

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28**\*E-FILED 9/22/2008\***

NOT FOR CITATION  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

CRIS JAO BRETANA, on behalf of himself and  
 all others similarly situated,

No. C07-05934 JF (HRL)

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
 MOTION TO COMPEL DISCOVERY**

v.

INTERNATIONAL COLLECTION  
 CORPORATION; CHARLES D.  
 HENDRICKSON, LUIGI CIOPPA, and  
 FRANKLIN JAY LOVE,

**[Re: Docket No. 36]**

Defendants.

---

This is a putative class action for alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., and the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code §§ 1788-1788.33. Plaintiff now moves for an order deeming certain matters admitted and compelling defendants to answer interrogatories and requests for admission and to produce documents. Defendants oppose the motion. Although they reportedly later agreed to serve supplemental discovery responses by September 15, 2008 (see Schwinn Suppl. Decl., ¶ 4), plaintiff advises that the promised discovery has not been produced. (See id., ¶¶ 6-8).

Pursuant to Civil Local Rule 7-1(b), this court finds the matter suitable for determination without oral argument, and the September 23, 2008 motion hearing is VACATED. Upon

1 consideration of the moving and responding papers, this court GRANTS plaintiff's motion.

2 **1. Plaintiff's Meet-and-Confer Efforts**

3 Defendants have failed to oppose the substance of plaintiff's motion in any way.  
4 Instead, they simply argue that the instant motion is defective because plaintiff (a) filed a single  
5 motion to address three kinds of discovery; and (b) allegedly failed to meet-and-confer about  
6 the disputed discovery by telephone. The court rejects these arguments. Defendants have failed  
7 to convince that plaintiff's motion should be barred on the ground that "there is no rule that  
8 allows a party to file one motion for three separate discovery disputes." (Opp. at 8). Moreover,  
9 upon review of the record presented, the court finds that plaintiff satisfied his meet-and-confer  
10 obligations. Plaintiff asserts that, although the parties agreed to a telephonic conference prior to  
11 the filing of the instant motion, defense counsel failed to place the call on the appointed day and  
12 time. Plaintiff's counsel apparently continued his attempts to speak with defense counsel by  
13 telephone before filing the instant motion, but defense counsel did not answer or return those  
14 calls. (See Schwinn Suppl. Decl., ¶ 3).

15  
16 **2. Discovery Requests to Defendants International Collection Corp. ("ICC"),  
Hendrickson and Cioppa**

17  
18 Defendants failed to respond to any of the discovery requests served by plaintiff.  
19 Instead, they merely asserted a blanket objection as follows:

20 These [sic] responding parties object to Interrogatories 1  
21 through 26 on the grounds that they are compound in that they are  
22 directed to more than one Defendant who/which may or may not  
have different responses to each Request for Admission.

23 This [sic] responding parties object to Interrogatories in that  
24 they are excessive in number and are burdensome and oppressive.  
They have been sent to harass these Defendants and should be  
limited to what the particular Defendant may know or not know.

25 (Schwinn Decl., Ex. 5). These defendants asserted essentially the same blanket objection in  
26 response to plaintiff's requests for admission and document requests. (*Id.*, Exs. 4 and 6).

27 Answers to discovery (and any grounds for objection) must be stated with specificity as  
28 to each request. See FED.R.CIV.P. 33(b)(1)(B) and (b)(3) (parties responding to interrogatories

1 “must furnish the information available to the party” and must answer each interrogatory  
2 “separately and fully in writing under oath.”); FED.R.CIV.P. 34(b)(2) (as to each item or  
3 category, responding parties must state objections or state that the requested information will be  
4 produced); Fed.R.Civ.P. 36(a)(4) (as to each request, “[i]f a matter is not admitted, the answer  
5 must specifically deny it or state in detail why the answering party cannot truthfully admit or  
6 deny it.”). Defendants’ blanket objections are inadequate. Plaintiff’s motion as to these  
7 requests is granted.<sup>1</sup>

8 **3. Requests for Admission to Defendant Love**

9 **a. Request Nos. 6-16**

10 These requests seek admissions that:

- 11 • Defendants ICC, Hendrickson and Cioppa are or were engaged in the collection  
12 of debts from consumers using the mail and telephone and regularly attempt to  
collect consumer debts alleged to be due to another;
- 13 • Defendants ICC, Hendrickson and Cioppa are each a “debt collector” within the  
14 meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c);
- 15 • Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1692a(3);
- 16 • Defendant Love’s principal business is the collection of consumer debts owed or  
alleged to be owed to another;
- 17 • Defendant Love regularly collects or attempts to collect consumer debts on  
18 behalf of clients;
- 19 • Defendant Love is a “debt collector” within the meaning of 15 U.S.C. §  
1692a(6); and
- 20 • The financial obligation allegedly owed by Bretana is a “debt” as that term is  
21 defined by 15 U.S.C. § 1692a(5).

22 (Schwinn Decl., Ex. 7).

---

25 <sup>1</sup> “Unless otherwise stipulated or ordered by the court, a party may serve on any  
26 other party no more than 25 written interrogatories, including all discrete subparts.”  
27 FED.R.CIV.P. 33(a)(1). There is no indication that this presumptive limit has been modified  
28 by stipulation or order. Nevertheless, in view of defendants’ failure to respond to the  
substance of the instant discovery motion, the court will grant plaintiff’s motion as to all  
twenty-six interrogatories. Moreover, there is no numeric limit on requests for admission or  
requests for the production of documents; and there is no indication that any such limits have  
been imposed in this case by stipulation or order.

1 Defendant objected to these requests on the ground that they call for legal conclusions or  
2 information protected by the attorney-client privilege (or both). He apparently has not produced  
3 a privilege log as required by Fed.R.Civ.P. 26(b)(5). Nor does the court find justification for  
4 his “legal conclusion” objections.

5 Rule 36 of the Federal Rules of Civil Procedure permits a party to seek admissions  
6 about, among other things, “facts, the application of law to fact, or opinions about either.”  
7 FED.R.CIV.P. 36(a)(1)(A). In responding to a request for admission, a party must either admit  
8 the matter, specifically deny it, or “state in detail why the answering party cannot truthfully  
9 admit or deny it.” Fed.R.Civ.P. 36(a)(4). “A denial must fairly respond to the substance of the  
10 matter; and when good faith requires that a party qualify an answer or deny only a part of a  
11 matter, the answer must specify the part admitted and qualify or deny the rest.” *Id.* Lack of  
12 knowledge or information may only be asserted as a reason for failing to admit or deny “only if  
13 the party states that it has made reasonable inquiry and that the information it knows or can  
14 readily obtain is insufficient to enable it to admit or deny.” *Id.*

15 Defendant’s responses are deficient. Accordingly, plaintiff’s motion as to Request for  
16 Admission Nos. 6-16 is GRANTED.

17 **b. Requests 17-23**

18 The record shows that defendant Love did not respond at all to Requests for Admission  
19 Nos. 17-23. (Schwinn Decl. ¶¶ 9, 12, Exs. 7 and 10). Although plaintiff subsequently agreed to  
20 give defendants additional time to July 23, 2008 to serve supplemental responses, and despite  
21 defendants’ reported promise to serve supplemental responses by September 15, 2008,  
22 plaintiff’s counsel attests that Love has not served responses to these requests for admission.  
23 (*Id.*, ¶¶ 18, 20; Schwinn Suppl. Decl., ¶ 8). Accordingly, the matters requested are  
24 automatically deemed admitted. *See* FED.R.CIV.P. 36(a)(3) (“A matter is admitted unless,  
25 within 30 days after being served, the party to whom the request is directed serves on the  
26  
27  
28

1 requesting party a written answer or objection addressed to the matter and signed by the party or  
2 its attorney.”).<sup>2</sup>

3 **4. Interrogatories 2-9, 11 and 13 to defendant Love**

4 **a. Interrogatory No. 2**

5 This interrogatory asks Love to “identify and describe any documents used to describe  
6 or record your methods and techniques used in the collection of consumer accounts. Said  
7 documents would include, but would not be limited to, collection activity logs.” (Schwinn  
8 Decl., Ex. 8). Plaintiff contends that the requested information is relevant to determining  
9 whether defendant have a viable “bona fide error” defense. Love responded only, “Various  
10 documents received from various clients.” (Id., Ex. 11). This interrogatory legitimately seeks  
11 identification of documents Love will use to support his affirmative defense, and Love’s  
12 response is insufficient to identify them. See Fed.R.Civ.P. 33(b)(3) (“Each interrogatory must,  
13 to the extent it is not objected to, be answered separately and fully in writing under oath.”).  
14 Plaintiff’s motion as to this interrogatory is granted.

15 **b. Interrogatory No. 3**

16 This interrogatory asks Love to “list and explain all abbreviations and codes, letters,  
17 numerals or symbols regularly used by you in your records or collection activities. Your  
18 answer should include references to any and all documents which support your answer.” (See  
19 Schwinn Decl., Ex. 8). Defendant responded, “Objection, overbroad, I do not understand the  
20 question.” (Id., Ex. 11). The court does not find this interrogatory to be overbroad; and, in  
21 meet-and-confer negotiations, plaintiff explained that he seeks codes and abbreviations to  
22 decipher collection logs. (Roulston Decl., Ex. 14 at 5). This is a legitimate request. Plaintiff’s  
23 motion as to this interrogatory is granted.

24  
25  
26  
27 <sup>2</sup> “A matter admitted under this rule is conclusively established unless the  
28 court, on motion, permits the admission to be withdrawn or amended.” FED.R.CIV.P. 36(b).  
Love has made no such motion; and, as discussed above, he has not even bothered to address  
the substance of plaintiff’s motion to compel.

1           c.       **Interrogatory Nos. 4 and 5**

2           Interrogatory No. 4 asks Love to “[d]escribe the process which resulted in Exhibit “4”  
3 being filed in the County of Sacramento.” (Schwinn Decl., Ex. 8).<sup>3</sup> Interrogatory No. 5 asks  
4 him to “[d]escribe the process which resulted in Exhibit “4” being filed and how the amounts  
5 claimed were determined.” (Id.). Plaintiff says that these interrogatories essentially seek  
6 information about procedures maintained by defendant to avoid violating the FDCPA. Love  
7 responded, “Processed information received from client” and objected that the interrogatories  
8 call for information protected by the attorney-client privilege. Defendant apparently has not  
9 produced a privilege log as he is required to do under Fed.R.Civ.P. 26(b)(5). In any event, it is  
10 not apparent that the privilege would extend to requested facts about defendant’s procedures.  
11 Defendant’s response is insufficient. Plaintiff’s motion as to these interrogatories is granted.

12           d.       **Interrogatory No. 6**

13           Interrogatory No. 6 asks Love to “describe in complete detail the maintenance of all  
14 procedures utilized by you to avoid violation of the federal Fair Debt Collection Practices Act,  
15 15 U.S.C. § 1692i(a). Your answer should include references to any and all documents which  
16 support your answer.” (Schwinn Decl., Ex. 8). Love responded, “Analysis and review of all  
17 documents by me to insure that errors are not made.” (Id., Ex. 11). Plaintiff says that this  
18 interrogatory seeks information pertaining to defendant’s bona fide error defense – i.e., whether  
19 the procedures maintained by defendant are resulting in compliance or non-compliance with the  
20 FDCPA. He contends that Love’s response is “so devoid of information as to be no response at  
21 all.” (Mot. at 12). This court agrees. FED.R.CIV.P. 33(b). Plaintiff’s motion as to this  
22 interrogatory is granted.

23           e.       **Interrogatory No. 7**

24           Interrogatory No. 7 asks Love to “identify all documents which would show your  
25 compliance or noncompliance with the federal Fair Debt Collection Practices Act, 15 U.S.C. §  
26

---

27           <sup>3</sup> Plaintiff’s interrogatories defined the referenced “Exhibit 4” to mean Exhibit  
28 4 to his First Amended Complaint – i.e., a purported copy of a complaint filed by defendant  
International Collection Corporation against plaintiff in the Sacramento County Superior  
Court. (See Schwinn Decl., Ex. 8; see also First Amended Class Complaint, Docket #5).

1 1692, *et seq.*” (Schwinn Decl., Ex. 8). Love responded, “Objection, overbroad and I do not  
2 understand the question.” (*Id.*, Ex. 11). This interrogatory is not overbroad; and, plaintiff  
3 explained in meet-and-confer negotiations what information he sought – i.e., information  
4 pertaining to the procedures maintained by defendants to avoid violating the FDCPA.  
5 (Roulston Decl., Ex. 14). This is a legitimate request. Plaintiff’s motion as to this interrogatory  
6 is granted.

7 **f. Interrogatory Nos. 8 and 9**

8 Interrogatory No. 8 asks Love to “state the caption of each case you have filed in the  
9 state of California on behalf of ICC to recover debts owed or alleged to be owed to Harrah’s  
10 Casino.” (Schwinn Decl., Ex. 8). Interrogatory No. 9 seeks “the caption of each case you have  
11 filed in the state of California on behalf of ICC to recover debts owed or alleged to be owed to  
12 ICC.” (*Id.*). Love responded, “Objection – public records available to all parties.” (*Id.*, Ex.  
13 11). A party answering interrogatories must “furnish the information available to the party” and  
14 answer each interrogatory “separately and fully in writing under oath.” FED.R.CIV.P.  
15 33(b)(1)(B)and (b)(3). “A requested party may not refuse to respond to a requesting party’s  
16 discovery request on the ground that the requested information is in the possession of the  
17 requesting party.” *Davidson v. Goord*, 215 F.R.D. 73, 77 (W.D.N.Y. 2003). Moreover,  
18 defendant has not bothered to address the merits of plaintiff’s arguments, much less provided  
19 any authority for the proposition that a response that information can be gleaned from the public  
20 record is an adequate response. Plaintiff’s motion as to these interrogatories is granted.

21 **g. Interrogatory No. 11**

22 Interrogatory No. 11 asks Love to “state in complete detail the facts upon which you  
23 rely for each affirmative defense listed in your answer. Your answer should include references  
24 to any and all documents which support your answer.” (Schwinn Decl., Ex. 8). Defendant  
25 responded, “Objection – compound and overbroad.” This interrogatory, as drafted, is a  
26 legitimate query. It is not compound or overbroad. Plaintiff’s motion as to this interrogatory is  
27 granted.  
28

1           **h. Interrogatory No. 13**

2           Interrogatory No. 13 asks Love to “identify each person who you believe has any  
3 knowledge of any of the relevant or material facts in this matter and is not listed in the previous  
4 interrogatory, and state as to each person: a) name and address; b) the subject matter on which  
5 such person has knowledge; and c) the substance of the facts to which such person has such  
6 knowledge.” (Schwinn Decl., Ex. 8). Defendant responded only, “I do not know yet.” (Id., Ex.  
7 11). As discussed above, a responding party must “furnish the information available to the  
8 party” and to answer each interrogatory “separately and fully in writing under oath.”  
9 FED.R.CIV.P. 33(b)(1)(B) and (b)(3). To the extent defendant is withholding information he  
10 knows now, plaintiff’s motion as to this interrogatory is granted, and defendant must provide  
11 the information. He is also under a continuing duty to supplement his discovery responses as  
12 additional information becomes known. FED.R.CIV.P. 26(e).

13           **5. Document Requests to Defendant Love**

14           **a. Request No. 6**

15           This request seeks “[a]ll documents relating in any way to the alleged debt of Plaintiff  
16 and the collection thereof.” (Schwinn Decl., Ex. 9). Defendant responded, “I am still reviewing  
17 documents and will provide these to you.” (Id., Ex. 12). Although plaintiff’s requests were  
18 served months ago, and despite defendant’s promise that documents would be produced,  
19 plaintiff’s counsel avers that no documents have been produced by Love. (Id., ¶ 20; Schwinn  
20 Suppl. Decl., ¶ 8). Accordingly, plaintiff’s motion as to this request is granted.

21           **b. Request Nos. 7-10, 15 and 20**

22           These requests seek copies of:

- 23           • “all documents relating to the litigation identified in Exhibit “4”;<sup>4</sup>
- 24           • “all documents regarding the amounts claimed in Exhibit “4”;

25

26

---

27           <sup>4</sup> Plaintiff’s document requests defined the referenced “Exhibit 4” to mean  
28 Exhibit 4 to his First Amended Complaint – i.e., a purported copy of a complaint filed by  
defendant International Collection Corporation against plaintiff in the Sacramento County  
Superior Court. (See Schwinn Decl., Ex. 9; see also First Amended Class Complaint, Docket  
#5).

- 1 • “all documents regarding the determination to file Exhibit “4” in the County of Sacramento”;
- 2
- 3 • “all documents regarding the relationship between or among [sic] ICC, Hendrickson, Cioppa, and Love.”
- 4 • “[a]ll documents in defendant Love’s possession sent to or received from anyone which in any way related to the debt owed by Bretana”;
- 5
- 6 • “the entire contents of the collection file maintained by Defendant Love pertaining to the collection of the debt allegedly owed by Bretana.”

7 (Schwinn Decl., Ex. 9). Defendant responded, “Other than public records that Plaintiff has, none that are not subject to the attorney client privilege.” (*Id.*, Ex. 12). Defendant failed to provide a privilege log as he is obliged to do under Fed.R.Civ.P. 26(b)(5). Additionally, it is generally not a ground for objection that requested documents are equally available from the requesting party’s own records. See St. Paul Reinsurance Co., Ltd. v. Commerical Fin. Corp., 198 F.R.D. 508, 514 (N.D. Iowa 2000) (citing cases). Plaintiff’s motion as to these requests is granted.

14 **c. Request Nos. 11 and 12**

15 These requests seek copies of:

- 16 • “the Complaint for all lawsuits you have filed in the state of California on behalf of ICC to recover debts owed or alleged to be owed to Harrah’s Casino between November 26, 2004 and November 26, 2007”;
- 17 and
- 18 • “the Complaint for all lawsuits you have filed in the state of California on behalf of ICC to recover debts owed or alleged to be owed to ICC between November 26, 2004 and the present.”
- 19

20 (Schwinn Decl., Ex. 9). Defendant responded only, “Objection – public records available to all parties.” (*Id.*, Ex. 12). As discussed above, Love cannot validly object to production on this basis. See St. Paul Reinsurance Co., Ltd., 198 F.R.D. at 514. Plaintiff’s motion as to these requests is granted.

24 Based on the foregoing, IT IS ORDERED THAT:

- 25 1. Plaintiff’s motion to compel is GRANTED in its entirety.
- 26 2. Request for Admission Nos. 17-23 to defendant Love are automatically deemed
- 27 admitted by operation of Fed.R.Civ.P. 37(a)(3).
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Defendants shall otherwise produce all responsive, non-privileged information and documents in response to plaintiff's discovery requests and in accordance with this order **no later than October 3, 2008**. To the extent defendants contend that any requested information legitimately is shielded from discovery by virtue of the attorney-client privilege (or any other ground for protection), they shall produce to plaintiff a privilege log **no later than October 3, 2008**. The privilege log shall (a) describe the nature of the documents, communications or tangible things being withheld; and (b) shall do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claimed privilege or protection. Fed.R.Civ.P. 26(b)(5)(A)(ii).

Dated: September 22, 2008

  
\_\_\_\_\_  
HOWARD R. I. LOYD  
UNITED STATES MAGISTRATE JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**5:07-cv-5934 Notice has been electronically mailed to:**

Fred W. Schwinn fred.schwinn@sjconsumerlaw.com, cand\_cmecf@sjconsumerlaw.com, fschwinn@gmail.com

Larry Rothman tocollect@aol.com

O. Randolph Bragg rand@horwitzlaw.com, shannon@horwitzlaw.com

**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**