

Appendix E Sample Discovery

This appendix and the companion CD-Rom contain sample Fair Debt Collection Practices Act interrogatories, requests for production of documents, and requests for admissions. A motion to compel FDCPA discovery is found at National Consumer Law Center's *Consumer Law Pleadings With Disk, Number Two* § 11.1.5 (1995) and also on that volume's companion disk. Interrogatories, requests for production of documents, and requests for admissions in the consumer's FDCPA action are found in NCLC's *Consumer Class Actions: A Practical Litigation Guide* Appx. E.1 (4th ed. 1999), and also on that volume's companion CD-Rom.

A motion to compel and the memorandum of law in support of the motion from an FDCPA case is found in National Consumer Law Center, *Consumer Law Pleadings With Disk, Number Four* § 4.2 (1998). The memorandum of law in support of the motion to compel deals with the issues of burdensomeness, client privilege, work product, and trade secrets.

E.1 Sample Set of Interrogatories

The following interrogatories are to be reviewed and used as applicable to the facts of each case; delete and add as appropriate. These interrogatories are also found on this volume's Companion CD-Rom.

Fed. R. Civ. P. 33(a) limits the number of interrogatories to 25 including subparts. This limitation may be avoided only by leave of court or written stipulation of the parties. For federal litigation, and in state courts which similarly limit discovery, the following sample interrogatories must be reduced to 25 interrogatories.

Additional interrogatories, also on disk, are available in other NCLC manuals:

- Interrogatories relating to an FDCPA suit against an attorney for allowing a collector to use its name. See *Consumer Law Pleadings With Disk, Number Two* § 11.1.2 (1995).
- Interrogatories relating to FDCPA suit against a collection agency for litigation abuses. See *Consumer Law Pleadings With Disk, Number Two* § 11.2.2 (1995).

UNITED STATES DISTRICT COURT
FOR THE [name district] DISTRICT OF [name state]

_____)	
[name of plaintiff])	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
[name of defendant])	
Defendant.)	
_____)	

INTERROGATORIES

The Plaintiff requests that the Defendant answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories.

INSTRUCTIONS AND DEFINITIONS

A. Answers to the Interrogatories must be furnished within forty-five (45) days of the service of the Summons and Complaint or within thirty (30) days of the service of these Interrogatories, whichever is later.

B. Each Interrogatory should be answered upon your entire knowledge from all sources and all information in your possession or otherwise available to you, including information from your officers, employees, agents, representatives or consultants and information which is known by each of them. An incomplete or evasive answer is a failure to answer.

C. If any answer is qualified, state specifically the terms of each qualification and the reasons for it. If an Interrogatory cannot be answered in full, state the part which can be answered and answer the same in full to the extent possible; state further and specifically the reason(s) why the remainder cannot be answered.

D. Unless otherwise specified in a particular paragraph, provide the information and documents requested for the period of one year prior to the date of filing the complaint to the present. Exhibits A and B refer to Exhibits A and B attached to the Complaint. Each Interrogatory is considered continuing, and if Defendant obtains information which renders its answers or one of them, incomplete or inaccurate, Defendant is obligated to serve amended answers on the undersigned.

E. The terms "document" or "documents" in these Interrogatories shall refer to all writings and recorded materials, of any kind, that are or have been in the possession, control or custody of Defendant of which Defendant has knowledge, whether originals or copies. Such writings or recordings include, but are not limited to, contracts, documents, notes,

rough drafts, interoffice memoranda, memoranda for the files, letters, research materials, correspondence, logs, diaries, forms, bank statements, tax returns, card files, books of account, journals, ledgers, invoices, diagrams, drawings, computer files, records, documents, data, print-outs or tapes, reports, statistical computations, studies, graphs, charts, minutes, manuals, pamphlets, or books of all nature and kind whether handwritten, typed, printed, mimeographed, photocopied or otherwise reproduced, all tape recordings (whether for computer, audio, or visual replay) or other written, printed, and recorded matter or tangible things on which words, phrases, symbols or information are recorded.

F. A request to identify a document is a request to state as applicable:

1. The date of the document;
2. The type of document;
3. The names and present addresses of the person or persons who prepared the document and of the signers and addressers of the document;
4. The name of the employer or principal whom the signers, addressers and preparers were representing;
5. The present location of the document;
6. The name and current business and home addresses of the present custodians of the original document, and any copies of it;
7. A summary of the contents of the document; and
8. If the original document was destroyed, the date and reason for or circumstances under which it was destroyed.

G. If any Interrogatory may be answered fully by a document, the document may be attached in lieu of an answer if the document is marked to refer to the Interrogatory to which it responds.

INTERROGATORIES

1. State the name(s), business address(es) and job title(s) or capacity(ies) of the officer(s), employee(s) or agent(s) answering or providing any information used to answer each Interrogatory.

2. State the correct legal name of your organization.

3. State any other names which your organization uses to identify itself, whether such names are registered with any official, and the date and place of such registration.

4. State the form of your organization, the date and place the organization was organized and registered and/or licensed to do business.

5. State the name, title, address and job description of each director, partner, shareholder, employee, officer, and manager of Defendant who authorized, approved, or was aware of the collection letters sent to consumers in the form represented by Exhibit A in attempt to collect a debt.

6. State the names, aliases, job title, business and home addresses and telephone numbers, date of initial employment and date of and reason for termination of employment of each of your employees

- a. who contacted Plaintiff or another person regarding this debt; and
- b. who have left your employ within the last two years.

7. State the names, aliases, job title, business and home addresses and telephone numbers, date of initial employment

of all current employees who engage in the collection of consumer accounts for Defendant.

8. Does Defendant provide training to new employees involved in the collection of consumer accounts?

- a. if so, describe the training content, timing and duration.
- b. if so, describe all documents and audio or visual materials used in such training.
- c. if so, identify each person involved in providing such training.

9. Identify and describe any documents used to describe, record or establish Defendant's methods and techniques to be used in the collection of consumer accounts.

10. State the number of notices, similar to those sent to the Plaintiff, which were sent out by the Defendant to consumers during the year preceding the date of the notice sent to Plaintiff.

11. State the number of notices, similar to those sent to the Plaintiff, which were sent out by the Defendant since the date of the notice sent to Plaintiff.

12. Identify by title, author, subject, and date any reports, memoranda, etc., of the Defendant regarding the use of notices similar to those sent to the Plaintiff.

13. Is Defendant affiliated with any other organization (e.g., common ownership, overlapping offices or managers or common facilities or employees)? If so, describe the affiliation and identify the participants.

14. Describe fully any system(s) Defendant maintains or operates to record contacts of its employees with consumers or third parties in connection with the collection of consumer accounts, and Defendant's policies for operating such a system.

15. Identify and describe each document known to Defendant which is related to the account of Plaintiff.

16. State the name(s) and address(es) of Defendant's liability insurer(s) for the last three years and the dates of coverage, type, policy number(s) of each liability insurance policy.

17. Identify and describe each claim made under each liability insurance policy in the last two years, including the date of claim, claim number, the subject of the claim, the status of the claim, the resolution of the claim, and any amounts paid under each policy.

18. Identify any notices that you have given any insurer regarding Plaintiff's claim.

19. Identify the date, time, type (e.g., letter, telephone call), witnesses to or participants in, and the substance of each contact with a person other than Plaintiff made in connection with the collection of Plaintiff's account.

20. Identify each document, recording and person furnishing information with regard to your response to the immediately preceding Interrogatory.

21. Identify all present and past contracts or agreements between Defendant and the creditor and give the date of the initial contract or agreement with the creditor.

22. Identify the terms of the agreement between Defendant and the creditor pursuant to which Defendant sought to collect this account from the Plaintiff.

23. Describe any other business other than the collection of consumer accounts in which Defendant now engages or in the past has engaged.

24. List and explain all abbreviations and codes, letters, numerals, or symbols regularly used by Defendant in its records or collection activities.

25. How did Defendant locate Plaintiff?

26. Does Defendant file or retain attorney(s) to file law suits to collect consumer accounts?

27. If the answer to the immediately preceding Interrogatory is affirmative:

- a. Identify Defendant's employee(s) who make(s) or approve(s) the decision to file suit or to request an attorney to file suit.
- b. At what point in Defendant's collection process is the decision to sue made?
- c. State what criteria and policies are used in deciding whether to sue (e.g., minimum dollar amount, distance of consumer from Defendant's office, contingency of claim, debtor's assets, defenses to claim) and how those criteria and policies have changed since [year] identifying any documents discussing such criteria and policies in use by Defendant since [year].
- d. Identify the attorney(s) retained by Defendant in [state] to file collection suit.
- e. Identify the courts in [name state] State in which Defendant has initiated law suits in the last year.
- f. Identify each document and other method of communication in which creditor authorizes Defendant to initiate law suits against consumers.

28. With regard to the debt allegedly owed by the Plaintiff, itemize the amount of each portion of the debt and the authority therefore.

29. State the date upon which the Defendant began using each type of notice sent to the Plaintiff and if the Defendant has ceased using such notices when that practice ended.

30. Describe the maintenance of all procedures utilized by the Defendant to avoid violation of the Fair Debt Collection Practices Act.

31. Identify all internal and external documents regarding Defendants compliance or noncompliance with the Fair Debt Collection Practices Act.

32. Identify by caption, court, civil action number and result all litigation filed against the Defendant alleging violations of the Fair Debt Collection Practices Act.

33. Identify by name, position, address and phone number all witnesses Defendant proposes to call to trial.

34. List all exhibits Defendant proposes to introduce at trial.

35. Identify each person whom the Defendant expects to call as an expert witness at trial, state the subject matter on which the expert is expected to testify and the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

36. Identify the individual who telephoned Plaintiff on or about [date].

- a. Where was the individual employed during [month] [year], what was their position of employment, and responsibilities?
- b. What is the relationship of that individual to the Plaintiff?
- c. How did that individual learn the location and phone number of Plaintiff.
- d. Why did that individual telephone Plaintiff?

e. Restate the contents of the telephone conversation between that individual and Plaintiff.

37. Please state in detail the facts upon which you base your denial of Paragraph [number] of the Plaintiff's Complaint.

****Repeat each paragraph denied as needed****

38. Did you receive notice of Plaintiff's bankruptcy from CREDITOR or from any other source prior to the [date of letter] written communication to the Plaintiff? If so, please state when and from where you received such information.

39. Do you have any evidence of when the collection account which is the subject of this lawsuit was referred to you and, if so, explain and describe that evidence in detail.

40. Please state in detail the facts upon which you rely for each affirmative defense listed in your Answer.

41. If your response to the Requests for Admissions served simultaneously herewith is anything other than an unqualified admission, then please state as to each denial the specific facts forming the basis for such denial and identify each witness and document upon which you will rely to support your denial.

42. Describe, step-by-step, the process which resulted in Exhibits A and [any others] being transmitted to plaintiff, beginning with the date and method of transmission of debtor information to [name], e.g., computer tapes or other media delivered (when, by whom, where and to whom); content of computer tape or media; data input (where and by whom); computer entry or other means of directing transmission letters (where and by whom entry made), letter with debtor information printed (from where and by whom); letter with debtor information mailed (from where and by whom), computer tapes or media returned (on what occasion, when, by whom and to whom).

Date: [month][day][year]

[attorney's name]
Attorney for Plaintiff

[street address]
[city, state, zip code]
[telephone number]

E.2 Sample Request for Documents

The following request for production of documents should be reviewed before use; delete and add as appropriate to the facts of each case. These requests for production of documents are also found on this volume's Companion CD-Rom.

Additional requests for production of documents, also on disk, are available in other NCLC manuals:

- Document requests relating to an FDCPA class action complaint against an attorney and creditor for misrepresenting that collection letters originated from the attorney. See *Consumer Class Actions: A Practical Litigation Guide* Appx. E.1.2 (4th ed. 1999).
- Document requests relating to an FDCPA suit against an attorney for allowing a collector to use its name. See *Consumer Law Pleadings With Disk, Number Two* § 11.1.3 (1995).

12. All income tax returns of the Defendant for the past two years.

13. All documents in the Defendant's possession sent to or received from the [name creditor].

14. All documents in the Defendant's possession sent to or received from [name of any other debt collector].

15. All internal documents, memoranda, etc., of the Defendant regarding the use of its collection notices and collection efforts.

16. All documents, memoranda, instructions, manuals, etc., of the Defendant surveying the number of notices sent and contacts made by the Defendant in the year preceding the date of the notice sent to Plaintiff.

17. All reports, memoranda, etc., of the Defendant surveying the number of notices and contacts sent by the Defendant since the date of the notice sent to Plaintiff.

18. All operation manuals or similar documents, etc., utilized by the Defendant.⁵

19. All documents relating to the maintenance of procedures by the Defendant adapted to avoid any violation of the Fair Debt Collection Practices Act.

20. All documents relating to the Defendant's procedures to provide verification of the alleged debt.

21. All documents relating to the Defendant's association with a consumer reporting agency, if any.

22. Samples of all postcards and/or envelopes used by the Defendant in its collection practices.

23. Copies of all reports and documents utilized by an expert which Defendant proposes to call at trial.

24. All exhibits which Defendant proposes to introduce at trial.

This Request shall be deemed continuing so as to require further and supplemental production if Plaintiffs obtain additional documents required to be produced herein between the time of the initial production and the time of trial.

Date: _____

[name of attorney]
Attorney for Plaintiff

[street address]
[city, state, zip code]
[telephone number]

E.3 Sample Request for Admissions

The following request for admissions should be reviewed before use; delete and add as appropriate to the facts of each case. These requests for admissions are also found on this volume's Companion CD-Rom.

Additional requests for admissions, also on CD-Rom and NCLC's *Consumer Law in a Box*, are available in other NCLC manuals:

⁵ *But see* *Artese v. Academy Collection Service, Inc.*, 1997 WL 509404 (D. Conn. 1997) (a motion to produce the collector's training and operations manuals was overbroad. If any of the manuals contained provisions dealing directly with the alleged violation, i.e., dealing with debtors who had retained counsel, the defendant should produce that portion of the manual.).

- Admission requests relating to a FDCPA class action complaint against an attorney and creditor for misrepresenting that collection letters originated from the attorney. See *Consumer Class Actions: A Practical Litigation Guide* Appx. E.1.3 (4th ed. 1999).
- Admission requests relating to a FDCPA suit against an attorney for allowing a collector to use its name. See *Consumer Law Pleadings With Disk*, Number Two § 11.1.4 (1995).

UNITED STATES DISTRICT COURT
FOR THE [name district] DISTRICT OF [name state]

_____))
[name of plaintiff])
Plaintiff,)
)
v.) Civil Action No. _____
)
[name of defendant])
Defendant.)
_____))

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of The Federal Rules of Civil Procedure, Plaintiff requests Defendant to admit or deny the truth of the following:

1. Plaintiff [name plaintiff] is a "consumer" as defined at 15 U.S.C. § 1692a(3).
2. The obligation allegedly due [creditor] is a "debt" as defined at 15 U.S.C. § 1692a(5).
3. Defendant [name defendant] is engaged in the business of collecting consumer debts and regularly attempts and collects consumer debts allegedly owed to another and is a "debt collector" as defined at 15 U.S.C. § 1692a(6).
4. Defendant [name defendant] mailed or caused to be mailed a letter dated [date of letter] to the Plaintiff as exemplified by Exhibit A to Plaintiff's Complaint.
5. Neither of Defendant's letters, attached to Plaintiff's Complaint as Exhibit A, contains the validation notice required by 15 U.S.C. § 1692g.
6. The notice required by 15 U.S.C. § 1692g was not sent to the Plaintiff by the Defendant within five days after its initial communication to the Plaintiff.
7. Defendant's letter attached to the Plaintiff's Complaint at Exhibit A, does not contain the disclosure required by 15 U.S.C. § 1692e(11): "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose."

[Repeat for each letter]

8. Defendant has sent [how many] notices similar to Exhibit "A" and "B" sent to the Plaintiff during the year preceding the date of the notice sent to Plaintiff.
9. [Additional request].
10. [Additional request].
11. [Additional request].