

Youssef H. Hammoud (SBN: 321934)  
HAMMOUD LAW, P.C.  
3744 E. Chapman Ave., #F12269  
Orange, California 92859  
T: 949-301-9692  
F: 949-301-9693  
E: [yh@lawhammoud.com](mailto:yh@lawhammoud.com)

David M. Barshay (PVH #3018033NY)  
BARSHAY, RIZZO & LOPEZ, PLLC  
445 Broadhollow Road | Suite CL18  
Melville, New York 11747  
T: 631-210-7272  
F: 516-706-5055  
E: [dbarshay@brlfirm.com](mailto:dbarshay@brlfirm.com)

*Attorneys for Plaintiff  
Crystal Holguin*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CRYSTAL HOLGUIN,  
  
Plaintiff,  
  
v.  
  
CREDIT CONTROL, LLC,  
  
Defendant.

Case No: 2:23-cv-03711-SVW-E

**DEFENDANT'S PROPOSED  
JURY INSTRUCTIONS  
DISPUTED BY PLAINTIFF**

Trial Date: October 17, 2023

Action Filed: May 15, 2023

*Defendant's Proposed Instruction No. 25*

**25. AFFIRMATIVE DEFENSE**  
**FDCPA BONA FIDE ERROR**

If you decide Plaintiff has proven by a preponderance of the evidence that Defendant violated the FDCPA, you must then consider whether the violation was the result of a bona fide error. You may not proceed to this step unless you have decided that Plaintiff carried her burden to prove her case. Remember that the Defendant does not carry any burden of proof unless Plaintiff has met her burden and proven her case.

Under the FDCPA, even if a debt collector is found to have violated the law, the debt collector is not liable if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

To qualify for the bona fide error defense, Defendant must prove that (1) its violation was not intentional, (2) that the violation was made in good faith (i.e. it is genuine mistake, not a contrived mistake), and (3) that the defendant has procedures in place that are reasonable and are designed to try to avoid the same kind of mistake.

Sources: *Gray v. Suttell & Assocs.*, 123 F. Supp. 3d 1283, 1293 (E.D. Wash. 2015); 15 U.S.C. § 1692k(c).

***Plaintiff's Objection to Proposed Instruction No. 25***

Plaintiff will not agree to an instruction concerning the “bona fide error” defense until Plaintiff’s motion *in limine* is decided. Defendant objected to each of Plaintiff’s discovery demands seeking documents and information bearing on Defendant’s bona fide error affirmative defense, produced no documentary evidence concerning such, and is therefore preclude pursuant to Rule 37(c)(1).

In order to prove such defense, Defendant must show: 1) Defendant violated the FDCPA unintentionally; 2) the violation resulted from a bona fide error; and 3) Defendant maintained procedures reasonably adapted to avoid the violation.

*McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 952 (9th Cir. 2011).

*Defendant's Proposed Instruction No. 26*

**26. AFFIRMATIVE DEFENSE**  
**ROSENTHAL ACT UNINTENTIONAL ERROR**

If you decide Plaintiff has proven by a preponderance of the evidence that Defendant violated the Rosenthal Act, you must then consider whether the violation was unintentional despite the maintenance of reasonable procedures to avoid such violations. You may not proceed to this step unless you have decided that Plaintiff carried her burden to prove her case. Remember that the Defendant does not carry any burden of proof unless Plaintiff has met her burden and proven her case.

Under the Rosenthal Act, even if a debt collector is found to have violated the law, the debt collector is not liable if the debt collector shows by a preponderance of evidence that the violation was not intentional and came about notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

To qualify for this defense, Defendant must prove that (1) its violation was not intentional, and (2) that the defendant has procedures in place that are reasonable and are designed to try to avoid the same kind of mistake.

Sources: *Gray v. Suttell & Assocs.*, 123 F. Supp. 3d 1283, 1293 (E.D. Wash. 2015);  
Cal. Civ. Code § 1788.30(e)

***Plaintiff's Objection to Proposed Instruction No. 26***

Plaintiff will not agree to an instruction concerning the defense until Plaintiff's motion *in limine* is decided. Defendant objected to each of Plaintiff's discovery demands seeking documents and information bearing on Defendant's bona fide error affirmative defense, produced no documentary evidence concerning such, and is therefore preclude pursuant to Rule 37(c)(1).

In order to prove such defense, Defendant must show by a "preponderance of evidence that the violation was not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation."

Cal. Civ. Code § 1788.30(e); *Warner v. Midland Credit Mgmt., Inc.*, 540 F. Supp. 3d 946, 970 (C.D. Cal. 2021); *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 952 (9th Cir. 2011).

///

///

///

///

///

///

///

///

///

1 Dated: October 10, 2023

2 Respectfully submitted,

3  
4 By: /s/ David M. Barshay  
5 David M. Barshay (PVH #3018033NY)  
6 BARSHAY, RIZZO & LOPEZ, PLLC  
7 445 Broadhollow Road | Suite CL18  
8 Melville, New York 11747  
9 T: 631-210-7272  
10 F: 516-706-5055  
11 E: dbarshay@brlfirm.com

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
*Attorneys for Plaintiff*  
*Crystal Holguin*