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STATEMENTS DUE ON SEPTEMBER 19, 2008

**U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSÉ DIVISION**

18 MANUEL G. FAUSTO and LUZ FAUSTO,)
 Plaintiffs,)

Case No.: C07-05658 JW RS

20 v.)

**PLAINTIFFS' STATEMENT AND
 REQUEST FOR COURT ORDER
 RE: PLAINTIFFS' MOTION TO
 COMPEL WRITTEN DISCOVERY AND
 DEPOSITION**

22 CREDIGY SERVICES CORPORATION,)
 CREDIGY RECEIVABLES INC., CREDIGY)
 23 SOLUTIONS INC., RYAN MILLER,)
 RICARDO VENTURA, BRETT BOYDE,)
 24 PAULO PERES, THOMPSON and DOES 1-)
 10, inclusive,)
 25 Defendants.)

**Date: September 3, 2008
 Time: 9:30 a.m.
 HON. RICHARD SEEBORG
 U.S. DISTRICT COURT
 280 South First St.
 San José, CA**

1 Plaintiffs' motion to compel written discovery and to compel Defendants' PMK deposition
2 came on for hearing on September 3, 2008. The Court directed the parties to further meet and
3 confer with respect to the issues discussed in the briefing and to return to the Court during the
4 same hearing calendar for further direction. The parties met and conferred, but Defendant was
5 unable to appear later because he had to catch a flight to San Diego to appear before a federal
6 judge in another matter. As a gesture of goodwill and in light of the fact that Defendants' counsel
7 was pressed for time Plaintiffs' counsel agreed to continue to further meet and confer and submit
8 a joint statement. Since that day Plaintiffs' counsel has offered to meet and confer by telephone
9 and meet in person but Defendants' counsel has refused every offer¹.

11 Given that the discovery cut-off is October 13, 2008, that Defendants have known about
12 these discovery issues for several months, and the fact that Plaintiffs' have offered to meet and
13 confer by telephone and in person², Plaintiffs respectfully request the Court order the discovery
14 items compelled, and verifications be provided and it occur within seven (7) days of the Court's
15 order.

16 ❖ Interrogatory 18

17 *Describe in detail the effort Defendant has made to preserve, search for, identify,*
18 *collect, review, and produce relevant documents.*

- 19 a. Plaintiffs Position: Plaintiffs request that Defendants answer and provide a
20 verified response.

21 ❖ Interrogatory 16

22 *Identify the name and address of the long distance telephone provider used to place*
23 *calls relating to Plaintiff's account (include the account # with such entity and the*

24 ¹ See Declaration of Balám O. Letona

25 ² See Declaration of Balám O. Letona. Furthermore Local Rule 1-5(n) states that a meet and confer can only occur
"through direct dialogue and discussion – either in a face to face meeting or in a telephone conversation."

1 to violate the Fair Debt Collection Practices Act, and related laws, an effort to
2 annoy and harass someone into repaying a debt (i.e. threatening to sue someone
3 and take their home if they fail to pay a time barred debt, threatening a consumer
4 that failure to pay a debt will remain on their credit report forever).

5 ❖ Deposition Topic 22

6
7 *Complaints and lawsuits against Defendants for unlawful collection practices in the
8 past three years.*

9 a. Plaintiffs Position: Plaintiffs request that Defendants 30(b)(6) testify to any
10 complaints or counter-claims filed against Defendants during the period 2006
11 through 2008 in which the debtor has alleged that Defendants violated the
12 FDCPA because they failed to honor a written cease and desist request, because
13 the Defendants' telephone collectors engaged in harassing or abusive conduct
14 over the phone, and because the Defendants' collectors made false statements.

15 ❖ Deposition Area – Witnesses, Investigation

16 a. Plaintiffs Position: Plaintiffs request that Plaintiffs be allowed to depose
17 Defendants 30(b)(6) witnesses regarding what actions Defendants took in
18 response to Plaintiffs allegations. As stated in the moving papers³, in April
19 the 30(b)(6) claimed Credigy conducted an investigation into the Fausto's
20 claims, but did not know who at Credigy conducted the investigation.
21 Plaintiffs request that Defendants produce a 30(b)(6) that can testify to the
22 identity of those who conducted the investigation and what were the results
23 of their investigation.

24
25

³ See *Motion to Compel Deposition* Docket #69, page 19-22, starting at line 22

1 ❖ Deposition Topic 1 - Request to Produce Documents

2 *All documents relating to Plaintiffs and/or Plaintiffs account.*

3
4 a. Plaintiffs Position: Plaintiffs request that Defendants be ordered to bring all
5 documents relating to Defendants reporting of the alleged debt to credit reporting
6 agencies to the deposition. Defendants have only produced three months of
7 reports contrary to this Court's order. On June 13, 2008, (see Docket #67) this
8 Court required Defendants to produce all responsive documents with respect to
9 this matter.

10 b. Plaintiffs Position: Plaintiffs request that Defendants produce a competent
11 30(b)(6) witness to testify with respect to all documents Defendants submitted to
12 the credit reporting agencies with respect to Plaintiffs. As outlined in the motion,
13 Defendants did not produce a competent witness in April 2008.

14 ❖ Deposition Location

15 a. Plaintiffs Position: Plaintiffs request that the continued 30(b)6 deposition occur in
16 San Jose for the topics originally noticed. The parties agreed that Defendants
17 FRCP 30(b)(6) witness deposition would proceed in San José, CA on April 22,
18 2008. Unfortunately, the designee produced by Defendants on that date was not
19 competent in many areas. Defendants then failed to appear for a continued
20 deposition noticed for July 10, 2008 in San José, CA (of which Defendant failed
21 to properly move for any protective order from the Court excusing its
22 appearance). Plaintiffs should not have to bear the expense of going to Atlanta,
23 GA when Defendants could have produced a competent FRCP 30(b)(6) witness
24 in April 2008, making this motion unnecessary.

1 b. Plaintiffs Position: Plaintiffs also request that the deposition be set to occur within
2 seven (7) days from this order and the Court order the parties to appear on a
3 weekend date if necessary. Discovery cut-off is October 13, 2008. Since
4 September 16, 2008, Defendants have noticed twenty-one (21) oral depositions,
5 including the deposition of Plaintiff's counsel Balám Letona, to occur from
6 September 30 – October 13th, earlier Defendants noticed another deposition to
7 occur on September 30th bringing the total number to twenty-two (22)⁴.

8 ❖ Interrogatory 5 – 9

9 *State all incentive pay (bonuses, commissions, etc.) paid to Ricardo Ventura, Brett*
10 *Boyde, Ryan Miller, Paulo Peres, Thompson, a.k.a. RG Oncalve.*

11 a. Plaintiffs Position: Incentive pay provided to debt collectors based on amounts
12 collected is relevant in a juror's analysis regarding motive and intent to violate
13 the Fair Debt Collection Practices Act, and related laws, an effort to annoy
14 and harass someone into repaying a debt (i.e. threatening to sue someone and
15 take their home if they fail to pay a time barred debt, threatening a consumer
16 that failure to pay a debt will remain on their credit report forever).

17 Manuel Fausto, Set One of Discovery

18 ❖ Request for Production 12 and 13

19 *All complaints, judgments and consent orders from 2006-2008 relating to*
20 *Defendants' conduct in the collection of individuals' debts; and its acts or practices*
21 *under the FDCPA.*

22 ❖ Request for Production 30

23 *Any judgments or decisions from a Court addressing whether Defendants were*
24 *attempting to collect a debt they could not prove.*

25

⁴ See Declaration of Balám O. Letona

1
2 **1)All federal district complaints filed between 2006 -2008 against Defendants that**
3 **include violations of the Fair Debt Collection Practices Act.**

- 4 a. Plaintiffs Position: Plaintiffs request that Defendants, with respect to federal
5 district court cases only, produce the name of the parties, case number, and
6 district court where the action was filed in lieu of producing copies of each
7 complaint within seven (7) days.

8 **2)All state court complaints filed between 2006 -2008 against Defendants that include**
9 **violations of the Fair Debt Collection Practices Act.**

- 10 a. Plaintiffs Position: Plaintiffs request that Defendants search all of their records
11 for the complaints set forth above, including but not limited to a computerized
12 search and Defendants produce such complaints in seven days (7). If Defendants
13 do not keep track of these records in any form that they submit a verified response
14 attesting to that fact.

15
16 **3)All state court counter-claims filed between 2006 -2008 against Defendants for**
17 **violations of the Fair Debt Collection Practices Act.**

- 18 a. Plaintiffs Position: Plaintiffs request that Defendants search all of their records
19 for the counter-claims set forth above, including but not limited to a computerized
20 search and Defendants produce such complaints in seven days (7). If Defendants
21 do not keep track of these records in any form that they submit a verified response
22 attesting to that fact.

23 ❖ Request for Production 29

24 *Any written communication to defendants from 2006-2008 where an individual or*
25 *their attorney, alleged Defendants were threatening to sue on a time barred debt.*

- a. Plaintiffs Position: Plaintiffs request that Defendants search all of their records

1 for the documents set forth above, including but not limited to a computerized
2 search and Defendants produce such documents in seven days (7). If Defendants
3 do not keep track of these records in any form that they submit a verified
4 response attesting to that fact.

5 ❖ Interrogatory 2

6 *What steps were taken, on what date and by whom to review Plaintiff's account.*

- 7
- 8 a. Plaintiffs Position: Defendants claim non-privileged documents have been
9 produced. Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants
10 specify the non-privileged records and documents to be reviewed in sufficient
11 detail to allow Plaintiff to identify and locate those records and documents.
12 Further, in light of the impending discovery cut-off date, and that this motion and
13 discovery has been pending for several months, that Defendants respond in seven
14 days (7) and provide a privilege log in seven (7) days.

15 Manuel Fausto, Set Two of Discovery

16 ❖ Request for Production 1

17 *All letters received from any consumers complaining about the debt collection*
18 *practices of Defendants.*

- 19 a. Plaintiffs Position: Plaintiffs request that Defendants search all of their records
20 for the documents set forth above, including but not limited to a computerized
21 search and Defendants produce such documents in seven days (7). If Defendants
22 do not keep track of these records in any form that they submit a verified response
23 attesting to that fact.

24 Luz Fausto, Set One of Discovery

25 ❖ Request for Production 1 – 39

1 *Provide a copy of the personnel file of "adias" (first remove any medical*
2 *information).*

3 *Provide copies of any and all tests, relating to the FDCPA, taken by "adias,"*
4 *employment applications, resumes, and performance evaluations of "adias."*
5 *[The same discovery demands were served for the following other individuals:*
6 *"jfmelo", "eisolva", "lunes", "dgregores", "acompani", "cdsilva", "rgoncalves",*
7 *"sblackwell", "kervin", "poston", "kramos" and "lgammage" - for the sake of*
8 *judicial efficiency Plaintiffs listed the three discovery demands above, but, did not*
9 *repeat them, thirty-nine (39) times].*

10 a. Plaintiffs Position: Defendants claim that documents have been produced.

11 Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants specify the
12 records and documents to be reviewed in sufficient detail to allow Plaintiff to
13 identify and locate those records and documents. Further, in light of the
14 impending discovery cut-off date, and that this motion and discovery has been
15 pending for several months, that Defendants respond in seven days (7).

16 b. Plaintiffs Position: Plaintiff requests that Defendants locate and produce any
17 other responsive documents and Plaintiffs request that in conformity with FRCP
18 33(d)(1) Defendants specify the records and documents to be reviewed in
19 sufficient detail to allow Plaintiffs to identify and locate those records and
20 documents. Further, in light of the impending discovery cut-off date, and that this
21 motion and discovery has been pending for several months, that Defendants
22 respond in seven days (7).

23 ❖ Request for Production 40

24 *Provide a copy of any document evidencing your internal communications with respect to*
25 *Plaintiff, the debt, this lawsuit, or the claims in the Amended Complaint.*

a. Plaintiffs Position: Defendants claim non-privileged documents have been
produced. Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants
specify the non-privileged records and documents to be reviewed in sufficient
detail to allow Plaintiff to identify and locate those records and documents.

1 Further, in light of the impending discovery cut-off date, and that this motion and
2 discovery has been pending for several months, that Defendants respond in seven
3 days (7) and provide a privilege log in seven (7) days.

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5 ❖ Interrogatory 14

6 *List by name, alias, job title, last known address and telephone number, and dates*
7 *of employment of each of your employees, agents, or servants who communicated*
8 *(orally or in writing) with Plaintiff. Provide the date, time, location and subject*
9 *matter of each such communication or contact. Provide any documents that mention*
10 *or refer to communications with Plaintiff or were created, prepared, or otherwise*
11 *generated as a result of those communications.*

12 a. Plaintiffs Position: Defendants claim that documents have been produced.

13 Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants specify the
14 records and documents to be reviewed in sufficient detail to allow Plaintiff to
15 identify and locate those records and documents. Further, in light of the
16 impending discovery cut-off date, and that this motion and discovery has been
17 pending for several months, that Defendants respond in seven days (7).

18 b. Plaintiffs Position: Plaintiffs request that Defendants locate and produce any
19 other responsive documents, including records and documents relating to Ralph
20 Phillips, Ray Phillips and Moises Motelli, Plaintiffs request that in conformity
21 with FRCP 33(d)(1) Defendants specify the records and documents to be
22 reviewed in sufficient detail to allow Plaintiffs to identify and locate those
23 records and documents. Further, in light of the impending discovery cut-off date,
24 and that this motion and discovery has been pending for several months, that
25 Defendants respond in seven days (7).

❖ Interrogatory 16

1 *List the names, aliases, job title of each of your employees who contacted Plaintiff*
2 *or another person regarding this debt.*

3 a. Plaintiffs Position: Defendants claim that documents have been produced.
4 Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants specify the
5 records and documents to be reviewed in sufficient detail to allow Plaintiff to
6 identify and locate those records and documents. Further, in light of the
7 impending discovery cut-off date, and that this motion and discovery has been
8 pending for several months, that Defendants respond in seven days (7).

9 b. Plaintiffs Position: Plaintiffs request that Defendants locate and produce any
10 other responsive documents, including records and documents relating to Ralph
11 Phillips, Ray Phillips and Moises Motelli, Plaintiffs request that in conformity
12 with FRCP 33(d)(1) Defendants specify the records and documents to be
13 reviewed in sufficient detail to allow Plaintiffs to identify and locate those
14 records and documents. Further, in light of the impending discovery cut-off date,
15 and that this motion and discovery has been pending for several months, that
16 Defendants respond in seven days (7).

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18 ❖ Interrogatory 20

19 *Name all persons who investigated the Fausto's claims of harassment and unlawful*
20 *collection practices.*

21 a. Plaintiffs Position: Defendants claim that documents have been produced.
22 Plaintiffs request that in conformity with FRCP 33(d)(1) Defendants specify the
23 records and documents to be reviewed in sufficient detail to allow Plaintiff to
24 identify and locate those records and documents. Further, in light of the
25 impending discovery cut-off date, and that this motion and discovery has been

1 pending for several months, that Defendants respond in seven days (7).

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3 b. Plaintiffs Position: Plaintiffs request that a privilege log be produced within
4 seven (7) days.

5 Dated: September 19, 2008

6
7 /s/ _____
8 Balám O. Letona
9 Attorney for Plaintiffs
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