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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN D. AHO, an individual,
individually and on behalf of similarly
situated persons,

Plaintiff,

v.

AMERICREDIT FINANCIAL SERVICES,
INC., d.b.a. ACF FINANCIAL SERVICES,
INC., a business entity form unknown,

Defendant.

) Case No. 10cv1373-DMS (BLM)

) **ORDER GRANTING IN PART AND**
) **DENYING IN PART PLAINTIFF'S**
) **MOTION TO COMPEL DEPOSITIONS**
) **AND WRITTEN DISCOVERY**

) [ECF No. 176]

_____)
Pending before the Court is Plaintiff's Ex Parte Request to Compel Depositions and
Written Discovery. ECF No. 176 ("Pl.'s Mot."). Pursuant to this Court's order setting a
briefing schedule (ECF No. 177), Defendant timely filed its opposition (ECF No. 179
("Opp'n")) and Plaintiff timely filed his reply (ECF No. 180 ("Reply")).

Having considered all of the briefing and supporting documents presented, and for
the reasons set forth below, the Court **GRANTS IN PART AND DENIES IN PART**
Plaintiff's motion to compel.

FACTUAL AND PROCEDURAL BACKGROUND

This class action arises from Defendant's alleged violations of the requirements of
California's Business and Professions Code and the Automobile Sales Finance Act ("ASFA"),

1 among other laws, “by failing to provide required notices and rights to reinstatement and
2 redemption for California consumers regarding vehicles [Defendant] AmeriCredit repos-
3 sessed.” ECF No. 1 at 2. Plaintiff is seeking a determination that Defendant’s notices of its
4 intent to dispose of the repossessed vehicles (“NOIs”) failed to comply with the ASFA, and
5 that Defendant consequently lost the right to assert deficiency claims. Id. Among other
6 forms of relief, Plaintiff is seeking restitution based on the amount of money each class
7 member paid on Defendant’s invalid deficiency claims. Id.

8 On November 8, 2011, Judge Sabraw issued an Order certifying the following class
9 under Rule 23(b)(2):

10 All persons who were sent an NOI by AmeriCredit to an address in
11 California at any time from March 18, 2005 through May 15, 2009, following
12 the repossession or voluntary surrender of a motor vehicle, who were
13 assessed a deficiency balance following the disposition of the vehicle, and
14 against who AmeriCredit has asserted, collected, or attempted to collect any
15 portion of the deficiency balance. The class excludes persons whose
16 obligations have been discharged in bankruptcy, persons against whom
17 AmeriCredit has obtained final judgments in replevin actions, persons whose
18 contracts include arbitration clauses that prohibit class membership, and
19 persons who received NOIs that denied them the right to reinstate.

20 ECF No. 98 at 20. Pursuant to Judge Sabraw’s Order, the above described class is “entitled
21 to pursue all forms of requested relief, with the exception of statutory damages under the
22 Rosenthal Act and restitution of any amounts paid toward a deficiency balance.” Id. Judge
23 Sabraw also “certifie[d] under Rule 23(b)(3) a subclass consisting of all those who made a
24 payment toward a deficiency and are therefore entitled to restitution.” Id.

25 On January 31, 2012, Judge Sabraw issued an Order denying Defendant’s Motion for
26 Partial Summary Judgment on its Rosenthal Act claim (ECF No. 153) and an Order Granting
27 Plaintiff’s Motion for Partial Summary Judgment on his declaratory relief and 17200 claims
28 (ECF No. 154). Trial is scheduled to commence on April 16, 2012. See ECF No. 28 at 7.

LEGAL STANDARD

The Federal Rules of Civil Procedure generally allow for broad discovery, authorizing parties to obtain discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense” Fed. R. Civ. P. 26(b)(1). Also, “[f]or good cause, the court

1 may order discovery of any matter relevant to the subject matter involved in the action.”
2 Id. Relevant information for discovery purposes includes any information “reasonably
3 calculated to lead to the discovery of admissible evidence,” and need not be admissible at
4 trial to be discoverable. Id. There is also no requirement that the information sought
5 directly relate to a particular issue in the case; rather, relevance “encompass[es] any matter
6 that bears on, or that reasonably could lead to other matter that could bear on, any issue
7 that is or may be in the case.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 354
8 (1978) (citation omitted). District courts have broad discretion to determine relevancy for
9 discovery purposes, see Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002), and “[f]or
10 good cause, the court may order discovery of any matter relevant to the subject matter
11 involved in the action,” Fed. R. Civ. P. 26(b)(1). District courts also have broad discretion
12 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts
13 may limit discovery where it is “unreasonably cumulative or duplicative,” “obtain[able] from
14 some other source that is more convenient, less burdensome, or less expensive,” or where
15 its burden or expense “outweighs its likely benefit”).

16 Pursuant to Federal Rule of Civil Procedure 37, “a party may move for an order
17 compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). The party seeking to compel
18 discovery has the burden of establishing that its request satisfies the relevance requirement
19 of Rule 26. Soto, 162 F.R.D. at 610. Thereafter, the party opposing discovery has the
20 burden of showing that the discovery should be prohibited, and the burden of “clarifying,
21 explaining, and supporting its objections.” DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458
22 (C.D. Cal. 2002) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).

23 DISCUSSION

24 The instant discovery dispute arises from the fact that Defendant, in its February 17,
25 2012 trial brief, indicated that it has instituted new policies that negate Plaintiff’s claim for
26 injunctive relief. See ECF No. 162 at 4. Upon learning of these policy changes for the first
27 time by reading Defendant’s trial brief, Plaintiff requested additional discovery, but
28 Defendant “dismissed and denied” this request. Reply at 3. However, on March 2, 2012,

1 defense counsel provided Plaintiff's counsel with a declaration from Craig Paterson, in which
2 Mr. Paterson stated that "[o]n February 14, 2012, AmeriCredit implemented a new policy
3 with respect to all members of the certified class (including subclass members) in this
4 action." Pl.'s Mot., Ex. 1, at 2 ("Paterson Declaration"). Plaintiff asserts that because
5 Defendant "has instituted new policies and procedures, hitherto unknown and undisclosed,"
6 Plaintiff is "entitled to have discovery regarding the new, surprise changes." Pl.'s Mot. at
7 3-4. Defendant, however, contends that Plaintiff not only failed to properly meet and confer
8 prior to filing his motion, but also that Plaintiff's requests are untimely, overbroad, and
9 burdensome. Opp'n at 3-6. Defendant also insists that Mr. Paterson's declaration "fully
10 informed plaintiff of AmeriCredit's policy changes," and "[a]ny remaining questions can be
11 asked and answered during the April 16, 2012 bench trial." Id. at 5.

12 **A. Failure to Meet and Confer**

13 This is not the first time the parties in this case have had a discovery dispute, and
14 this is also not the first time the parties have disagreed as to the sufficiency of their meet
15 and confer efforts. See ECF Nos. 80, 140. Due to the upcoming trial, the Court will resolve
16 this discovery dispute without addressing the adequacy of the parties' meet and confer
17 efforts.

18 **B. Deposition of Person Most Qualified**

19 Plaintiff seeks to "take the Custodian of Records deposition, or other PMQ of
20 AmeriCredit," regarding: 1) "Any and all changes in AmeriCredit policy, practice and/or
21 procedure since November 15, 2011 regarding deficiency amounts and class and/or subclass
22 members"; 2) "Any and all changes in AmeriCredit policy, practice, and/or procedure since
23 November 15, 2011 regarding deficiency debts for non-class members who were sent the
24 same form NOIs as class members and which NOIs were sent to a California Address during
25 the class period."; and 3) "The documents produced in response to Plaintiff's Requests for
26 Production served herewith." ECF No. 176-3 at 4-5.

27 At the outset of his motion, Plaintiff "requests the Court order Defendant to provide
28 deponents and to respond to written discovery regarding its post January 31, 2012, changes

1 to its policies and procedures, and the steps it has undertaken regarding the purported
2 changes.” Pl.’s Mot. at 1. Yet, in his actual deposition notice and requests for production,
3 Plaintiff inexplicably asks for information and documents reflecting policy changes since
4 November 15, 2011. See ECF No. 176-3 at 4-5, 12. Plaintiff also seeks information
5 regarding non-class members. Id. Plaintiff does not provide the Court with any justification
6 for these overbroad requests. Because Plaintiff has failed to establish that producing the
7 requested discovery may result in relevant and non-cumulative information, or that the
8 benefit of such discovery will outweigh the burden of producing it, the Court declines to
9 permit such expansive discovery so close to the commencement of trial. See Fed. R. Civ.
10 P. 26(b)(2)(C). However, the Court finds that Plaintiff is entitled to some discovery
11 regarding Defendant’s recently enacted policy changes because these changes are directly
12 “relevant to the subject matter involved in the action.” Fed. R. Civ. P. 26(b)(1). Although
13 Defendant summarizes AmeriCredit’s “four recent policy changes” (Opp’n at 5), this
14 summary is insufficient, particularly because Plaintiff provides evidence which casts doubt
15 on the veracity of Defendant’s claims (Reply at 2). The Court therefore **GRANTS** Plaintiff’s
16 request to depose a Person Most Qualified of AmeriCredit. However, the deposition is
17 limited to the following topics: 1) the new policies regarding deficiency amounts and class
18 and/or subclass members implemented by AmeriCredit on or about February 14, 2012 (and
19 outlined in Mr. Paterson’s declaration) and the related practices and procedures; and 2) the
20 documents that the Court orders be produced in response to Plaintiff’s Requests for
21 Production. See ECF No. 176-3 at 4-5.

22 **C. Request for Production No. 1**

23 Request for Production No. 1 seeks “[a]ll documents (including, but not limited to,
24 bills, correspondence, contracts, and electronic records) regarding, evidencing, or otherwise
25 reflecting any and all changes in AmeriCredit policy, practice, and/or procedure since
26 November 15, 2011 regarding deficiency amounts and class and/or subclass members.” ECF
27 No. 176-3 at 12. For the reasons stated above, the Court **GRANTS in part** and **DENIES**
28 **in part** Plaintiff’s motion to compel a response to Request for Production No. 1. Defendant

1 must produce all documents regarding the changes in AmeriCredit policy regarding
2 deficiency amounts and class and/or subclass members implemented on or about February
3 14, 2012.

4 **D. Request for Production No. 2**

5 Request for Production No. 2 seeks “[a]ll documents regarding UDFs that you sent
6 to any and all Credit Reporting Agencies.” ECF No. 176-3 at 12. For the reasons stated
7 above, the Court **GRANTS in part** and **DENIES in part** Plaintiff’s motion to compel a
8 response to Request for Production No. 2. Defendant must produce all documents
9 regarding UDFs sent to Credit Reporting Agencies regarding class and/or subclass members
10 since February 14, 2012 or in response to the new policies implemented on or about
11 February 14, 2012.

12 **E. Request for Production No. 3**

13 Request for Production No. 3 seeks “[a]ll documents regarding, evidencing or
14 otherwise reflecting class member account (sic) have been cleared.” ECF No. 176-3 at 12.
15 For the reasons stated above, the Court **GRANTS in part** and **DENIES in part** Plaintiff’s
16 motion to compel a response to Request for Production No. 3. Defendant must produce all
17 documents reflecting that class member accounts have been cleared since February 14,
18 2012 or in response to the new policies implemented on or about February 14, 2012..

19 **F. Request for Production No. 5¹**

20 Request for Production No. 5 seeks “[a]ll documents regarding settlements with
21 subclass or class members.” ECF No. 176-3 at 12. For the reasons stated above, the Court
22 **GRANTS in part** and **DENIES in part** Plaintiff’s motion to compel a response to Request
23 for Production No. 5. Defendant must produce all documents regarding settlements with
24 subclass or class members since February 14, 2012 or in response to the new policies
25 implemented on or about February 14, 2012.

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28 ¹ Plaintiff seemingly misnumbered its requests because there is no “Request No. 4” on its proposed
Notice of Deposition and Request for Production. See ECF No. 176-3 at 12.

1 **G. Request for Production No. 6**

2 Request for Production No. 6 seeks “[a]ll documents regarding subclass member
3 payments and/or returns since any related policy change.” ECF No. 176-3 at 12. For the
4 reasons stated above, the Court **GRANTS in part** and **DENIES in part** Plaintiff’s motion
5 to compel a response to Request for Production No. 6. Defendant must produce all
6 documents regarding subclass member payments and/or returns since February 14, 2012
7 or in response to the new policies implemented on or about February 14, 2012.

8 **H. Request for Production No. 7**

9 Request for Production No. 7 seeks “[a]ll documents regarding supervision and/or
10 auditing of changes regarding Topic No. 1 of the deposition notice served herewith.” ECF
11 No. 176-3 at 12. For the reasons stated above, the Court **GRANTS in part** and **DENIES**
12 **in part** Plaintiff’s motion to compel a response to Request for Production No. 7. Defendant
13 must produce all documents regarding supervision and/or auditing of changes in AmeriCredit
14 policy regarding deficiency amounts and class and/or subclass members since February 14,
15 2012 or in response to the new policies implemented on or about February 14, 2012.

16 **I. Request for Production No. 8**

17 Request for Production No. 8 seeks “[a]ll document (sic) regarding communications
18 with class and/or subclass members and the policy or other changes discussed in the March
19 2, 2012 Paterson Declaration.” ECF No. 176-3 at 12. For the reasons stated above, the
20 Court **GRANTS in part** and **DENIES in part** Plaintiff’s motion to compel a response to
21 Request for Production No. 8. Defendant must produce all documents regarding
22 communications with class and/or subclass members regarding the policy or other changes
23 discussed in the Paterson Declaration, which were created since February 14, 2012 or in
24 response to the new policies implemented on or about February 14, 2012.

25 **J. Request for Production No. 9**

26 Request for Production No. 9 seeks “[a]ll documents (including, but not limited to,
27 bills, correspondence, contracts, and electronic records) regarding, evidencing, or otherwise
28 reflecting [a]ny and all changes in AmeriCredit policy, practice, and/or procedure since

1 November 15, 2011 regarding deficiency debts for non-class members who were sent the
2 same form NOIs as class members and which NOIs were sent to a California address during
3 the class period.” ECF No. 176-3 at 12-13. For the reasons stated above, the Court
4 **DENIES** Plaintiff’s motion to compel a response to Request for Production No. 9.

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiff’s Ex Parte Request to Compel Depositions and
7 Written Discovery is **GRANTED IN PART AND DENIED IN PART**. Defendant is ordered
8 to provide a Person Most Qualified regarding Topic No. 1 and Topic No. 3 in Plaintiff’s
9 proposed deposition notice (as limited by this Order). See ECF No. 176-3 at 4-5. The
10 deposition shall occur on or before **April 6, 2012**. Defendant is further ordered to respond
11 to Plaintiff’s Request for Production Nos. 1-3 and 5-8 by **March 29, 2012**.

12 **IT IS SO ORDERED.**

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14 DATED: March 19, 2012

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16 BARBARA L. MAJOR
17 United States Magistrate Judge
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