rights. Br.74–78.

1. Under Federal Rule of Civil Procedure 83 and 28 U.S.C. § 2071(a), "[d]istrict courts have power to make local rules," so long as they do "not conflict with the Federal Rules of Civil Procedure." *Holloway v. Lockhart*, 813 F.2d 874, 880 (8th Cir. 1987). Consistent with this authority and the Federal Rules of Civil Procedure, the Eastern District of Arkansas has adopted Local Rule 5.1, which states that "[a] person not represented by an attorney is generally not allowed to electronically file

and must submit paper for filing" except as "permitted by court order." E.D. Ar. Local R. 5.1; *see also* Eastern District of Arkansas CM/ECF Administrative Policies and Procedures Manual for Civil Filings § 1.B.

Where a law restricts an activity to which there is no fundamental right and the individual challenging the law on equal protection grounds is not a member of a suspect class, the law is subject to rational basis review. *Carter v. Arkansas*, 392 F.3d 965, 968 (8th Cir. 2004). "A classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Danker v. City of Council Bluffs*, 53 F.4th 420, 423 (8th Cir. 2022) (citation omitted). Moreover, "the Equal Protection Clause does not forbid" classification distinctions between lawyers and nonlawyers. *Ferguson v. Skrupa*, 372 U.S. 726, 732–33 (1963); *see also Stone v. DeSantis*, No.4:20cv568-MW-MAF, 2021 WL 11695991, at *1–2 (N.D. Fla. Feb. 4, 2021) (rejecting equal protection challenge to pro se electronic filing rule); *Greenspan v. Admin. Office of the U.S. Courts*, No.14CV2396 JTM, 2014 WL 6847460, at *7 (N.D. Cal. Dec. 4, 2014) (same).

2. Here, the district court properly applied the plain text of Local Rule 5.1 and Section 1.B to Plaintiff, who was proceeding pro se, and denied her the ability to file documents electronically. R.Doc.18. Moreover, application of the prohibition on electronic filing by pro se litigants to Plaintiff did not violate the Equal Protection Clause. Courts may reasonably permit attorneys to take certain actions in litigation that non-attorneys cannot, and so it is plainly "rational," *Danker*, 53 F.4th at 423, for the district court "to limit [e-filing] to lawyers," wholly consistent with the Equal Protection Clause, *Ferguson*, 372 U.S. at 732–33. Plaintiffs' argument to the contrary, Br.74–78, thus fails.

C. The Court Correctly Denied Plaintiffs' Request To Extend Discovery

1. "A district court possesses broad discretion when it establishes and enforces deadlines in its scheduling orders." *Yang v. Robert Half Int'l, Inc.*, 79 F.4th 949, 960 (8th Cir. 2023) (citation omitted). "Once a scheduling order has been adopted by the district court, it may be modified 'only for good cause and with the judge's consent.'" *Id.* (quoting Fed. R. Civ. P. 16(b)(4)).

2. Here, the district court did not err in denying Plaintiff's request for extension of discovery.

One day prior to the close of discovery, Plaintiff filed a "Motion to Extend and Compel Discovery or Sanctions Against [PRA]." R.Doc.97. At the hearing on March 16, 2022, the district court was clear that it did not intend to extend the discovery deadline or otherwise modify the final scheduling order. R.Doc.124 at 52. The district court then denied Plaintiff's motion in a written order, explaining that in the final scheduling order, the court had clearly instructed that any requests for extension of discovery should be "filed sufficiently in advance of" the discovery deadline "to allow for a timely response." R.Doc.140 (quoting R.Doc.23).

Plaintiff's motion and brief before the district court did not provide anything constituting good cause to extend discovery. R.Doc.97. In her motion, she asserted that she could "probably prevail against PRA on its Motion for Summary Judgment and maybe at trial with just her testimony and the exhibits she already possesse[d]," but complained that discovery needed to be extended so that she could seek certain phone logs and access to PRA's proprietary record system in order to investigate claimed inaccuracies in PRA's phone records. *Id.* at 2. Notably absent from her submission was any explanation or "good cause," *Yang*, 79 F.4th

at 960, for why she did not seek this information sooner. Further, as PRA explained in detail in its opposition to Plaintiff's motion, R.Doc.108 at 2–5, Plaintiff was not entitled to much of the information she sought because PRA had already fully produced all material responsive to her evidence requests, Plaintiff had failed to make a proper discovery request to on-site inspect PRA's internal system of record, *see* Fed. R. Civ. P. 34(a)(2), and provided no legal basis whatsoever to order PRA to subpoena its own telephone provider, R.Doc.108 at 2–5.

3. Plaintiff now argues that at the time of her request she "did not calculate the response time into the deadline for filing discovery motions," such that she had discovery motions pending at the time her opposition brief was due and complains of the "harsh[ness]" of the district court's ruling. Br.78. But the district court did not deny her motion solely because of her failure to comply with the case management order—the court also found that she had not shown good cause for an extension. R.Doc.140 at 2. As the court explained, "PRA [was] not responsible for Ms. Hammett's delay in filing her motion," as "PRA did not (for example) string Ms. Hammett along with promises of providing the disputed discovery in order to lull her into not filing a timely discovery motion."

Id. Thus, the court did not abuse its discretion in denying Plaintiff's request to extend discovery.

D. The Court Did Not Abuse Its Discretion In Allowing PRA To Protect Confidential Information

1. Plaintiff further complains that the district court erred in denying public access to documents PRA designated as "confidential" and under seal, Br.88–92, echoing arguments asserted in her previously filed Motion To Unseal District Court Documents, *Hammett*, No.23-2638 (8th Cir. Oct. 4, 2023). She contends that her motion "should suffice for this court to order unsealing," and purports to "reiterate[ ]" her "basic arguments" over the next three pages, which provide general legal rules without any application or specifics. Br.89.

As PRA explained in its opposition to Plaintiff's Motion to Unseal, a motion is not the proper form in which to challenge the district court's order granting entry of a stipulated protective order, R.Doc.46; an order denying Plaintiff's blanket challenge to PRA's confidentiality designations below, R.Doc.124 at 16–17; orders granting motions to seal or redact documents, R.Docs.51, 110, 114, 115, 119, 183, 192; and an order denying a motion for reconsideration on an order granting a motion to seal, R.Doc.90. Opp'n to Mot. to Unseal at 6–10, *Hammett*, No.23-2638

(8th Cir. Oct. 16, 2023). The Federal Rules of Appellate Procedure require Plaintiff to present such challenges in her merits briefing. Fed. R. App. P. 28. Now, at the merits briefing stage, Plaintiff cannot get by with "cursory or summary arguments," and this Court should decline to consider her arguments related to protection of PRA's confidential information. *Watson v. O'Neill*, 365 F.3d 609, 615 (8th Cir. 2004) (collecting cases). Plaintiff has wholly failed to identify specific documents that she seeks to unseal, providing a sufficient basis alone to reject her limited arguments on appeal. *Procaps S.A. v. Patheon Inc.*, No.12-24356-CIV, 2013 WL 4773433, at *7–8 (S.D. Fla. Sept. 4, 2013); *Medcorp, Inc. v. Pinpoint Techs., Inc.*, No.08-cv-00867-MSK-KLM, 2009 WL 3588362, at *3–4 (D. Colo. Oct. 23, 2009).

2. The district court also did not abuse its discretion in allowing for entry of a protective order, R.Doc.46; denying Plaintiff's blanket challenge to PRA's confidentiality designations, R.Doc.124 at 16–17; granting motions to seal or redact documents, R.Docs.51, 110, 114, 115, 119, 183, 192; and denying a motion for reconsideration on an order granting a motion to seal, R.Doc.90, as PRA explained in it response to Plaintiff's improper appellate motion to unseal, *see Gen. Dynamics Corp.*

v. Selb Mfg. Co., 481 F.2d 1204, 1212 (8th Cir. 1973); *Webster Groves Sch. Dist. v. Pulitzer Pub. Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990); *K.C. 1986 Ltd. P'ship v. Reade Mfg.*, 472 F.3d 1009, 1017 (8th Cir. 2007). The protective order entered in this case was a standard "umbrella" or "blanket" protective order that "initially protect[ed] all documents that the producing party designates in good faith as confidential, replacing document-by-document litigation of claims for protection, 10A Fed. Proc., L. Ed. § 26:294 (Aug. 2023); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1307 (11th Cir. 2001) (per curiam), and which courts routinely adopt. Moreover, Plaintiff's blanket challenge to all confidentiality designations did not comply with her burden to challenge specifically any designation, further supporting the district court's ruling. And finally, the district court properly exercised its discretion to permit PRA to seal its proprietary and sensitive business information, as courts routinely do and this Court has long blessed. *See IDT Corp. v. eBay, Inc.*, 709 F.3d 1220, 1223–24 (8th Cir. 2013).

3. In her Brief, Plaintiff includes a couple new, generalized arguments about the impropriety of PRA's confidentiality designations and the court's redaction and sealing orders, asserting that information

regarding her account "should be accessible to the public" and that withholding documents "identical" to those "in the public records or conveyed to individuals contacted by PRA" amounts to "an intent to conceal lies and deceit." Br.89–90. To the extent that Plaintiff means to suggest that PRA has sought to protect public information, it remains unclear what information she is referring to. And even if certain documents and information were conveyed to specific individuals contacted by PRA, that does not mean that such information should be made public through these proceedings. In fact, debt collectors cannot communicate "in connection with the collection of any debt, with any person other than the consumer," 15 U.S.C. § 1692c(b), and thus cannot reveal other debtors' identities or information about their debts to the general public through filing in the public record.

Plaintiff further contends on appeal that a purpose of public disclosure and the FDCPA is to "protect health and safety," so "[p]olicies aiding consumers in stopping calls should be publicized." Br.90. But that would extend the FDCPA far beyond its plain language. And disclosure of PRA's methods and policies would dampen PRA's ability to negotiate favorable terms effectively going forward, revealing to PRA's competitors

its business strategy with respect to purchasing pools of assets, as well as its proprietary system of record to track customer accounts, all traditionally accepted grounds for sealing information. R.Doc.98 at 20–23.

V. The District Court Complied With All Rules Relevant To Conflicts Of Interest

A. Under 28 U.S.C. § 455(a) a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned," meaning "disqualification is required if a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003) (citation omitted). "A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise." *Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992). Courts routinely reject recusal arguments based "a judge's rulings in the same or a related case." *See, e.g.*, *Bolin v. Story*, 225 F.3d 1234, 1239 (8th Cir. 2000); *United States v. Phillips*, 664 F.2d 971, 1002–03 (5th Cir. 1981).

B. Here, Plaintiff acknowledges that she did not raise any recusal arguments below, Br.70–71, and the district court did not commit plain error in failing to recuse himself due to his previous employment at Walmart. That Walmart allegedly does some business with Capital One, and Capital One separately and subsequently does business with PRA, is insufficient to cause "a reasonable person" to "question the judge's impartiality." *Fletcher*, 323 F.3d at 664 (citation omitted). Plaintiff's arguments regarding the court's rulings in other FDCPA cases fare no better, as arguments about prior rulings are insufficient for partiality. *Bolin*, 225 F.3d at 1239; *Phillips*, 664 F.2d at 1002–03.[6] This is not an "exceptional case where error has seriously affected the fairness, integrity, or public reputation of the judicial proceedings," *Fletcher*, 323 F.3d at 663, and Plaintiff has not come close to meeting her heavy burden to overcome the district court's impartiality, *Pope*, 974 F.2d at 985.

[6] A CFPB-related article authored by the district judge described by Plaintiff, Br.72, could not possibly create an appearance of impartiality either. *Fletcher*, 323 F.3d at 664; *Pope*, 974 F.2d at 985.

VI. The Court Did Not Err In Ruling On Several Post-Judgment Issues

Plaintiff also challenges several post-judgment rulings, including an award of costs to PRA, R.Doc.263; an order denying Plaintiff's request for Rule 11 sanctions, R.Doc.243; and denial of a motion to settle the record, R.Doc.279. All these orders were proper.

A. PRA Was Entitled To Costs As The Prevailing Party

Challenging the district court's granting of costs to PRA, R.Doc.263, Plaintiff asserts that she is a prevailing party here because PRA claimed that it "'waived' [her] debt 'in light of the litigation'" and "did not resume collection after the 30-day verification period." Br.84. Plaintiff challenges only the legal conclusion that Plaintiff was not a prevailing party, Br.83–84, thus, this court reviews the court's decision de novo, *Coates v. Powell*, 639 F.3d 471, 474 (8th Cir. 2011).

Plaintiff misunderstands the meaning of "prevailing party" for purposes of determining an award of costs. Where "a party . . . has failed to secure a judgment on the merits or a court-ordered consent decree," she is not a prevailing party, even if she has "nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Buckhannon Bd. & Care Home, Inc. v. W. Va.*

Dep't of Health & Hum. Res., 532 U.S. 598, 600 (2001); *see also Quiles v. Union Pac. R.R. Co.*, 4 F.4th 598, 606 (8th Cir. 2021) (citing *Buckhannon*, 532 U.S. at 604). That PRA waived Plaintiff's debt does not weigh on the prevailing-party determination in the district court proceedings, and PRA was unequivocally the prevailing party, winning at summary judgment on all of Plaintiff's claims. R.Docs.173, 231.

B. None Of PRA's Conduct Warranted Rule 11 Sanctions

Plaintiff also challenges the district court's post-judgment decision to deny a motion for sanctions under Rule 11. Br.87–88. Plaintiff complains that PRA "baselessly" attacked her character, asserting that she depleted her assets in online poker games and that such falsehood "was especially harmful as Hammett had won a World Series of Poker event in January 2020 and co-authored a book on poker in 2023." Br.87. This Court reviews a district court's denial of sanctions pursuant to Rule 11 for abuse of discretion. *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004, 1008 (8th Cir. 2006).

1. Rule 11 sanctions may be awarded when a pleading contains allegations or factual contentions that lack evidentiary support, Fed. R. Civ. P. 11(b)(3), and may be reserved for those cases in which "an

attorney's conduct, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the court," *Clark*, 460 F.3d at 1011 (citation omitted). Thus, when a factual allegation is supported by some evidence, Rule 11 sanctions are not appropriate. *Brubaker v. City of Richmond*, 943 F.2d 1363, 1377 (4th Cir. 1991). "By definition, every unsuccessful complaint, at some level of analysis, contains either flawed argument or an unsupported allegation," *Burull v. First Nat'l Bank*, 831 F.2d 788, 789 (8th Cir. 1987), so that alone is insufficient.

2. Here, the district court did not abuse its discretion in denying Plaintiff's Rule 11 motion. Plaintiff disputes as "baseless" PRA's contention that she depleted her assets in online poker games, and claims that this assertion "was especially harmful as Hammett had won a World Series of Poker event in January 2020 and co-authored a book on poker in 2023." Br.87. But PRA's statement that Plaintiff lost money gambling was supported by her own statements in this case, R.Doc.239 at 6–7, and so PRA's assertions cannot rise to a level of "intentional or reckless disregard of the attorney's duties [of candor] to the court," *Clark*, 460 F.3d

at 1011 (citation omitted), that would merit sanctions. Thus, the district court did not abuse its discretion in denying the sanctions motion.[7]

C. The Court Did Not Err In Denying Plaintiff's Request To Settle The Record

1. Plaintiff challenges the district court's decision to deny a request for corrected transcript, Br.92–94, echoing the arguments asserted in a previously filed motion, this one entitled Motion To Settle The Record And Reissue A Subpoena For Production Of Exculpatory Evidence, *Hammett*, Nos. 23-2638, 23-3093 (8th Cir. Oct. 18, 2023).[8] But, as explained above, *supra* pp.1–2, this Court lacks jurisdiction to consider this issue because Plaintiff did not timely appeal this order, *see Teinert v. Abdallah*, 435 F. App'x 566, 567 (8th Cir. 2011); *Miles v. Gen. Motors Corp.*, 262 F.3d 720, 722–23 (8th Cir. 2001). Further, as with respect to Plaintiff's Motion To Unseal The Record arguments addressed *supra*

[7] Plaintiff's objection to the district court's conclusion that she "c[ame] perilously close to harassment of opposing counsel and abuse of the litigation process," R.Doc.243, *see* Br.87–88, has no bearing on this issue, as the court did not sanction Plaintiff in any form.

[8] In Plaintiff's Motion To Settle The Record, Plaintiff also sought to revive a subpoena to a court reporter in unrelated state court proceedings, but beyond listing "[m]otion to quash subpoena deemed moot; reversal should revive it" in a "Miscellaneous" section of the stated issues for appeal, Br.42, Plaintiff does not address these concerns in her merits briefing, thereby forfeiting them.

p.53, this Court need not consider Plaintiff's bare, generalized complaints sets forth in her merits brief. *Watson*, 365 F.3d at 615.

2. Moreover, this argument fails on its merits. District courts have the authority to "settle[ ]" disputes concerning the accuracy of the record on appeal, Fed. R. App. P. 10(e)(1), and litigants claiming that a district-court transcript is inaccurate carry a heavy burden, as a certified transcript is "deemed prima facie a correct statement of the testimony taken and proceedings had," 28 U.S.C. § 753(b). "Appellate courts will . . . give great deference to the district court's view and must accept the [district] court's reconstruction of the record under Federal Rule of Appellate Procedure 10[e] unless it was intentionally falsified or plainly unreasonable." *United States v. Franklin*, 250 F.3d 653, 663 (8th Cir. 2001) (citations omitted). To overcome that statutory presumption a party must do "far more than state that a transcript does not comport with the recollection of . . . the movant." *United States v. Zichettello*, 208 F.3d 72, 97 n.11 (2d Cir. 2000); *see United States v. Harris*, 966 F.3d 755, 763 (8th Cir. 2020) (citation omitted).

In this case, Plaintiff now claims, as she did below, R.Doc.267, that there are certain inaccuracies in the record, and her only support for such

claim is that she personally "memorialized" what she claims to be missing dialogue "several times" before the transcript was prepared, Br.93. Such support is plainly insufficient to rebut the statutory presumption of correctness of the transcript. *See Zichettello*, 208 F.3d at 97 n.11; *Harris*, 966 F.3d at 763. The district court was well within its discretion to deny requests to correct the transcript on this ground below. *Franklin*, 250 F.3d at 663. In any event, the district court "double-check[ed]" the disputed portion of the transcript "against the audio recording," "out of an extreme abundance of caution," and did not find any discrepancy, R.Doc.279 at 2, which this Court "give[s] great deference to . . . and must accept," *Franklin*, 250 F.3d at 663 (citation omitted). Thus, the court properly denied her motion to settle the record.

CONCLUSION

This Court should affirm the district court's decisions.

Dated: January 29, 2024

Respectfully Submitted,

/s/ Misha Tseytlin

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COMBINED CERTIFICATIONS

I hereby certify that:

1. This brief complies with Federal Rule of Appellate Procedure 28(a)(7), because it contains 12,887 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Century Schoolbook size 14 font.

3. The text of the electronic version of this Brief filed on ECF is identical to the text of the paper copies to be filed with the Court.

4. The electronic versions of the Brief on ECF were virus checked using Windows Defender ATP, version 4.18.23110.3, and no virus was detected.

5. On this 29th day of January, 2024, I filed the foregoing Brief with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

6. Upon acceptance by this Court, counsel will send ten copies of the foregoing Brief to be served via United States First Class Mail, on the following:

Clerk's Office
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
Room 24.329.
St. Louis, MO 63102

7. Counsel will also serve Plaintiff-Appellant via U.S. mail or third-party commercial carrier for delivery within three days, *see* Fed. R. App. P. 25(c)(1)(B)–(C), at:

Laura Hammett
16 Gold Lake Club Road
Conway, AR 72032

Dated: January 29, 2024

/s/ Misha Tseytlin
MISHA TSEYTLIN