

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

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

Trial Date: October 17, 2023

Action Filed: May 15, 2023

***Plaintiff's Proposed Instruction No. 1***

**1. CLAIMS AND DEFENSES**

To help you follow the evidence, I will give you a brief summary of the positions of the parties:

Plaintiff asserts that Defendant engaged in unfair and unlawful conduct in an attempt to collect money from her. Plaintiff claims that through the use of false and misleading representations, Defendant sought to an inflated amount of money from her on behalf of an entity that she had never even heard of. The plaintiff has the burden of proving these claims.

Defendant denies those claims. Defendant has the burden of proof on its defenses to Plaintiff's claims.

The plaintiff denies defendant's defenses.

1                                    ***Defendant's Objection to Proposed Instruction No. 1***

2            The Plaintiff's version of this instruction strongly suggests Defendant has the  
3            burden of proof to prove its denials, rather than just its affirmative defenses, which  
4            constitutes burden shifting. Defendant's version includes the proper burdens, and  
5            clarifies that Defendant has the burden of proof only as to its affirmative defenses.  
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7                                    ***Defendant Proposed Instruction No. 1***

8            To help you follow the evidence, I will give you a brief summary of the positions of  
9            the parties:  
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11            Plaintiff asserts that Defendant engaged in unfair and unlawful conduct in an attempt  
12            to collect money from her. Plaintiff claims that through the use of false and  
13            misleading representations, Defendant sought to collect money from her that she does  
14            not believe she owes. The plaintiff has the burden of proving these claims.  
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17            Defendant denies those claims.  
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20            Additionally, Defendant is asserting an affirmative defense, described in Instruction  
21            \_\_\_\_\_. Defendant claims that, if Plaintiff's allegation is true, Defendant cannot be held  
22            liable because the alleged violation was a genuine mistake made despite the existence  
23            of reasonable procedures designed to prevent such mistakes. Defendant has the  
24            burden of proof on its affirmative defense to Plaintiff's claims.  
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1 The plaintiff denies defendant's defenses.

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***Plaintiff's Response to Defendant's Objection to Instruction No. 1***

Plaintiff will agree to change “Defendant has the burden of proof on its defenses to Plaintiff’s claims” to “Defendant has the burden of proof on its affirmative defense to Plaintiff’s claims.” 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).

*Plaintiff's Proposed Instruction No. 3*

**3. BACKGROUND OF THE FAIR DEBT COLLECTION PRACTICES ACT**

Plaintiff Crystal Holguin has brought this lawsuit against Defendant, based on 15 U.S.C. § 1692, et seq., commonly known as the Fair Debt Collection Practices Act, or "FDCPA," a law that regulates debt collectors.

Plaintiff also alleges Defendant violated Cal. Civ. Code § 1788, et seq., commonly called the "Rosenthal Act," which mirrors the FDCPA.

In enacting the FDCPA, Congress stated that:

"There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."

Congress stated that the purpose of the FDCPA was:

"the problem of debt collectors attempting to collect debts not owed was one of the justifications for the enactment of the FDCPA. For this reason, "even a partial misstatement of a consumer's debt obligation can be misleading under the FDCPA."

***Defendant's Objection to Proposed Instruction No. 3***

This instruction is composed almost entirely of argument and should not be delivered at all. While it selectively quotes a portion of the statute that was written decades ago, it does so in a manner that encourages the jury to believe that debt collectors are engaged in widespread abusive practices. That is a factual contention that is not and will not be in evidence. Defendant does not see a need to provide an alternate instruction, here, because the instruction itself is unnecessary.

This instruction is composed almost entirely of argument and should not be delivered at all. While it selectively quotes a portion of the statute that was written decades ago, it does so in a manner that encourages the jury to believe that debt collectors are engaged in widespread abusive practices. That is a factual contention that is not and will not be in evidence. Defendant does not see a need to provide an alternate instruction, here, because the instruction itself is unnecessary.

***Plaintiff's Response to Defendant's Objection to Instruction No. 3***

Plaintiff will agree to delete “For this reason, even a partial misstatement of a consumer’s debt obligation can be misleading under the FDCPA.” Plaintiff rejects the balance of Defendant’s objection. The instruction is not argument at all, but rather statement of fact that will help the jury better understand the context in which Plaintiff brings her claims. To wit:

The first quote is verbatim the codified “Congressional findings and declaration of purpose” set out in 15 U.S.C. § 1692(a):

“There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.”

The second quote is verbatim from the legislative history of the Act, set out in S. Rep. No. 95-382, at 4 (1977), *reprinted in* U.S.C.C.A.N. 1695, 1696. Moreover, this legislative history has been repeatedly relied upon by the Ninth Circuit.

*See e.g. Clark v. Cap. Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1170 (9th Cir. 2006).



*Plaintiff's Proposed Instruction No. 6*

**6. DEFENDANT CREDIT CONTROL IS A DEBT COLLECTOR**

Defendant Credit Control, LLC is a “debt collector” under the FDCPA.

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***Defendant's Objection to Proposed Instruction No. 6***

This instruction assume Defendant stipulates to this element of Plaintiff's claim. Defendant does not so stipulate.

***Plaintiff's Response to Defendant's Objection to Instruction No. 6***

The instruction assumes that the Court will grant Plaintiff's motion *in limine* to declare Defendant's status as a "debt collector" under the FDCPA an uncontroverted fact based upon Defendant's responses to Plaintiff's Notice to Admit. 15 U.S.C. § 1692a(6).

*Plaintiff's Proposed Instruction No. 9*

**9. FDCPA**  
**LEAST SOPHISTICATED CONSUMER STANDARD**

In determining whether the Defendant violated the FDCPA you are to apply the “least sophisticated consumer” standard. Claims should be viewed from the perspective of a consumer whose circumstances make him relatively more susceptible to harassment, oppression or abuse. This law was not made for the protection of experts, but for the public--that vast multitude which includes the ignorant, the unthinking and the credulous, and the fact that a false or misleading statement may be obviously false or misleading to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. Thus, in reaching your determination of whether Defendant’s communications are false or deceptive you must view them through the eyes of the “least sophisticated consumer.”

1                                    ***Defendant’s Objection to Proposed Instruction No. 9***

2                    Plaintiff’s formulation of this standard incorrectly names the standard (in the  
3  
4 9th Circuit, it’s “debtor,” not “consumer”), and then contains clear argument and  
5 selective excerpts from case law. While the cases state that that the law must be  
6 applied to the “gullible, ignorant, unthinking, and credulous,” they also clearly talk  
7 about protecting debt collectors from unreasonable interpretations.  
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9                                    ***Defendant Proposed Instruction No. 9***

10                    In determining whether the Defendant violated the FDCPA you are to apply the “least  
11 sophisticated debtor” standard. This is an objective test, meaning you need not  
12 decide if Plaintiff, herself, was misled, but rather whether a person who fits the  
13 description of the least sophisticated debtor would be misled.  
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17                    The “least sophisticated debtor” standard applies the law not only to reasonable  
18 people, but to those who are gullible, ignorant, unthinking, and credulous. However,  
19 the law also expects debtors to read communications from debt collectors with care,  
20 and to have a basic level of understanding. Under this standard, the least  
21 sophisticated debtor does not leap to unreasonable conclusions, and the law does not  
22 make a communication unlawful simply because a person can come up with an  
23 interpretation of the communication that is bizarre, idiosyncratic, or peculiar.  
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26                    Source: *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011)  
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***Plaintiff's Response to Defendant's Objection to Instruction No. 9***

While Courts in the Ninth Circuit sometimes use “debtor” and “consumer” interchangeably, Plaintiff agrees that “debtor” is more appropriate. Plaintiff objects to Defendant’s instruction as such contains clear argument and selective excerpts from case law. Additionally, Defendant’s instruction states that the jury is to “apply the ‘least sophisticated debtor’ standard” while neither describing how that standard should be applied, nor defining what the standard means. Plaintiff’s instruction does just that:

As to *how* the standard should be applied: “Thus, in reaching your determination of whether Defendant’s communications are false or deceptive you must view them through the eyes of the ‘least sophisticated debtor’”

As to *defining* the standard: “Claims should be viewed from the perspective of a consumer whose circumstances make him relatively more susceptible to harassment, oppression or abuse. This law was not made for the protection of experts, but for the public--that vast multitude which includes the ignorant, the unthinking and the credulous, and the fact that a false or misleading statement may be obviously false or misleading to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.”

*Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1225-27 (9th Cir. 1988);

*Schweizer v. Trans Union Corp.*, 136 F.3d 233, 237 (2d Cir. 1998); *Jeter v. Credit*

1 *Bureau, Inc.*, 760 F.2d 1168, 1172-75 (11<sup>th</sup> Cir. 1985); *Graziano v. Harrison*, 950  
2 F.2d 107, 111 (3d Cir. 1991).  
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*Plaintiff's Proposed Instruction No. 14*

**14. FDCPA**  
**VIOLATION OF SECTION 1692g**

A debt collector's initial collection letter to a consumer must include, among other things, the "amount of the debt" and "the name of the creditor to whom the debt is owed."

A collection letter that states a debt is owed when it is not owed, violates Section 1692g.

A collection letter that states an incorrect or inflated amount of the debt, violates Section 1692g.

A collection letter that states the incorrect name of the creditor to whom the debt is owed violates Section 1692g.

A collection letter that states the name of an entity as the creditor to whom the debt is owed when the debt is not owed to that entity, violates Section 1692g.



1 The Plaintiff does not have to prove that the Defendant knew that the statements in  
2 its collection letter were false. Plaintiff need only prove by a preponderance of the  
3 evidence that the statements in the collection letter were false.  
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1                                    ***Defendant's Objection to Proposed Instruction No. 14***

2            Defendant's version of this instruction again removes the reference to a claim  
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4    for attempting to collect an inflated amount, which Plaintiff has not pled. Defendant  
5    additionally altered the final sentence to accurately portray the burden of proof,  
6    describing what Plaintiff must prove rather than first emphasizing what she need not  
7    prove.  
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9                                    ***Defendant Proposed Instruction No. 14***

10    A debt collector's initial collection letter to a consumer must include, among other  
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12    things, the "amount of the debt" and "the name of the creditor to whom the debt is  
13    owed."  
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15    A collection letter that states a debt is owed when it is not owed, violates Section  
16    1692g.

17    A collection letter that states the incorrect name of the creditor to whom the debt is  
18    owed violates Section 1692g.

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20    A collection letter that states the name of an entity as the creditor to whom the debt  
21    is owed when the debt is not owed to that entity, violates Section 1692g.

22    Plaintiff must prove by a preponderance of the evidence that the statements in the  
23    collection letter were false in the manner described above. Plaintiff need not prove  
24    that Defendant knew the statements were false.  
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***Plaintiff's Response to Defendant's Objection to Instruction No. 14***

Plaintiff rejects Defendant's objection, in part. Again, plaintiff's claim is both that the letter failed to accurately state the name of the creditor to whom the debt is owed and the amount of the debt. Plaintiff has pled that she did not owe the amount that Defendant sought to collect from her. Complaint, at ¶¶ 25, 32-45, 87, 89-91, 110-111. Additionally, Plaintiff testified at her deposition that the amount sought by Defendant was inflated. Holguin Depo. at 37:8-11, 37:16-24, 40:19-23.

Plaintiff will agree to the remainder of Defendant's suggestions.

15 U.S.C. §§ 1692g, g(1), g(2); *Quicho v. Mann Bracken, LLC*, No. C07-3478 BZ, 2007 WL 2782971, at \*1 (N.D. Cal. Sept. 25, 2007); *Suellen v. Mercantile Adjustment Bureau, LLC*, No. 12-CV-00916 NC, 2012 WL 2849651, at \*2 (N.D. Cal. June 12, 2012); *Clark v. Cap. Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1177 (9th Cir. 2006); *McMillan v. Bank of Am., N.A.*, No. 14CV1575-MMA BLM, 2015 WL 6129194, at \*1 (S.D. Cal. Oct. 8, 2015).

*Plaintiff's Proposed Instruction No. 16*

**16. ROSENTHAL ACT**  
**DEFENDANT CREDIT CONTROL IS A DEBT COLLECTOR**

Defendant Credit Control, LLC is a “debt collector” under the Rosenthal Act.

***Defendant's Objection to Proposed Instruction No. 16***

Defendant does not stipulate to this element of Plaintiff's claim. An alternate version of this instruction is not necessary, as the instruction should not be given.

***Plaintiff's Response to Defendant's Objection to Instruction No. 16***

The instruction assumes that the Court will grant Plaintiff's motion *in limine* to declare Defendant's status as a "debt collector" under the under the Rosenthal Act an uncontroverted fact based upon Defendant's responses to Plaintiff's Notice to Admit.

Cal. Civil Code § 1788.2(c).

*Plaintiff's Proposed Instruction No. 22*

**22. DAMAGES**  
**FDCPA ACTUAL DAMAGES**

The FDCPA permits damages to be awarded against a debt collector who violates the FDPCA.

If you find for the plaintiff on any of Plaintiff's claims, you must determine the plaintiff's damages.

The plaintiff has the burden of proving damages by a preponderance of the evidence.

Damages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant.

First, actual damages may be awarded the Plaintiff as a result of the failure of Defendant to comply with the FDPCA. Actual damages may include out-of-pocket expenses, as well as damages for personal humiliation, embarrassment, mental anguish, or emotional distress (e.g. loss of sleep, appetite, nervousness crying spells) due to Defendant's conduct.

1 There is no fixed standard or measure in the case of intangible items such as  
2 humiliation, embarrassment, mental anguish, and emotional distress. You must  
3 decide a fair and adequate award of these items through the exercise of your judgment  
4 and experience in the affairs of the world after considering all the facts and  
5 circumstances presented during the trial of this case.  
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9 To prove she is entitled to damages for mental or emotional distress, Plaintiff's own  
10 testimony may be considered when you are deciding whether and to what degree she  
11 suffered emotional distress. Plaintiff does not have to introduce medical or other  
12 testimony of her damages.  
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16 15 U.S.C. § 1692k. *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 188 (D.  
17 Del. 1991); *Panahiasl v. Gurney*, No. 04-04479 JF, 2007 WL 738642 (N.D. Cal. Mar.  
18 8, 2007); *Nelson v. Equifax Info. Servs., LLC*, 522 F. Supp. 2d 1222 (C.D. Cal. 2007);  
19 *Guimond v. Trans Union Credit Information, Co.*, 45 F.3d 1329, 1332-1333 (9<sup>th</sup> Cir.  
20 1995); *Dennis v. BEH-1, LLC*, 504 F.3d 892, 895 (9<sup>th</sup> Cir. 2007), *Anderson v. United*  
21 *Finance Co.*, 666 F.2d 1274, 1277 (9<sup>th</sup> Cir. 1982); *McGrady v. Nissan Motor*  
22 *Acceptance Corp.*, 40 F. Supp. 2d 1323 (M.D. Ala. 1988); *Bingham v. Collection*  
23 *Bureau, Inc.*, 505 F. Supp. 864 (D. N.D. 1981); *Johnson v. Dep't of Treasury, I.R.S.*,  
24 700 F.2d 971, 985 (5<sup>th</sup> Cir. 1983).  
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***Defendant's Objection to Proposed Instruction No. 22***

Defendant objects only to the last sentence: "Plaintiff does not have to introduce medical or other testimony of her damages."

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1 Dated: October 10, 2023

2 Respectfully submitted,

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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

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13 *Attorneys for Plaintiff*  
14 *Crystal Holguin*  
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