In The
UNITED STATES COURT OF APPEALS
For The Eighth Circuit

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

LAURA LYNN HAMMETT, an individual
Plaintiff-Appellant

v.

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

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

APPELLANT'S REPLY BRIEF

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Summary

The gist of PRA's arguments, accepted by the lower court, is that if PRA sets the balance of an alleged debt to zero and stops calling, the plaintiff must forego all other permissible recovery. PRA will pay no damages.

The parties agree; Litigation caused PRA to zero and close the account.

Litigation was necessary to convince PRA to cease collection activity permanently. Hammett is entitled to recover actual damages of FDCPA violations, tort and punitive damages, including the emotional distress and invasion of privacy of the litigation itself.

There is no conclusive evidence that PRA owns the Debt.

The reported balance correction was not part of a settlement. It was unilateral.

There is no genuine dispute that the account balance of $2,297.63 was the product of fraud, a clerical error, non-allowable post charge off fees, or a combination. The "contested liability" doctrine does not apply as PRA argued.

Hammett disputed PRA's lies and flawed arguments through documentary evidence and sworn testimony. The lower court made a credibility determination to accept the defendant's falsehoods in its opinions.

The Court cloaked the proceedings in secrecy, then used the opportunity to misstate what was purportedly "UNDER SEAL" as rationale of his errant opinions.

Hammett asks the Eighth Circuit to reverse and remand the case to allow for a fuller discovery, amendment, and a jury to decide all claims against the defendants and award punitive damages enough to cause PRA to stop its notorious collection scam.

The Court Condoned Procedural Improprieties (Resp.44-47)

- **The Court's bias against unrepresented litigants clouded his judgment.**

➢ "'In evaluating whether a pro se plaintiff has asserted sufficient facts to state a claim, we hold "a pro se complaint, however inartfully pleaded ... to less stringent standards than formal pleadings drafted by lawyers."' *Jackson v. Nixon*, 747 F.3d 537, 541 (8th Cir. 2014) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). This means 'that if the essence of an allegation is discernable, even though it is not pleaded with legal nicety, then the district court should construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework.' Jackson, 747 F.3d at 544 (cleaned up)." *Jefferson v. Elrod*, No. 623CV06018SOHBAB, 2023 WL 2925185, at *1 (W.D. Ark. Feb. 23, 2023), report and

recommendation adopted, No. 6:23-CV-06018, 2023 WL 2918761 (W.D. Ark. Apr. 12, 2023)

- **The Court created an artificial handicap for Hammett:**

➢ The Court forbid Hammett from using electronic filing, and failed to determine criteria by which the pro se litigant can use the same clerical tool as the represented party.

➢ PRA demonstrated the difficulty of paper filing by omitting a Statement of Undisputed Material Facts from its MSJ. (Docket entries, 1/28/22, Br.39)

➢ PRA demonstrated lawyers are not exemplary by filing and refusing to retract Hammett's confidential information publicly until on appeal. (Br.76)

➢ PRA failed to oppose Hammett's motion for leave to file electronically at the trial court. Therefore, all PRA's arguments were waived. (Resp.47-49)

Lest the Eighth Circuit consider arguments not raised below: PRA compared the exclusion of nonlawyers from practicing debt adjusting, which

often entails practicing bankruptcy law, to filing electronically – a task that is commonly assigned to non-attorney clerical workers.

PRA cited another District Court, Northern Florida, that also relegates electronic filing privileges to the elite. In contrast, the Eighth Circuit made the fair decision to extend electronic filing to the common person and will hopefully pull the ARED into line.

Equal access to the electronic filing system is crucial for ensuring fairness and efficiency in the legal process.

- **The Court allowed PRA to spoil or fail to produce this evidence:**

➢ Documents correlating the -6049 account to a bill of sale.

➢ The 2014 to November 18, 2020 calls to the -6000 number. The Court and PRA call this "speculation" and only reiterate Hammett's contention that she knew the calls from disconnected numbers were from PRA because of the short length. (Resp.38.) Other evidence includes the exact script being used, that PRA disconnected all its admitted numbers after the suit was filed, the non-admitted numbers were also disconnected, and all collection calls to Laura Lynn with Hammett's birthday ended on February 18, 2021.

- Third party contact information for PRA's telephone service provider.

- Selected recordings of connected calls.

- A contract between "Laura Lynn" and Capital One Bank. (Resp.38) Usually a predecessor in interest is subject to liabilities of the original creditor. The bulk of the alleged purchase agreement was also withheld, so an inference against the creditor that the contract does not support the debtor's obligation, the post-charge-off fees nor the assignment is appropriate.

  PRA's policy is to always give debtors a copy of "the last statement or terms that [were] signed" upon request. (R.Doc.68, at 533.) Hammett's purported last statement was not produced until 1/28/22, Br.39. A contract, never.

- The original data file that was used to populate the "Data Load".

- Original Account Level Documentation identifying what and where purchases were made on the -6049 account.

- **The Court allowed PRA to produce documents untimely.** This denied Hammett the opportunity to propound interrogatories timely or cross-examine affiants through discovery**:**

➢ Rule 26(a) Initial disclosures.

PRA claimed it needed a protective order before complying, but did not propose one until the disclosures were due.

➢ "Charge-off Statement". First produced 1/28/22 with PRA's MSJ. (Br.39) Supra.

➢ Capital One affidavit attesting to authenticity of charge off statement. (R.Doc.107-2) Signed and notarized February 26, 2022. Produced to Hammett with reply to MSJ, March 15, 2022. In August 2021 Capital One told Hammett it had no documentation from the -6049 account. PRA did not produce any communications with Capital One Bank, a third party, to evidence how this here-to-fore missing document was "found". (Br.66)

The Court failed to explain why it relied on documents that were not kept in the course of business. (R.Doc.98, at 5:22-6:5)

PRA said Hammett complained "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,' [R.Doc.98] at 6." (Resp.45) The actual quote: "They still have not provided the name or account information, anything that I could use on a subpoena to subpoena their telephone records from a third party." Hammett said nothing about subpoenaing records "for other consumers". PRA felt compelled to alter the dialogue because the truth hurts its case.[1] This statement is representative of PRA's unethical conduct throughout the proceedings that went unsanctioned.

- **The Court prejudiced Hammett with delayed decisions:**

➢ Hammett's motion to compel PRA to fulfil its FRCP Rule 26(a) obligation filed on September 20, 2021, (R.Doc.24), was denied February 18, 2022. (R.Doc.88.)

[1] Hammett's important words were replaced by "—" in the transcript. 100% of words the court reporter omitted would support Hammett's case.

Hammett assumed more discovery time would be granted after the order was issued. However, the Court approved PRA's late disclosures without considering Hammett's own delayed discovery.

Hammett's motion to extend discovery was filed one week after non-electronic notification of the denial of the first discovery motion, based on untimeliness. (R.Doc.100, 140).

The Court wrote: "'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.'" (Resp.51) PRA did not have to; the Court did the stringing along for them.

- Motion for Leave to Amend the Complaint

The motion and proposed complaint were filed on November 15, 2021, R.Doc.33, 33-1. The Court delayed ruling, giving PRA time to file an MSJ on the FAC and ruling on both simultaneously.

- Motion for Partial Summary Judgment

Hammett's MPSJ filed November 22, 2021, R.Docs.37-39, was intended to entice an attorney to take Hammett's case on contingency.

The Court decided the motion after discovery ended, and PRA's voluminous MSJ was decided simultaneously.

An attorney who was guaranteed fee shifting before discovery ended and the summary judgment motions were decided would probably help Hammett on contingency.

The Court's delay increased Hammett's damages. Rather than shifting reasonable attorney's fees under 15 U.S.C. 1692k(a)(3), Hammett's actual damages include the added stress and opportunity cost of working on the case herself.

- **The Court adopted PRA's false, baseless, prejudicial accusations. (Resp.14, 59-61)**

➢ It is unlawful to harass even degenerate gamblers to extort payments of fictitious debt. Regardless, the Court adopted PRA's ad hominem tactics. R.Doc.243 ("For the reasons set forth in paragraphs 15 and 16 of 239")

PRA disingenuously edited Hammett's words to support its attack of her character. (R.Doc.239, at 6-7, 13-14, R.Doc.164, at 270:17-25)

More importantly, there was no legitimate purpose for PRA's prejudicial lies. PRA lost one of the highest jury verdicts in Missouri history based in part on publicizing Ms. Mejia's lack of a social security number.

- The entitlement the Court bestowed on PRA encouraged further dishonesty.

  For example, in a motion to extend time to file its Appellate Brief, Entry ID: 5342418, at 2[2], PRA listed active cases competing for counsels' time.

  None of the attorneys involved in this case are listed as attorneys on *North v. Portfolio Recovery Assocs., LLC, No.2:20-cv-20190 (D.N.J.)*[3] nor admitted to practice in New Jersey.[4] Ditto for *Pazymino v. Portfolio Recovery Assocs., LLC,* No.2:19 cv-12259 (D.N.J.) Hammett didn't check all the cases.

- PRA misquoted Hammett, removing a date certain to make Hammett's residency in Arkansas ambiguous. (Resp.8)

[2] paper copy page number used where different than electronic number.
[3] PACER
[4] https://portalattysearch-cloud.njcourts.gov/prweb/PRServletPublicAuth/app/Attorney/-amRUHgepTwWWiiBQpI9_yQNuum4oN16*/!STANDARD?AppName=AttorneySearch

PRA filed the call transcripts under seal, then misquoted them on the open record.

Apposite Supplemental Case

- *Mazie Green v.* ***Portfolio Recovery Associates*****, LLC**, Court of Appeals of Virginia, Record No. 0144-22-3, February 20, 2024.

  h.n.32: "Circuit Court, in collection action brought by debt buyer as alleged assignee of credit card debt purportedly owed by consumer, abused its discretion by finding the debt was valid and dismissing consumer's counterclaim for $1,000 under the Fair Debt Collection Practices Act (FDCPA); consumer repeatedly asked that her debt be validated by buyer, but it was not, and neither buyer's documentary evidence nor the affidavit or testimony of its records custodians was sufficient to verify that the debt belonged to consumer. Consumer Credit Protection Act § 813, 15 U.S.C.A. § 1692k."

  "Verifying and validating a debt are critical parts of the debt-collection process that ensure fairness in debt collections." (*Green*, h.n.33)

"There is a missing link between the bill of sale and [the] specific debt." (*Green*, Court commenting during oral argument, https://www.vacourts.gov/courts/cav/oral_arguments/2022/11_home.html)

Virginia is PRA headquarters. Lead attorney on *Hammett*, James Trefil of Troutman-Pepper, represents PRA on *Green*.

Mazie Green is a pro se litigant.

The Hammett Court plainly erred by ignoring Hammett's insistence that PRA's documentation of its purported purchase was inadequate. PRA failed to provide a copy of the "Forward Flow Receivable Sale Agreement dated December 12, 2012" referred to on the Bill of Sale (R.Doc.78-4). PRA did not attach a list of identified accounts included with the agreement. All that was provided were three exhibits to the agreement, the Bill of Sale, Affidavit of Sale of Account by Original Creditor and Certificate of Conformity (R.Doc.78-5).

"The Bill of Sale referenced in Dreano Decl. does not reference the -6049 Account." (R.Doc.99, at 3)

The *Pazymino* Court discussed PRA's inadequate documentation. "PRA stated that it does not have access to a copy of [Plaintiff's] contract. This is difficult to accept. As a sophisticated financial services entity, it is probable that PRA possesses or at least has access to the 'written terms' at issue here.

Even on the doubtful assumption that PRA cannot informally obtain the documents from [the originator], it is just as capable of pursuing third-party discovery as [Plaintiff] is." *Pazymino*, Order denying PRA's MSJ, ECF 78, at 8, filed 12/14/22.

The Hammett Court, whether naively or corruptly, accepted the lack of a credit contract as inconsequential.

Consistency between the state appellate courts and the federal district courts on interpretation and application of the FDCPA is desirable.

PRA's False Facts and Flawed Arguments

- **PRA did not own the Debt.**
- **Hammett did not owe the Debt.**
- **PRA's collection was not reasonable.**
- **Ample "evidence raising genuine issues" of these facts was presented. (Resp.i, 5, 6, 19, 29-32)**

Hammett informed the Court that her Opposition to Defendant's MSJ, "is based upon the Brief, the Counterstatement of Undisputed Facts, and exhibits filed contemporaneously, [Plaintiff's] Motion to Extend and Compel Discovery or

Sanctions Against [PRA], with its supporting documents filed contemporaneously and the entirety of the case file." (R.Doc.99, at 1)[5]

The Court wrote, "Hammett offers blanket denials without pointing to any record facts." (R.Doc.173, at 5.)

The Court failed to consider Hammett's affidavits but relied heavily on PRA's impermissible hearsay affidavits as "record facts".

The Affidavit supporting R.Doc.99 is cited as "Aff.page#" using the paper page number. Hammett's affidavit in support of her PMSJ is R.Doc.39.

All the facts in the Verified Complaint, R.Doc.1, were pled pursuant to F.R.C.P. Rule 11. The facts in the FAC, R.Doc.6, and proposed SAC, R.Doc.33-1, were incorporated in the sworn affidavit as if set forth completely. (R.Doc.39, at 2)

"I do not have any written record of a Capital One account, other than the insufficient documentation provided by PRA, and therefore do not know the account number on any account I may have had." (Aff.1)

[5] It is not clear that the entire filing was docketed and transmitted, because the clerk failed to hyphenate the separate documents.

"I do not recall missing any payments [or] becoming delinquent on a Capital One account. I asked for PRA to mail documentation to me that might spark a memory of an alleged decade old event and none was offered." (Aff.2)

In the recorded conversation February 18, 2021, Hammett said "I have no debt and so I know that whatever you have is not my debt. It is absolutely not my debt. I do not have any debt, and so anything that you allegedly have is not my debt." (R.Doc.107, at 59)

"I remember and it was my practice not to borrow money for business ventures. The first time I borrowed money to invest was in 2017". (R.Doc.39, at 2)

"When I wrote my complaint, I did not realize it was PRA that called the Witts Spring number on an almost daily basis." (Aff.2)

"Most, but not all of the calls PRA made to (870) 496-2653 were not answered and went to the old school answering machine." (Aff.3)

"I thought the calls were made by my former significant other, Micheal Pietrczak. I now realize it was PRA. I would like to amend the complaint to

conform to the evidence, adding that my belief that Mr. Pietrczak was stalking me was caused by PRA calling [my rarely used Arkansas number] almost daily and not leaving a message." (Aff. 3)

"I received numerous calls between December 12, 2013 and November 18, 2020 to my phone number ending -6000 in which the callers seemed to follow a script. The callers did not identify as 'Portfolio Recovery Associates'. Instead they said 'This is Random Unknown Name calling from a recorded line for Laura Lynn.' I would either hang up or tell the caller not to call me and hang up. Finally, out of frustration and thinking I would be woken from any nap I could possibly take, I decided to speak to the random callers and record the call myself. The first call I recorded was November 18, 2020." (Aff.5)

Hammett gave detail about how she knew the annoying calls she received from August 2020 to November 18, 2020 were from PRA. The calls stopped when PRA agreed to put the 30-day dispute hold on the account and did not resume after Hammett filed suit. (Aff.10-12)

"PRA claimed I owed a debt of $2,297.63 to it by telephone on February 18, 2021 and by letter dated '02/19/2021'." (R.Doc.39, at 2)

"By letter dated '04/23/2021', written after the FAC was filed, PRA admitted the balance on the purported account was '$0.00' and closed the account." (id.)

"I made no payment to PRA during the time between when the two letters were generated." (R.Doc.39, at 3)

PRA produced no OALD nor purchase agreement between Capital One Bank (USA) NA and PRA that refers to the -6049 account. (R.Doc.39, at 4)

On February 15, 2022, Hammett ordered the Verizon record for the -6000 number. The calls PRA admitted to on its self-generated call log omitted fifteen short calls previous to November 18, each from a number that is no longer in service. The most recent four calls PRA showed on its log are not in service, either. (Aff.5, 6)

Hammett listed the fifteen connected calls to her cellphone that were probably from PRA August to November 18, 2020. (Aff.6)

"PRA refused to allow [Hammett] to inspect the documents that would show [her] the TSP to subpoena." (Aff.7) PRA admits to 411 collection calls to numbers associated with Hammett, but there were more. (R.Doc.78-7)

Incoming calls that go to voicemail do not register on the Verizon log. Most of the PRA log calls that were marked as going to voicemail did not show on the Verizon log. Ten calls PRA marked as going to voicemail appeared on the Verizon log. PRA withheld the recordings of these ten connected calls. (Aff.7)

In 2014, Hammett's prior fiancé (probably deceased) told Hammett he was receiving an annoying number of calls regarding debt allegedly owed by "Laura Lynn". (Aff.8)

The CFPB 2015 Consent Order "stated PRA had knowledge or reason to believe, based on contractual terms or past performance of accounts sold by certain original creditors, that the portfolios purchased by PRA contained unreliable data, but PRA failed to obtain and review information that would be necessary to have a reasonable basis to collect on the debt." (File No. 2015-CFPB-0023, R.Doc.39, at 4.)

"As a result of the false claim of a $2,297.63 debt to PRA, Hammett incurred damages including but not limited to:

The litigation costs, mileage, pre-litigation correspondence, a pro-rated Westlaw subscription, depreciation on computer, replacement cost after her computer's useful life, mileage to therapy, administrative assistance, and emotional distress." (R.Doc.39, at 4.) Hammett "suffered tangible injury as a result of PRA's collection conduct." Hustvet never "sought any significant medical attention when experiencing [her claimed physical damages]." *Hustvet v. Allina Health Sys*., 910 F.3d 399, 406 (8th Cir. 2018) Hammett sought care for her insomnia and adhesive capsulitis during the period PRA called her. She reentered therapy after she had dealt with her primary stressor in March 2020, her investment losses associated with the pandemic.

"Closing and zeroing out [Hammett's] account" did not absolve the defendant of all damages including forcing litigation. (Resp.i, 10)

Hammett demanded damages for waking, alarming, harassing and violating her privacy, forcing her to litigate, then using deceptive litigation practices, and punitive damages. PRA did not address punitive damages and therefore waived argument.

"PRA made no further calls to Plaintiff following her written request." (Resp.10) That is no guarantee PRA would not resume collection after the 30-day hold

required after a debt is disputed. PRA also ceased calling the -6000 for some period after Hammett told PRA it was a business line in 2013. PRA resumed calling in or before 2020.

- **PRA used false, deceptive, and misleading representations of the Debt. (15 U.S.C. 1692e(2)(A))**

PRA's SMSJ must be denied and it was a manifest injustice to deny Hammett's MPSJ.

As discussed supra, Hammett owed no debt.

Failure to report a cancellation of debt is evidence that the debt was fraudulent. (Resp.10)

The Internal Revenue Code mandates a report by a creditor for waived or canceled debts. However, neither Capital One nor PRA filed a 1099-C for the -6049 account. A creditor must "not file Form 1099-C when fraudulent debt is canceled due to identity theft. Form 1099-C is to be used only for cancellations of debts for which the debtor actually incurred the underlying debt."[6]

The claim that PRA made a concession not included in a settlement is bizarre.

[6] Instructions for Forms 1099-A and 1099-C (Rev. 01-2022)

PRA continued to try to make the 3-letter chain closing the account turn into a one or two letter closure. (Resp.10-11, R.Doc.164, Vol. I at 69:8–25, (PRA's citation) through page 72:13.) Hammett asked, "[a]re you assuring me there will be no reopening of the account?" (at 70:17-18) PRA did not answer that question until its August 25, 2022 settlement offer, which included a demand for Hammett to call the correction a waiver. (Br. 28) The zero balance is not the last record PRA planned to make of the account.

Now PRA admits the $2,297.63 included $381.58 in "post-charge-off" charges. (Resp.30) PRA provided no contract, and the "Data Load" specifically stated the interest rate was zero. (R.Doc.261, at 34)

The Court, sua sponte decided that "Hammett does not actually have a concrete injury that flows from the oral or written communications of the existence of this debt or the amount." (R.Doc.261, at 100, referring to *Spokeo*.) PRA did not espouse this argument, thereby waiving it. Regardless, Hammett had more concrete injury from being told the balance was $2,297.63 than a balance of $1916.05. Because the SOL passed and she didn't owe the Debt, the only motivation Hammett had to pay was to end the harassing calls. The threat of a $2,297.63 extortion is greater than the threat of a $1,916.05 extortion. Rather than negotiating with an extortionist, Hammett litigated, which cost significantly more.

PRA still refuses to repeat the entire "I am a consumer" statement. (Resp.30) The full statement doesn't imply Hammett owed the debt and doesn't outweigh the Hammett's sworn statements denying the debt.

PRA acknowledges Hammett's dispute of the Debt as 'good faith' (Resp.32), indicating she did not agree she owed it.

- **Calls after 9 pm Central were not bona fide errors. (15 U.S.C. 1692c(a)(1), Resp.20-23, *Kelleher v. Wal-Mart Stores, Inc*., 817 F.3d 624, 634 (8th Cir. 2016)**)

Kelleher and *Hammett* are differentiated because Kelleher "offer[ed] no examples or evidence" of her contentions.

The calls to Hammett's Arkansas landline did not end in 2017, as implied. (Resp.22.) According to PRA's falsified record, most calls from 2017 to "11/17/2020" were to the Arkansas landline. (R.Doc.78-7.)

PRA has the burden of proving a bona fide error by the preponderance of evidence and did not offer skip tracing that lacked an Arkansas address.

The bona fide error defense applies to some clerical and factual errors, but not all. It should not apply here. Soft inquiries on Hammett presumably showed four Arkansas addresses where Hammett had utilities and PRA's self-generated call log

showed a preponderance of calls made to an Arkansas landline. PRA cited R.Doc.78-6 claiming it had a California Address and telephone number. Elsewhere, PRA implied the "Data Load" was from Capital One, generated before 2013, before Hammett moved to Arkansas.

- **A reasonable jury might find PRA purposefully harassed Hammett. (15 U.S.C. §1692d, Resp.16, 19-20, 23-26, 37)**

Most of the calls were "anonymous". (https://alegaldictionary.com/anonymous/ R.Doc.107-6.) Telling Hammett the caller was "[Representative's Name]" was meaningless identification. It violated authority PRA cited, *Zortman v. J.C. Christensen & Assocs., Inc*., 870 F. Supp. 2d 694, 707 (D. Minn. 2012). (Resp.24.)

Debt collectors began to identify themselves meaningfully to potential third parties "when courts started imposing liability on debt collectors for failing to comply with sections 1692d(6) and 1692e(11). Section 1692d(6) prohibits 'the placement of telephone calls without meaningful disclosure of a caller's identity.'" *Zortman* *699.

The Court, at first glance, disagreed that failing to identify meaningfully violated the FDCPA. "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 . . .')." (R.Doc.173, at 33) The Court's statement is technically true, though deceptive. Hammett only claimed that a debt collector must make meaningful identification, not "and the purpose of the call".

"PRA's defense for refusing to identify itself **pursuant to 15 USC 1962(d)(6)** is that 'PRA was legally obligated to take precautions to verify Plaintiff's identity on the phone.' PRA provides no legal authority that mandates it to ask a person's address, any part of the social security number or birthdate before making the required disclosure of the caller's identity. The legislature did not say 'the following conduct is a violation of this section: the placement of telephone calls without meaningful disclosure of the caller's identity, after the person who answers identifies herself.'" (R.Doc.99, at 46-47 and Exhibit ii.) PRA insists FDCPA restrictions don't apply if they call or could be calling the wrong party. (Resp.8, 23.) *Mejia*, not precedent but persuasive, decided otherwise.

Congress made provision, § 1692b(3), "to protect 'any person other than the consumer' from unwanted, repetitive calls from debt collectors. See generally *Todd v. Collecto, Inc*., 731 F.3d 734, 737-39 (7th Cir. 2013)." *Kuntz v. Rodenburg*

LLP, 838 F.3d 923, 925 n.2 (8th Cir. 2016). A person is not required to identify to the police without being suspected of a crime; certainly, Hammett did not need to identify to PRA, who knew the report of debts originated from Capital One were not reliable.

It is irrelevant who was demanding the calls stop.

Try both scenarios. Had Hammett said, "I am not Laura Lynn", the debt collector must stop calling. Hammett instead said, "You verified it." (R.Doc.107-6, at 18.) PRA insisted it would continue calling.

Hammett: "Don't call this number again, please."
PRA: "Why, ma'am? Why. We're calling for you. You're just unwilling to verify you're the person we're calling for, ma'am."

PRA bragged it did not use "threats of violence" or "obscene language". (Resp.24.) PRA is aware though that "Collection abuse takes many forms, including [] obtaining information about a consumer through false pretense []. S.Rep. No. 95–382, at 2 (1977), 1977 U.S.C.C.A.N. 1695, 1696." *Zortman* *698. A reasonable juror might find that PRA's identity theft affidavit is a false pretense to collect information. The Court and PRA offered no reason answering interrogatories outside of litigation would benefit an accused debtor when the

alleged creditor had no legal recourse to collect the debt and the SOL for fraudulent use of credit had run. (R.Doc.173, at 18-20, 38-39)

Hammett gave evidence that PRA's collection activity caused anxiety. Hammett started therapy in March 2020 due to anxiety from financial loss from the COVID-Crash, stopped in October 2020, and resumed in March 2021 due to "ongoing stressors with the legal issues". (R.Doc.68, at 1770, 1828, 1832.)

VanHorn, Resp.24, is dicta differentiated from Hammett: VanHorn "does not actually contest that he owed money", "Defendant used its same company number to call Plaintiff", and "multiple debt collectors were contacting VanHorn in the attempt to collect other debts owed by Plaintiff." *Vanhorn v. Genpact Servs., LLC*, Case No. 09-1047-CV-S-GAF, (W.D. Mo. Feb. 14, 2011)

PRA cited VanHorn in *Seifried v.* ***Portfolio Recovery Assocs., LLC***, Case No. 12-CV-0032-JHP, 2 (E.D. Okla. Nov. 25, 2013) in its unsuccessful MSJ. The Court decided, "a rational juror could infer that PRA's collection efforts violated § 1692d(5) of the FDCPA."

PRA claimed ignoring "a verbal cease-and-desist" was not harassing or abusive, (Resp.16, 25-26) But, PRA's spoliation of many of the recordings in which Hammett beseeched them to stop calling indicates that PRA knew it should have honored Hammett's verbal order.

Hammett also communicated her demand non-verbally, by hanging up, ignoring calls, and blocking PRA's numbers. Until November 18, 2020, Hammett did not know PRA was a debt collector, and therefore did not know the FDCPA applied. Regulation-F was not enforceable yet, but PRA was on notice that Congress agreed that ignoring a verbal cease-and-desist was harassing. The tort claims did not require a written cease-and-desist.

Of the first 365 calls PRA acknowledges, only one didn't indicate a desire to be left alone. Of the 411 admitted collection calls, 91% weren't recorded. (R.Doc.78-7 and media with PRA's sound recordings.)

The Court agreed with PRA that "use of a recorded line is a 'ubiquitous' practice []. R.Doc.173 at 38." (Resp.25) A reasonable juror could disagree. PRA claims it thought Hammett was in California. PRA violated its own policy to transfer a California call recipient to an unrecorded line after she expresses refusal to being recorded. (R.Doc.68, at 408.) In a single party consent state like Arkansas, a person who doesn't consent to being recorded has no option but to not speak. That includes refusing to identify oneself or confirm identifiers.

A person who owes a debt is not required to answer a recorded deposition outside of the procedural confines of litigation. PRA illegally forced Hammett to speak on a recorded line at the time that was convenient for PRA without notice or an attorney to protect her interests by hijacking Hammett's phone.

Hammett's half-hearted waiver of 15 U.S.C. 1692c(c) claim, supports the 1692d and outrage claims. (Resp.37, at fn5)

PRA cited R.Doc.99 at 12, "Textually, PRA is correct that it did not violate 1692c(c)." PRA and the Court ignored the next sentences at 13. "But calling Hammett repeatedly after she begged PRA to stop calling her violated 1692d's catchall opening sentence and 1692d(5). It also contributed to the accumulated annoyances that added up to 'outrageous' conduct."

- **The animating purpose of all PRA's pre-litigation communications was to intrude, harass and annoy as a means to induce payment of the debt. (Resp.26-27)**

PRA could not take legal action to enforce the Debt. Hammett did not need "an avenue to avoid the debt". (R.Doc.173, at 41) PRA's algorithm determined Hammett is likely to pay debts, or they would have moved on to collect from one of the other millions of line items of data it's purchased over the years, instead. PRA's only purpose to continue the calls was to extort payment. PRA did not intend to show Hammett documentation that might convince her she incurred the Debt. (PRA shows OALD to convince actual debtors to pay. (R.Doc.68, at 528, 533.)

The identity theft letter was intended to collect information to induce payment. PRA had no interest in finding who defrauded Hammett. Otherwise, PRA would clamor to play the subpoenaed recordings that are proof of Pietrczak's fraudulent conduct. After the balance was corrected, PRA asked Hammett to say the Debt was waived, which would subject her to a tax liability.

PRA mischaracterized the three closing letters. (Resp.27, describing the chain as a single letter.) The Court summarized the chain as three letters. (R.Doc.173, at 20-21) Then inexplicably, the Court also ignored the second and third closing letter in his discussion. (R.Doc.173, at 41-42)

There are only two plausible reasons the wrong name and account number were on the first letter leads to only two conclusions. One, the Laura Lyman and Laura Lynn accounts were crossed sometime as early as 2010, which created a clerical error where Lynn was charged with Lyman's purchases, or Lyman was credited with Lynn's payments. The other, that PRA purposefully erred to create a narrative that the Lynn account was never at a zero balance, so PRA could continue collecting after the litigation was dismissed.

Which of these two scenarios is correct is only speculative due to PRA's refusal to produce any OALD for either account. Either way, the $2,297.63 balance was wrong.

Changing the body text in the second letter indicates that PRA was up to no good. If the changes were unintentional, the second letter would be identical to the first except for the name and account number.

The evidence of the ruse is on the face of the letters.

Hammett provided evidentiary support of 15 U.S.C. 1692e(11) and 1692g. (Resp.36-37)

Hammett swore that attempted communications with the required disclosures never reached her in Hammett Affidavit ¶36 and Defense Exhibit E. (counterstatement of undisputed facts, R.Doc.99-?, at 29, and brief, R.Doc.99, at 43.) *Seaworth v. Messerli*, Nos. 09–3437, 09–3438, 09–3440, 09–3441, 2010 WL 3613821, at *5 n. 6 (D.Minn. Sept. 7, 2010) (finding a letter that is mailed but never received is not a "communication" under the FDCPA)

The Court focused on a sentence at R.Doc.99, at 29 of 53, which Hammett wrote assuming she wouldn't finish her brief in time to file it manually in Little Rock. However, she managed to finish it miraculously and inadvertently left the sentence unchanged. The Court disregarded the rest of the brief. PRA misstated Br.68 describing this situation.

- **A reasonable jury might find PRA intruded on Hammett's seclusion and acted outrageously. (Resp.32-35, 41)**

The same fact set that proves Hammett's FDCPA claims (Supra) supports her Intrusion on seclusion and outrage claims and is also mirrored in the CFPB actions and *Mejia*.

Hammett was ordered to share her physical and mental health record with an army of adversarial attorneys and staff who she does not trust, and to submit to an intrusive and disturbing Defense Medical Exam, given by a hired gun.

PRA only stopped collection "in light of the ongoing litigation". Therefore, the stress, embarrassment and time of the intrusive litigation is direct damage caused by PRA.

PRA did not address the claim of Outrage in its brief, seeming to understand it lost the fight on other cases and should lose here. PRA's conduct was outrageous because PRA repeated the conduct against so many people, even after paying 8-figure settlements and losing an $82M punitive damages jury verdict. (CFPB 2015 and *Mejia* 2016)

- **The Court contributed to Plaintiff's one missed deadline and should have reopened discovery. (Resp.i)**

As discussed supra in "Procedural Improprieties", Hammett reasonably expected that her first discovery motion would extend the time for discovery once Rule 26(a) was enforced against PRA.

Plaintiff is self-represented, not an attorney, suffered fatigue and brain-fog from off the chart thyroglobulin anti-bodies and this was her first discovery in Federal Court.

Hammett's motion to compel initial disclosures asked for spoliation sanctions as an alternative to extension of discovery. (R.Doc.100 and 98, at 4:13-13:8.) Sanctions were denied without justification.

PRA has a practice of withholding and falsifying evidence. (*Mejia*, *CFPB* actions.) PRA argued that it settled *Mejia*, omitting that was only after a $82,000,000 punitive damage jury award. (Resp.40)

- **The 8th Circuit has appellate jurisdiction, the record should be settled, and the subpoena revived. (Resp.1, 61-63)**

PRA failed to rebut Hammett's reason that the NOA was timely. (Br. 23, 24) The Court denied Hammett's Motion for Reconsideration on October 6, 2023, making Hammett's NOA filed November 1, 2023 timely.

F.R.A.P. (4)(a)(4)(B)(ii) is inapposite. The challenged ruling was not disposing of a motion listed in 4(a)(4)(A).

Miles v. Gen. Motors Corp., 262 F.3d 720, 722-23 (8th Cir. 2001) is differentiated because Miles concerns one of the 4(a)(4)(A) motions and no amended NOA was filed. Likewise in *Teinert v. Abdallah*, 435 F. App'x 566, 567 (8th Cir. 2011), Teinert submitted a NOA prior to the motion appealed being denied and did not amend the NOA to specify the denial. Hammett filed a new NOA after the motion to settle the record was denied and less than 30 days after the motion to revive the subpoena/reconsideration was denied.

PRA said the motion to revive is mentioned only in "stated issues for appeal", but Br.42 lists orders to be reviewed. (Resp.61) The issue on appeal is that the Court purposefully ignored that PRA introduced disputed facts and issues in response to a motion and opined on the new facts and issues in a separate order, confusing the time to appeal. (Jurisdictional statement Br.23-24)

PRA cited caselaw for the proposition that the appellate court will only correct a transcript that is "intentionally falsified or plainly unreasonable." (Resp.63) Hammett argued that removing the dialogue that lulled Hammett into stipulating to the overbroad protective order was falsification and unreasonable.

- **Hammett's proposed SAC cures pleading negligent infliction of emotional distress.**

In the SAC, Hammett focuses on the physical harm that was done by being woken by PRA. Hammett had insomnia and adhesive capsulitis. It is acceptable in Arkansas to include emotional distress damages that are caused by bodily injury, such as being woken from needed sleep. Sleep is a physical process. Disrupting needed sleep repeatedly is physical torture.

- **The Court knew that burdening Hammett to challenge each particular confidentiality designation is inappropriate. (Resp.12)**

Hammett refused to agree to a protective order that shifted the burden of showing particularized need off PRA, until the Court persuaded her that he would not let PRA get out of control. The Court's advocacy on behalf of PRA, almost identical to arguments in a case he fought as Solicitor General, was edited out of the transcript.

Regardless, the protective order gave confidentiality to only discovery documents. Evidence used at trial or as here, for a determination of summary judgment, is not to be filed nor left under seal without a compelling, particularized need.

- **PRA misstated Hammett's prevailing party argument. (Resp.15, 58)**

PRA failed to cite a page number when misquoting **"**R.Doc.252." Plaintiff never asserted that PRA waived the debt in R.Doc.252.

Plaintiff asserted, "Plaintiff is appealing the conclusion that PRA waived the debt, because no debt was owed." (R.Doc.252, at 3.)

The Court's erroneous conclusion that the Debt was "waived" must lead to the conclusion that Hammett prevailed.

Application of *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 600 (2001) is limited to cases with represented plaintiffs and where there was full satisfaction or settlement.

The *Buckhannon* Court used the defendants' fear of paying attorney fees in its analysis discounting the "catalyst theory". PRA knows an award of reasonable attorney fees to a pro se litigant would contradict established precedent.

The Buckhannon Court decided, "petitioners' fear of mischievous defendants only materializes in claims for equitable relief, for so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." PRA's agreement to stop collection was only a partial victory for Hammett.

Zeroing the debt is, until the decision is reversed, a judicially sanctioned, material alteration of the legal relationship of the parties. It was not a settlement.

- **Changing "disagreed" to "agreed" was not a "typo", nor was it harmless error. (Resp.15)**

An inadvertent error in transcription is a typo. All the errors in transcriptions throughout this case favor PRA. 100%. The statistical probability of erring in one party's favor randomly is 50%. An event occurring 100% of the time over multiple trials despite having a probability of 0.5, suggests either a flaw in the experimental setup or an external factor influencing the outcomes.

- **Conclusion**

Hammett presented ample evidence that demands a jury verdict. It is plain error to deny this Constitutional right.

PRA's spoliation of evidence and purposeful defamation should be sanctioned.

Amendment of the complaint and an extension of discovery for Hammett is appropriate.

Respectfully submitted,

March 18, 2024

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(s)Laura Lynn Hammett

Attorney for Plaintiff / Appellant in pro se

Dated: March 18, 2024

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

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I hereby certify that on March 18, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system.

(s)Laura Lynn Hammett
Attorney for Plaintiff / Appellant in pro se
Dated: March 18, 2024