

No. \_\_\_\_\_

In the

**Supreme Court of the United States**

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LAURA LYNN HAMMETT,

Petitioner,

v.

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

Respondents.

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On Petition for Writ of Certiorari to the

United States Court of Appeals for the

Eighth Circuit

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PETITION FOR WRIT OF CERTIORARI

Hammett's Motion to Filed Sealed Documents, Unseal Those Documents and All

Lower Court Documents Referred to by the Court in Its Decision

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Seeing is believing. Whether or not certiorari is granted, it is essential that the motion to unseal the records at the lower court be decided, as it is the only way to overcome the public's disbelief that a judge would show partiality to the big business defendant and then bury the truth.

Portfolio Recovery Associates, LLC (PRA), the nation's second-largest debt buyer, has been the defendant or respondent in numerous similar actions, with verdicts or settlements exceeding \$150,000,000. However, the raw data from these cases is rarely accessible to the public. Although it exists, uncovering it requires someone with the persistence and analytical skills of Laura Lynn Hammett—who, with over a decade of experience writing about court proceedings, a 162 LSAT score, and a detail-oriented approach indicative of autism—managed to find it.

For example, in *Evans v. PRA*, USDC New Jersey, 1:15-cv-1455, documents were attached as Exhibits D and E to R. Doc. 163, at 12-21. The same forms were filed in this case as Exhibits D and E to PRA's Motion for Summary Judgment (Docs. 76-7 and 76-8). The District Court allowed those documents to remain under seal.

This motion is submitted in support of public access to judicial records. The documents in Appendices aa, bb, cc, and dd, along with all other documents referenced by the district court to support its Consolidated Order and Order on Reconsideration, should be unsealed.

To comply with lower court orders, Hammett respectfully moves this Court to initially file under seal the appendices designated 'UNDER SEAL' in the petition.

The 'Stipulated Protective Order,' included as Appendix I, was agreed to during the December 1, 2021, hearing (R. Doc. 260). Many of the TEO orders to seal, included as Appendix II, reference the March 16, 2022, hearing (R. Doc. 124).

Hammett contested the accuracy of the transcript, recalling that the court provided an informative lecture aligned with its previous opposition to a protective order in *Planned Parenthood of Arkansas & Eastern Oklahoma Inc. v. Cindy Gillespie*, Director, Arkansas Department of Human Services, USDC ARED Case No. 4:15-CV-00566-KGB (“PPAR”), a case he had previously been involved in. His remarks reassured Hammett that PRA would not be permitted to designate as “confidential” evidence that was publicly available elsewhere or related to non-confidential communication, such as phone calls made to her by PRA. However, that portion of the hearing was not transcribed, and Hammett was denied access to the audio recording that the court claimed to have reviewed. The clerk indicated that the court reporter would have made the recording, but the reporter, via email, denied having done so. Hammett’s petition to settle the record was denied by both lower courts. If appeals are exhausted without relief, Hammett intends to campaign for other journalists to file Freedom of Information Act requests to disclose the audio recordings.

Hammett raised objections to the proposed protective order, prompting the court to hold a hearing to reach a consensus (R. Doc. 30, especially at 4–6) (Affidavit ¶¶ 31, 32). See ¶ 30 (“Order paragraph 12 shifts the burden that the legislature placed on the party seeking confidentiality onto the opposing party.”) and ¶ 32 (“The party

requesting a protective order must provide a specific demonstration of facts supporting the request, rather than relying on conclusory or speculative statements about the need for confidentiality and the harm that would result without it."). The transcript does not reflect any new argument from PRA or the court explaining why Hammett should or would change her position.

No document cited as evidence in the summary judgment determinations, Doc. 173 and Doc. 237 (Petition for Writ of Certiorari Appendices D and E, respectively), should remain under seal, including those in Appendices aa–dd. In fact, to avoid speculation and promote transparency, all exhibits to the summary judgment motions should be unsealed. Any opposition to this motion should be required to provide specific grounds justifying why each particular document should remain "Confidential" and "Under Seal." (The phone system exhibits were not used as evidence, as Hammett conceded that the TCPA violations did not apply following the landmark Facebook case defining an automatic telephone dialing system.)

**Supreme Court Rule 34(7)(b):** PRA argued that the stipulated protective order was necessary to protect commercially sensitive information, including proprietary data, phone systems, and internal policies. They contended that Hammett failed to follow proper procedures for challenging specific confidentiality designations, asserting that her objections were too broad and lacked the legal specificity required. PRA further maintained that the purported confidential nature of their documents justifies the court's decision to seal them.

The public's right to access these records outweighs any claimed interest in confidentiality, particularly when those documents served as a pretext for the court's determinations in this case. The sealed records contain essential evidence and internal policies that directly support Hammett's assertions of PRA's spoliation and fabricated defenses. Transparency is critical here, as these documents are central to exposing practices that may otherwise remain hidden under the guise of confidentiality.

Transparency in judicial proceedings is essential to uphold fairness, public confidence, and accountability. PRA has not shown a compelling reason to keep these documents sealed, especially given the court's reliance on them in granting summary judgment. Unsealing these records is critical to ensuring that justice is both done and seen to be done.

PRA contended that Hammett's motion to unseal in the Eighth Circuit was procedurally improper. They argued that, under Federal Rule of Appellate Procedure 27, motions can address only procedural issues and not substantive challenges to court orders. Instead, PRA maintained that Hammett should have raised her objections to the district court's confidentiality and protective orders through merits briefing as part of her formal appeal.

Hammett raised her objections in the appellate court through both merits briefing and a separate motion. As noted in the Petition for Writ of Certiorari, both efforts were denied without any further explanation from the court.

**Supreme Court Rule 34(7)(c):** Including the sealed exhibits in this petition is necessary to demonstrate the inconsistencies within PRA's internal records, as well as the contradictions between PRA's defenses and its own written policies. It is equally important to reveal to the public how the district court's opinions—adopted verbatim by the Eighth Circuit—were tainted by factual inaccuracies and flawed reasoning, leaving the impression that these well-educated judges either failed to grasp basic legal principles or were disingenuous in their rulings.

**Supreme Court Rule 34(7)(d):** It is not possible for the movant to provide a redacted version of the material for the public record. The redactions required by Federal Rule of Civil Procedure 5.2 have already been applied by PRA to the "confidential" copies filed under seal. In addition, PRA has made further unexplained redactions on pages 1, 2, 3, and 5 of Appendix bb. It appears that PRA considers all other content in these documents to require sealing, even in its redacted form.

**Supreme Court Rule 34(7)(g):** Hammett consents to unsealing all documents she designated as confidential or under seal, with the exception of her medical records. The court did not reference these medical records in its opinions. PRA's expert psychiatric witness submitted his initial report late and incomplete, and Hammett's motion to exclude it was denied as moot. Should the case proceed to trial, Hammett will agree to unseal her medical records (including psychological counseling notes), provided that any references to her husband and sons are redacted to preserve their confidentiality.

**Appendix aa: Call Log Generated by Portfolio Recovery Associates LLC:** This call log, central to determining whether PRA made harassing and annoying calls, contains inaccuracies, showing inconsistencies with both the PRANet record and Hammett's recollection. While the judiciary has access, public scrutiny of this document is essential to holding PRA accountable for its actions. The spoliation of evidence, such as deleting calls from the log, multiplied the time, energy, and costs of litigating, and PRA's claim that the log is "confidential" is untenable since it directly pertains to Hammett's claims.

**Appendix bb: PRANet Communication Log:** This log documents PRA's handling of Hammett's account and contains no proprietary information. Public access would allow for transparent scrutiny of PRA's actions and help assess the accuracy of the court's reliance on this document. As with the call log, this information was not confidential when PRA contacted Hammett, and preventing her from discussing PRA's version of events violates her First Amendment rights.

**Appendix cc: PRA 1099-C Policy Script:** This script outlines PRA's protocol for handling debt cancellations, which is central to Hammett's argument regarding PRA's failure to issue a 1099-C form. PRA reads this script to customers without requesting confidentiality, and similar accounts are already publicly available online. Public access to this document would shed light on PRA's practices and their compliance with tax law.

**Appendix dd: Policy to Keep Detailed Notes on Every Contact:** This policy reveals discrepancies between PRA's documented contacts and the actual calls made. These

inconsistencies are significant to Hammett's case, particularly given the court's failure to address evidence spoliation. Unsealing this document is crucial to ensure a full examination of PRA's practices and the court's decision-making.

**Other Records Relied Upon by the District Court:** Hammett also seeks the unsealing of all documents referenced by the district court in its summary judgment rulings. These records were central to the court's decisions, and public access is essential to ensure accountability and transparency in judicial reasoning.

#### **DIRECTIVES OF THE PROTECTIVE ORDER (Appendix I)**

The protective order specifies that a party may only designate discovery materials as confidential if they reveal information that is not generally known to the public (§ 5).

If a producing party knowingly discloses its own confidential or privileged information in a public filing or publication, it is deemed to have consented to the removal of that designation (§ 16). This rule should apply here, even where the court or the producing party has misrepresented the contents of the documents.

#### **CASE LAW**

*Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) – The Court held that "[p]arties may disseminate the identical information covered by the protective order, so long as it was obtained through means independent of the court's processes."

The requirement for showing good cause to issue a protective order demands "a particular and specific demonstration of fact as distinguished from stereotyped and



conclusory statements." *In re Terra Int'l*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)). This standard is often ignored, leading to misuse, as noted in *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1358 (Fed. Cir. 2011) ("Parties frequently abuse Rule 26(c) by seeking protective orders for material not covered by the rule.").

There is a stark distinction between protective orders issued under *Federal Rule of Civil Procedure 26* and orders to seal judicial records. The common-law right of access applies to judicial records, and courts recognize a "strong presumption in favor of openness" when it comes to court records. Only the most compelling reasons can justify non-disclosure of these records. See *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016); *IDT Corp. v. eBay*, 709 F.3d 1220, 1222 (8th Cir. 2013); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983); *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983).

The assertion of "valuable trade secrets" does not justify extensive redactions across dozens of pages, as courts require a specific and particularized showing to support such confidentiality claims. Blanket statements of commercial sensitivity are insufficient. See *Hyatt v. Lee*, F. Supp. 3d, 2017 WL 1737630, at \*1-\*4 (D.D.C. 2017).

Once a protective order is entered, the burden remains on the party seeking continued confidentiality to demonstrate good cause when challenged. As courts have held, "If a party does not show good cause to justify the ongoing concealment of

certain information, the protective order may be dissolved or modified to unseal that information." Additionally, the common law presumption of access to judicial records "does not attach to documents filed in connection with a motion to dismiss and excluded by the court because those documents do not play any role in the district court's adjudication." *Chicago Mercantile Exchange, Inc. v. Technology Research Group, LLC*, F. Supp. 2d, 2011 WL 3510934, at \*3-\*4 (N.D. Ill. Aug. 9, 2011), citing *Trustees of Purdue University v. Wolfsped, Inc.*, 620 F. Supp. 3d 393 (M.D.N.C. 2022). Here, the sealed evidence played a role in the adjudication of summary judgment.

## CONCLUSION

For the reasons stated above, Hammett respectfully requests that the Court grant her motion for public access to the sealed judicial records, unseal Appendices aa, bb, cc, and dd, and require PRA to provide specific justification for maintaining under seal any documents referenced by the district court in its orders granting summary judgment to PRA and denying partial summary judgment to Hammett.

Transparency and fairness in the judicial process demand no less.

Respectfully submitted, October 24, 2024

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