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Holt v. MRS BPO, LLC, Dist. Court, ND Illinois 2014



MICHELLE HOLT, Plaintiff,
v.
MRS BPO, L.L.C., Defendant.

[Case No. 112-cv-02571.](#)

United States District Court, N.D. Illinois, Eastern Division.

January 22, 2014.

Marshall Meyers, WEISBERG & MEYERS, LLC, Phoenix, AZ, Attorneys for Plaintiff.

ALEX D. WEISBERG IL Bar #: 6271510, WEISBERG & MEYERS, LLC, Cooper City, FL,
Attorneys for Plaintiff.

THE SALVO LAW FIRM, P.C. Cindy D. Salvo, Fairfield, New Jersey, Attorneys for
Defendant, MRS BPO, LLC.

PLAINTIFF'S MOTION UNDER RULE 37 FOR DEFAULT JUDGMENT, OR, IN THE ALTERNATIVE, TO DEEM CERTAIN FACTS AS TRUE

Plaintiff Michelle Holt ("Plaintiff"), by and through her attorneys, submits this motion pursuant to Rule 37(d) for default judgment, or, in the alternative, to deem certain facts as true.

Introduction

Plaintiff moves the Court for default judgment against Defendant MRS BPO, L.L.C. ("MRS") as a sanction for withholding numerous documents it received from Sprint in response to its subpoenas. MRS has twice withheld documents in violation of Rule 37—once in October 2012, and, again, in December 2012—that would have explained crucial discrepancies in Plaintiff's cell phone records. MRS relied on these discrepancies in opposing Plaintiff's motion for summary judgment on her **TCPA** claims. Throughout this case, MRS has engaged in a pattern of making

false statements and withholding information—only to issue a *mea culpa* when finally confronted with the truth. This discovery misconduct should be remedied through the entry of default against MRS. In the alternative, Plaintiff requests that this Court deem certain disputed facts as true.

Relevant Background

Plaintiff alleges that MRS violated the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), and the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("**TCPA**"), by calling her at least 19 times in an attempt to collect a debt, even after it received a cease and desist letter from her. *See* Doc. 46-1, ¶ 9. MRS admits to receiving her cease-and-desist letter and contends that it has no record of having ever called Plaintiff's cell phone number. *See* Doc. 48; Doc. 48-6. But MRS has provided no proof of ever searching for the called number (Plaintiff's number), it has only stated it searched and found nothing.^[1] Plaintiff has asked for this information, but has not received it. *See* Exhibit "A."

A. MRS denied that (877) 553-3114 belonged to it, until Plaintiff asked it to sign an affidavit.

After Plaintiff filed its complaint, MRS's counsel attempted to persuade Plaintiff, by and through attorney Alex Weisberg, to withdraw her complaint on the grounds that (877) 553-3114 belonged to some other organization. *See* Doc. 15-6 at 2. When confronted with a statement from one of MRS's customer service representatives that (877) 553-3114 did belong to MRS, MRS's counsel again stated that MRS's Quality Assurance Manager William Perkins ("Mr. Perkins") told her that the representative must be mistaken. *See* Doc. 15-7 at 2-4. Plaintiff's counsel then asked MRS's counsel for an affidavit, which MRS's counsel stated "made [Mr. Perkins] nervous." *Id.* Only then MRS's counsel acknowledge that (877) 553-3114 was one of MRS's debt collection numbers. *Id.*

B. MRS served Sprint with a subpoena on September 26, 2012.

On September 26, 2012, MRS served a subpoena to Sprint Nextel Corporation ("Sprint") to obtain Plaintiff's telephone records during the relevant period.^[2] *See* Exhibit "B." Sprint responded to MRS via email on October 11, 2012. *See* Exhibit "C."

Plaintiff served MRS with requests for production, including Request No. 8 for "All documents that contain Plaintiff's name, address, telephone number, account number, or any other information which is personally identifiable to Plaintiff." *See* Exhibit "D." In addition, on October 19, 2012, Plaintiff requested a copy of Sprint's subpoena response. *See* Exhibit "E."

On November 26, 2012, MRS responded to Plaintiff's request for production no. 8, stating, "Subject to the foregoing General Objections, Defendant responds to Request No. 8 by stating that it does not have any responsive documents in its possession, custody, or control other

besides [sic] the telephone records provided by Virgin Mobile, Sprint PCS Wireless." *See* Exhibit "F." In conjunction with its response, MRS provided two documents it received from Sprint, representing that this was all it received from Sprint. *See* Doc. 52-2.

C. MRS served Sprint with another subpoena on November 21, 2012.

On November 21, 2012, MRS served a second subpoena to Sprint to obtain additional information regarding Plaintiff's account and certain telephone numbers (XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX) that appeared in the "DIALED_DIGITS" column on the Sprint records produced in response to the first subpoena. *See* Exhibit "G." MRS did not disclose any information related to this subpoena, and when Plaintiff inquired about the status of this subpoena, MRS initially denied having received anything. *See* Exhibit "H." MRS then stated that it received only an objection letter to its subpoena. *See* Exhibit "I." After Plaintiff confronted MRS about Sprint's Subpoena Compliance team's differing version of the truth, MRS's counsel again denying receiving anything. *See* Exhibit "J." The next day, and the day on which the parties' joint pretrial order was due, MRS admitted that it had received additional documents. *See* Exhibit "K."

D. This Court denied Plaintiff's motion for summary judgment on her TCPA claims because of unexplained discrepancies in Sprint's call records.

The Court denied Plaintiff's motion for summary judgment on her TCPA claims, in part, because "the alleged calls do not all match up," noting that the call records from Sprint "only show five calls made from MRS's number to Holt's cell phone number." Doc. 57 at 5-6. The other 14 calls occurred during a gap in the records from October 6, 2011 to January 15, 2012—a gap which Plaintiff struggled to explain. *See* Doc. 52 at 4. The Court further noted that the Sprint call records "list the original number dialed as being different than Holt's number." *Id.* at 7 The Court held that this, combined with MRS's claim that it never called Plaintiff, supported "the reasonable inference that the five documented calls to Holt could have been routed to her cell phone through a different number, i.e., the number originally dialed that was not a TLDN." *Id.* (emphasis added).

E. MRS withheld one of the documents it received from Sprint in response to its September 26, 2012 subpoena that explained the gap in the records.

On January 7, 2014, Plaintiff learned that Sprint's Subpoena Compliance department produced—not two—but *three* documents in response to MRS's first subpoena. *See* Exhibit "C." The third document was a cover letter that Sprint sent in conjunction with its response. *See* Exhibit "L." The cover letter stated, "Please be advised: Call detail reports for Sprint CDMA during the time frame of 10-6-11 through 1-14-12 may have been affected by a storage related issue." *Id.* at 2 (emphasis added).

F. MRS received—but did not produce—a response to its November 21, 2012 subpoena showing additional calls and explaining that the unexplained numbers were Sprint's TLDNs.

On December 10, 2012, Sprint responded to MRS's second subpoena. *See* Exhibit "K" at 3. These records contained partially recovered data from the previously missing time frame showing four additional calls placed in the month of October 2011. *See* Exhibit "M" at 8-11.

Sprint also included a cover letter which stated, with regard to the unexplained "dialed digits" XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX, XXX-XXX-XXXX that, "[n]o records were found for these numbers, as our search results indicate they are Temporary Local Dialing Numbers (TLDN). TLDN's are routing, or bridge, numbers used only by the switch to complete calls and are not assigned to customers." *See* Exhibit "N" (emphasis added).

In addition, Sprint mailed a certified copy of this information on March 1, 2013, which MRS never produced or filed. *See* Declaration; Exhibit "O."

G. Plaintiff can no longer obtain her phone records via traditional subpoena method, because records are only retained for 18 months.

In response to Plaintiff's December 5, 2013 subpoena to Sprint, Sprint informed Plaintiff that Sprint only retains records for Virgin Mobile accounts for 18 months, meaning it is now impossible to obtain a complete record for the relevant time frame. *See* Exhibit "L" ("We are able to provide call records for Virgin Mobile accounts for approximately the most recent 18 month period from the date of processing.").

Sprint has informed Plaintiff that there is a way to recover call details from a tape backup system operated by a third-party company, but that this process is estimated to cost \$3,400 and may take up to six months to process. *See* Exhibit "P." Moreover, there is no guarantee that the tape backup will contain a comprehensive record. *Id.*

Legal Standard

Under Rule 37(d), the Court may sanction a party for failing to disclose information in response to an interrogatory or a request for production. Fed. R. Civ. P. 37(d)(1)(A)(ii). The sanctions available under Rule 37(d) are the same as those available under 37(b)(2)(A)(i)-(vii). *See* Fed.R.Civ.P. 37(d)(3); *Ari Officer v. Duran*, No. 12-C-10195, 2014 WL 51330, at *3 (N.D. Ill. 2014). "[T]he entry of a dismissal or default judgment under Rule 37 requires a showing of 'willfulness, bad faith, or fault' on the part of a non-complying party." [Hindmon v. Natl.-Ben](#)

[*Franklin Life Ins. Corp.*, 677 F.2d 617, 620 \(7th Cir. 1982\)](#). "The district courts have `wide latitude in fashioning appropriate sanctions.'" [*e360 Insight, Inc. v. Spamhaus Project*, 658 F.3d 637, 642 \(7th Cir. 2011\)](#) (citing [*Johnson v. Kakvand*, 192 F.3d 656, 661 \(7th Cir.1999\)](#)). The district court's choice of sanction will only be overturned upon a showing of abuse of discretion. See [*Hindmon*, 677 F.2d at 620](#).

Argument

A. MRS's failure to disclose the Sprint records is sanctionable under Rule 37.

This Court should sanction MRS for withholding Sprint's subpoena responses. The October 11, 2012 cover letter would have informed Plaintiff—and the Court—that a known Sprint "stored related issue" caused the gap in the phone records from October 6, 2011 to January 14, 2012. The December 10, 2012 response to Sprint's second subpoena would have revealed additional calls and explained that the "dialed digits" were not the telephone numbers for other debtors being "routed" to Plaintiff's phone, but were in fact Sprint's Temporary Local Dialing Numbers, as Plaintiff argued in her motion for summary judgment.

MRS had an obligation under the Federal Rules to provide complete disclosure of the records requested. By producing two of the three documents from October 11, 2012 in response, MRS conceded that the information Sprint produced in response to its subpoenas was responsive to Plaintiff's Request for Production no. 8. MRS had a continuing obligation to supplement its discovery responses, yet it failed to do so. Since MRS produced nothing other than Sprint's records, it unquestionably was aware of its duty to produce any information it received in response to the second subpoena. It failed to do so.

MRS's conduct is sanctionable. The Court dedicated a substantial amount of time comparing the call lists—as Plaintiff did—searching for an explanation, and relied on the lack of consistency in denying Plaintiff's motion for summary judgment. MRS's failure to produce this information, which would have avoided this wasted effort, must be deterred.

B. This Court should enter default judgment against MRS as a sanction for withholding key evidence in this case.

MRS has opened itself up to the most severe sanctions available by withholding key evidence in this case. The Seventh Circuit has "held that the penalty must be proportionate to the wrong." [*Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Services Americas LLC*, 516 F.3d 623, 626 \(7th Cir. 2008\)](#). "Default judgment is appropriate where a lesser sanction under the circumstances would unfairly minimize the seriousness of the misconduct and fail to sufficiently deter such misconduct by others in the future." [*Rosenthal Collins Group, LLC v. Trading Technologies Intern., Inc.*, 05 C 4088, 2011 WL 722467, at *6 \(N.D. Ill. 2011\)](#).

1. MRS's conduct threatens the legitimacy of civil litigation.

"The judicial system is premised on the honest, good faith efforts of the parties involved." *Domanus v. Lewicki*, 288 F.R.D. 416, 419 (N.D. Ill. 2013). "Where honesty is replaced with falsehood, a party's right to litigate comes into question." *Id.* "Our legal system is dependent on the willingness of the litigants to allow an honest and true airing of the real facts." [*Quela v. Payco-Gen. Am. Creditas, Inc.*, 99 C 1904, 2000 WL 656681, at *7 \(N.D. Ill. 2000\)](#).

2. This Court must not permit MRS to continue litigating this case after withholding evidence, relying on the lack of evidence, and then only disclosing it after being caught.

MRS "seriously violated the `rules of the game', and [it] can't be permitted to say `oops, you've caught me', and thereafter be allowed to continue to play the game." [*Dotson v. Bravo*, 202 F.R.D. 559, 573 \(N.D. Ill. 2001\) *aff'd*, 321 F.3d 663 \(7th Cir. 2003\)](#). MRS relied on the gap in the Sprint records and the "dialed digit" discrepancy in its motion practice, without revealing to the Court or Plaintiff the true reasons for these factual disputes. Indeed, the inconsistencies in the call records have been a crucial part of its defense. Only after Plaintiff confronted MRS with Sprint's contradictory information did MRS finally disclose what it had received. MRS must not be allowed to resume litigating this case, having obfuscated for nearly a year and a half.

3. MRS may plead inadvertence, but its conduct in this case suggests that it acted intentionally.

MRS will argue that its conduct was unintentional. But its repeated failures to disclose and misstatements, taken together, suggest a pattern of bad faith. Indeed, each document that it claims to have unintentionally withheld hurts its case.

MRS has explained to Plaintiff that it was simply unaware of the contents of the October 11, 2012 cover letter. MRS has asked Plaintiff to believe it was merely a coincidence that the *one* document that MRS did not provide is one that explains a discrepancy upon which MRS relied in defending against summary judgment.

MRS also explained that after opening the Excel spreadsheet it received from Sprint on December 10, 2012, it believed that Sprint's response to the second subpoena was merely a reproduction of the same information it received in response to the first subpoena. And for this reason, it never opened the December 10, 2012 cover letter sent. The Court should view this claim with skepticism. First, these records contained nearly one hundred additional telephone calls in the missing gap from October 2011 to January 2012. The majority of the alleged calls occurred during this period, so one would expect MRS to have examined this period closely.

Second, even if the Court is willing to believe that MRS did not read the sentence about the missing call records in the October 11, 2012 cover letter, it seems very hard to believe that it

wouldn't have even *opened* the December 10, 2012 cover letter. MRS's second subpoena sought substantially more information than its first subpoena, *including records for six other telephone numbers*. So even if MRS hadn't noticed the additional one hundred calls in the spreadsheet, it must have been curious about the rest of Sprint's response. MRS was interested enough to serve its second subpoena in two months hoping to find answers about Plaintiff's mysterious records, yet MRS didn't bother to read the accompanying cover letter? Plaintiff finds this explanation is illogical and believes the Court will agree.

Finally, MRS requested a certified copy of these records—which Sprint sent on March 1, 2013, and which MRS admits to receiving. Yet, MRS did not file these certified records with the Court in opposing Plaintiff's motion for summary judgment; instead, it relied on the uncertified documents it received from the original subpoena. *See* Doc. 48-2. Perhaps it was then that MRS discovered that the records in response to the second subpoena contained additional calls and chose not to use them. Plaintiff asks the Court to recall that this litigation began with MRS's adamant denial that (877) 553-3114 was even one of their numbers, only admitting the truth when asked to sign a sworn affidavit (i.e., invoking the penalty of perjury). And MRS has defended this case based on its claim that no record of Plaintiff's telephone number exists in its system, yet has never provided any proof of having actually searched for Plaintiff's number. Given MRS's lack of credibility, this Court should deny MRS the opportunity to continue litigating its case based on its denial of the existence of internal records.

C. In the alternative, this Court should deem that MRS placed each call alleged, including the 12 calls for which Plaintiff now cannot obtain records.

In the alternative to issuing the most severe sanction, Plaintiff asks this Court to deem certain facts as admitted. First, the Court should deem that MRS placed all of the calls that appear on Plaintiff's cell phone record.¹³¹ Second, the Court should deem that the 12 calls Plaintiff alleges occurred during this period did, in fact, occur.

1. This Court and Plaintiff wasted substantial time ruling on, and arguing, the motion for summary judgment without being made aware of the fact that Sprint had acknowledged that the unexplained numbers were TLDNs.

Had MRS disclosed Sprint's response on December 10, 2012, Plaintiff—and more importantly, the Court—would not have wasted time researching, litigating, or ruling on the "dialed digit" discrepancy. While Plaintiff and the Court were trying to understand the meaning of Sprint's records, MRS knew that these numbers were TLDNs belonging to Sprint, not consumers, and that it was therefore inconceivable that MRS would have dialed those numbers in an attempt to reach different debtors. It would be unfair to allow MRS to attempt to establish some new theory before the jury, having possessed dispositive evidence for over a year that its original theory was

without merit. Thus, to the extent that this Court permits MRS to defend this case at all, it should be deemed that the calls in the Sprint records were placed by MRS to Plaintiff's cell phone.

2. Because of MRS's failure to disclose the Sprint records, Plaintiff is now unable to obtain a complete call history for the missing period.

Had MRS produced this information at the time it received it, Plaintiff would have been on notice that the information was missing as a result of Sprint's technical error. Plaintiff might have been able to obtain a full version of the records by contacting Sprint's Subpoena Compliance department before the 18 month period (ending in June 2013) had lapsed. Indeed, Plaintiff has now learned that MRS's second subpoena yielded nearly an additional month of calls. Even if those calls were not recoverable through normal means, Plaintiff would have at least had sufficient time to request a search of Sprint's tape backup system. Now, having discovered this information just before trial, Plaintiff simply does not have time to obtain the records.

This sanction would be rather mild, but would likely not deter such misconduct in the future. The partial records show that, in addition to the five calls already in the records, Plaintiff's alleged calls were indeed placed on the dates and times that she claimed. As MRS has relied on a *lack* of records for its defense and Plaintiff's records have proven reliable, it is entirely fair to deem that the twelve other calls took place.

Conclusion

MRS has frustrated this litigation by withholding evidence that it was required to disclose under Rule 37. Its pattern of behavior suggests that this conduct was intentional. Given that MRS's entire defense is based on a claim that *other* evidence does not exist, this Court should not allow it to continue litigating. Instead, this Court should enter default judgment against it. In the alternative, Plaintiff requests that it be deemed that MRS, in fact, placed all of the calls in the Sprint records, and those in Plaintiff's handwritten notes, to her cell phone. This Court should not allow MRS to profit from its failure to disclose key evidence.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CASE NO. 1:12-cv-02571 MICHELLE HOLT, Plaintiff, v. MRS BPO, L.L.C., Defendant.

DECLARATION OF MARSHALL MEYERS IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT UNDER RULE 37

I, Marshall Meyers, submit the following declaration based on my personal knowledge of the facts contained herein:

1. Following my conversation with Cindy Salvo ("Ms. Salvo"), counsel for Defendant MRS BPO, L.L.C. ("MRS"), I sent her an email requesting that she forward additional information regarding her client's attempt to search for Plaintiff's telephone number. A true and exact copy of that email is attached to Plaintiff's Motion for Sanctions as Exhibit "A."
2. A true and exact copy of the subpoena MRS sent to Sprint on September 26, 2012 is attached to Plaintiff's Motion for Sanctions as Exhibit "B."
3. On January 7, 2014, Ms. Salvo forwarded me an email she received from Sprint on October 11, 2012, in response to MRS's first subpoena. A true and exact copy of that email is attached to Plaintiff's Motion for Sanctions as Exhibit "C."
4. On October 17, 2012, Plaintiff served MRS with requests for production. A true and exact copy of those requests is attached to Plaintiff's Motion for Sanctions as Exhibit "D."
5. On October 19, 2012, Plaintiff sent a formal request to MRS for a copy of the documents it received from Sprint in response to its subpoena to Sprint. A true and exact copy of that request is attached to Plaintiff's Motion for Sanctions as Exhibit "E."
6. On November 26, 2012, MRS responded to Plaintiff's requests for production. A true and exact copy of its response is attached to Plaintiff's Motion for Sanctions as Exhibit "F."
7. On November 21, 2012, MRS served Sprint with a second subpoena. A true and exact copy of that subpoena is attached to Plaintiff's Motion for Sanctions as Exhibit "G."
8. On January 9, 2014, my associate David McDevitt ("Mr. McDevitt") emailed Ms. Salvo, requesting any documents that Sprint produced in response to this second subpoena. Ms. Salvo responded stating that Sprint had not produced any documents. A true and exact copy of that email chain is attached to Plaintiff's Motion for Sanctions as Exhibit "H."
9. On January 9, 2014, Ms. Salvo sent a follow up email stating that MRS in fact had received a response to its second subpoena, but that the response consisted only of an objection. A true and exact copy of that email is attached to Plaintiff's Motion for Sanctions as Exhibit "I."
10. On January 16, 2014, Mr. McDevitt emailed Ms. Salvo again to inform her that Sprint's Subpoena Compliance department had told our office that it sent Ms. Salvo documents in response to its second subpoena. That email, and Ms. Salvo's email denying it received any documents, is attached to Plaintiff's Motion for Sanctions as Exhibit "J."
11. On January 17, 2014, Ms. Salvo acknowledged that her office had been in possession of the documents Sprint produced in response to its second subpoena since December 10, 2012 and forwarded those documents in an email to my office. A true and exact copy of that email is attached to Plaintiff's Motion for Sanctions as Exhibit "K."

12. A true and exact copy of the cover letter attached to the October 11, 2012 email from Sprint to MRS is attached to Plaintiff's Motion for Sanctions as Exhibit "L."

13. I have converted the cell phone records attached to the December 10, 2012 email Sprint sent to MRS from Excel (.xls) to PDF (.pdf) format. A true and exact copy of this PDF is attached to Plaintiff's Motion for Sanctions as Exhibit "M."

14. A true and exact copy of the cover letter Sprint sent to MRS on December 10, 2012 is attached to Plaintiff's Motion for Sanctions as Exhibit "N."

15. On January 16, 2013, Mr. McDevitt emailed Sprint's Subpoena Compliance department to inquire about whether Ms. Salvo's representation of what it received from Sprint in response to its December 10, 2012 subpoena was accurate. Sprint's email response is attached to Plaintiff's Motion for Sanctions as Exhibit "O."

16. On January 7, 2014, a representative from Sprint's Subpoena Compliance department emailed Mr. McDevitt to explain the process of obtaining call records from a tape archive. On January 8, 2014, this representative emailed Mr. McDevitt to explain that this process could take several months. On January 15, 2014, this representative emailed Mr. McDevitt to inform him that the search for the missing calls was estimated to cost \$3,400. A true and exact copy of the email exchange is attached to Plaintiff's Motion for Sanctions as Exhibit "P."

17. I declare under the penalty of perjury that the foregoing is true and correct. Executed this 22nd day of January, 2014.

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"

EXHIBIT "D"

PLAINTIFF'S REQUESTS FOR PRODUCTION TO DEFENDANT

Plaintiff, Michelle Holt, hereby requests that Defendant, MRS BPO, LLC, produce the following documents for inspection and copying in accordance with Rule 34 of the Federal Rules of Civil Procedure. Plaintiff's request is intended to cover all documents in possession of the Defendant, or subject to its custody and control, regardless of location and shall be deemed continuing so as to require supplemental answers should Defendant obtain or acquire additional information following the date on which Defendant serves its responses.

INSTRUCTIONS AND DEFINITIONS

A. The phrase "discovery request" shall include Interrogatories, Requests for the Production of Documents and Requests for Admission.

B. Answers to discovery requests must be furnished within thirty (30) days of the date of service. Documents may be produced by electronic copy, unless impracticable.

C. The term "Defendant" shall include the Defendant listed in the caption of this matter upon whom this discovery request has been served, and any agency, subsidiary(ies), parent corporation(s) and/or any of its branches, departments, employees, agents, contractual affiliates, or otherwise connected by legal relationship in the broadest sense, and also includes as well as any person, agent, servant and/employee who acted on behalf of the Defendant at any time and in connection with answering these discovery requests. "Defendant" may also be referenced herein as "you."

D. The terms "document" or "documents" shall refer to all writings and recorded materials, of any kind without limitation, that are or have been fixated in a tangible medium that are or have been in the possession, custody or control of Defendant of which Defendant has knowledge, whether originals or copies, whether stored electronically or non-electronically.

E. "Debt" or "account" shall refer to the obligation or alleged obligation of Plaintiff referenced in Plaintiff's complaint, the actions taken in connection with which form the basis of the instant controversy.

F. "Account notes" refers to any and all documents or data including, but not limited to, logs, notes, and computer printouts relating to, created by, or generated as a result of any system, scheme, technique, practice, procedure or method that Defendant maintains, operates, or employs to record, memorialize, or otherwise document communications or contacts, or attempted communications or contacts, between Defendant and Plaintiff, or Defendant and any third party, or as may otherwise relate to Defendant's actions taken in connection with the collection of the debt referenced in Plaintiff's complaint.

G. The term "automatic telephone dialing system" includes equipment which has the capacity (i) to store or produce telephone numbers to be called, using a random or sequential number generator, and (ii) to dial such numbers.

H. The term "predictive dialer" means:

1. Equipment that dials numbers and, when certain computer software is attached, assists callers in predicting when an agent will be available to take calls, or
2. Hardware, that when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers.

I. The term "record" means to preserve in writing or other form, to cause to be set down or registered, to catalog, to document, to track, to inscribe, to tabulate, or to otherwise fix in a tangible medium any information.

J. The term "person" shall also include corporations, partnerships, or any other type of business entity, incorporated or otherwise, and to also include agents, servants, employees and representatives thereof.

K. The terms "communicate" and/or "communication" shall include every manner of transmitting or receiving information, opinions, or thoughts from one person to another person, whether made or accomplished orally or by document, whether face-to-face, by telephone, mail, telex, facsimile, personal delivery, email or otherwise, including, but not limited to, words transmitted by telephone, radio, or any method of voice recording.

L. The phrases "related to" or "relating to" shall mean directly or indirectly supporting, evidencing, describing, mentioning, referring to, contradicting, comprising or concerning and any other possible connection within the broadest sense of those terms.

M. The terms "and" or "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive. The use of the word "including" shall be construed to mean "without limitation."

N. Reference to the singular shall also include a reference to the plural, and reference to the plural shall include a reference to the singular.

O. Unless otherwise specified in a particular paragraph, provide the information and documents requested for the period of time between the present and the number of years prior to the date of filing the original complaint equivalent to the longest statute of limitations period of any claim asserted in the complaint. Each discovery request is considered continuing, and if Defendant obtains information which renders its answers, or one of its answers, incomplete or inaccurate Defendant is obligated to serve amended answers, on the undersigned.

P. In the event you assert any form of objection or privilege as a ground for not answering a discovery request or any part thereof, please set forth the legal grounds and facts upon which the objection or privilege is based, including sufficient information to allow Plaintiff or a court to evaluate whether the objection or claim of privilege has a basis in law or fact.

REQUESTS FOR PRODUCTION

1. Any and all "account notes" as defined above.
2. All documents Defendant sent to Plaintiff.
3. All documents Defendant received from Plaintiff.

4. All documents Defendant sent to any other person mentioning Plaintiff or related to the collection of Plaintiff's account.
5. All documents Defendant received from any other person mentioning Plaintiff or related to the collection of Plaintiff's account.
6. All recordings, copies, transcriptions, or productions, or other documents fixated in any medium, of communications or conversations, or attempted communications or conversations, between Defendant and Plaintiff.
7. All recordings, copies, transcriptions, or productions, or other documents fixated in any medium, of communications or conversations, or attempted communications or conversations, between Defendant and any other person related to the collection of Plaintiff's account.
8. All documents that contain Plaintiff's name, address, telephone number, account number, or any other information which is personally identifiable to Plaintiff.
9. Any and all other documents relating to Plaintiff's account.
10. Any and all other documents relating to Defendant's activities in effort to collect Plaintiff's account.
11. All documents memorializing or otherwise relating to the terms, conditions, and/or other agreements made by Defendant related to the collection Plaintiff's account or accounts such as Plaintiff's.
12. All documents related to any policies and/or procedures utilized by Defendant in effort to avoid the violations the Fair Debt Collection Practices Act alleged in Plaintiff's operative complaint.
13. All documents related to any training provided by Defendant to its employees regarding the Fair Debt Collection Practices Act.
14. All documents relating to any disciplinary policy maintained by Defendant for violating the Fair Debt Collection Practices Act, and for violating any other state or federal laws in the course of collecting debts of any kind.
15. Any and all documents involving any past or present disciplinary notices, reprimands, incident reports, or any other similar documents related to any of Defendant's employees who participated in any way in the collection of Plaintiff's account.
16. Any and all documents summarizing, describing, instructing, detailing, or otherwise training any of Defendant's employees with respect to Defendant's policies, procedures, methods, techniques, or rules used in connection with debt collection.

17. All documents relating to any training that Defendant provides to its employees involved in making telephone calls to consumers, debtors, or alleged debtors.
18. All documents relating to any instructions that Defendant provides to its employees involved in making telephone calls to consumers, debtors, or alleged debtors, with respect to how to document an oral or written request to cease contacting a consumer, debtor, or alleged debtor by telephone.
19. All documents relating to any instructions that Defendant provides to its employees involved in making telephone calls to consumers, debtors, or alleged debtors, with respect to how to document an individual's consent to contact him or her through the use of an automatic telephone dialing system, a predictive dialer, or an artificial or prerecorded voice.
20. All documents relating to all telephone, telegraph, cable, telecommunication, and electronic communication providers, suppliers, servicers, and carriers, utilized by Defendant to make telephone calls to consumers, debtors, or alleged debtors.
21. All documents relating to Defendant's use of an automatic telephone dialing system, predictive dialer, or artificial or prerecorded voice.
22. All documents relating to each telephone call that Defendant made to Plaintiff's cellular telephone number, XXX-XXX-XXXX.
23. All documents relating to all equipment (including any all software, software applications, software packages, software systems, software programs, hardware, computer systems, and other electronic or non-electronic devices) that Defendant used to make each telephone call to Plaintiff's cellular telephone number, XXX-XXX-XXXX.
24. All documents relating to Plaintiff's provision of prior express consent to Defendant to make telephone calls to Plaintiff's cellular telephone number, XXX-XXX-XXXX, using:
 - a. An automatic telephone dialing system; or
 - b. A predictive dialer; or
 - c. An artificial or prerecorded voice.
25. All applications that Defendant has submitted to a state public utilities commission, telephone corporation, or other organization for automatic dial announcing device ("**ADAD**") permits or other permits or licenses for the use of automated equipment used for telephone solicitation or collection, and all permits or licenses that Defendant has received as a result of those applications.
26. Any and all documents referred to by Defendant in its Rule 26 disclosures, or identified in response to any of Plaintiff's interrogatories, and not previously disclosed and not disclosed in response to any other request for production.

27. Copies of any of Defendant's collection agency license for each and every state in which Defendant's actions to collect Plaintiff's debt touch upon.

28. A plain-English description or glossary for any and all lists, legends, codes, abbreviations, collector initials, or other non-obvious terms, words, or data contained in any of the documents produced above.

EXHIBIT "E"

REQUEST FOR COPIES

Plaintiff, Michelle Holt, by and through her attorneys, Weisberg & Meyers, LLC, hereby requests Defendant, MRS BPO, LLC, through its attorney, Cindy Salvo, to provide Plaintiff with legible copies of all items requested pursuant to Defendant's Subpoena Duces Tecum sent to Virgin Mobile, Sprint PCS Wireless, Sprint Spectrum, L.P., 6480 Sprint Parkway, Overland Park, Kansas 66251.

EXHIBIT "F"

Defendant MRS BPO, LLC. ("MRS" or "Defendant"), by and through its attorneys, The Salvo Law Firm, P.C., as and for its responses to Plaintiff's Request for Production of Documents hereby states as follows:

GENERAL OBJECTIONS

1. MRS objects to each request to the extent that it seeks information that is attorney-client privileged or seeks information that includes attorney work product.
2. MRS objects to each request to the extent that it is vague and ambiguous.
3. MRS objects to each request to the extent that it seeks documents that are unrelated to any party's claims or defenses.
4. MRS objects to each request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.
5. MRS objects to each request to the extent that it requests documents that constitute a trade secret or other proprietary commercial or confidential information.
6. MRS objects to Plaintiff's requests, and to the definitions and instructions contained within those requests, to the extent that they would impose obligations over and above those required by the Federal Rules.

7. MRS's responses are based on information presently known to MRS and its attorneys. MRS reserves the right to supplement, amend, modify or correct its responses and objections at any time.

SPECIFIC OBJECTIONS AND RESPONSES

1. Subject to the foregoing General Objections, Defendant responds to Request No. 1 by stating that it does not have any responsive documents in its possession, custody or control.

2. Subject to the foregoing General Objections, Defendant responds to Request No. 2 by stating that it does not have any responsive documents in its possession, custody or control.

3. Subject to the foregoing General Objections, Defendant responds to Request No. 3 by stating that it does not have any responsive documents in its possession, custody or control.

4. Subject to the foregoing General Objections, Defendant responds to Request No. 4 by stating, Plaintiff does not have an account with MRS. Defendant further responds by stating that it does not have any responsive documents in its possession, custody or control.

5. Subject to the foregoing General Objections, Defendant responds to Request No. 5 by stating, Plaintiff does not have an account with MRS. Defendant further responds by stating that it does not have any responsive documents in its possession, custody or control.

6. Subject to the foregoing General Objections, Defendant responds to Request No. 6 by stating that it does not have any responsive documents in its possession, custody or control.

7. Subject to the foregoing General Objections, Defendant responds to Request No. 7 by stating that it does not have any responsive documents in its possession, custody or control.

8. Subject to the foregoing General Objections, Defendant responds to Request No. 8 by stating that it does not have any responsive documents in its possession, custody or control other besides the telephone records provided by Virgin Mobile, Sprint PCS Wireless.

9. Subject to the foregoing General Objections, Defendant responds to Request No. 9 by stating Plaintiff did not have an account with MRS. Defendant further responds to Request No. 9 by stating that it does not have any responsive documents in its possession, custody or control.

10. Subject to the foregoing General Objections, Defendant responds to Request No. 10 by stating Plaintiff did not have an account with MRS. Defendant further responds to Request No. 10 by stating that it does not have any responsive documents in its possession, custody or control.

11. Defendant objects to Request No. 11 on the grounds that it seeks information that is not relevant and not likely to lead to the discovery of relevant evidence. Subject to the foregoing General and Specific Objections, Defendant responds to Request No. 11 by stating that it does not have any responsive documents in its possession, custody or control.

12. Subject to the foregoing General Objections, Defendant responds to Request No. 12 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

13. Subject to the foregoing General Objections, Defendant responds to Request No. 13 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

14. Defendant objects to Request No. 14 on the grounds that it seeks information that is not relevant and not likely to lead to the discovery of relevant evidence.

15. Subject to the foregoing General Objections, Defendant responds to Request No. 15 by stating that Plaintiff did not have an account with MRS, therefore Defendant does not have any responsive documents in its possession, custody or control.

16. Subject to the foregoing General Objections, Defendant responds to Request No. 16 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

17. Subject to the foregoing General Objections, Defendant responds to Request No. 17 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

18. Subject to the foregoing General Objections, Defendant responds to Request No. 18 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

19. Subject to the foregoing General Objections, Defendant responds to Request No. 19 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control upon the entry of a Confidentiality Order.

20. Defendant objects to Request No. 20 on the grounds that it is overly broad, not relevant and not likely to lead to the discovery of relevant evidence.

21. Defendant objects to Request No. 21 on the grounds that it seeks information that is not relevant and not likely to lead to the discovery of relevant evidence.

22. Subject to the foregoing General Objections, Defendant responds to Request No. 22 by stating MRS never placed a telephone call to the telephone number, XXX-XXX-XXXX.

23. Subject to the foregoing General Objections, Defendant responds to Request No. 23 by stating MRS never placed a telephone call to the telephone number, XXX-XXX-XXXX.

24. Subject to the foregoing General Objections. Defendant responds to Request No. 24 by stating MRS never placed a telephone call to the telephone number, XXX-XXX-XXXX.

25. Defendant objects to Request No. 25 on the grounds that it seeks information that is not relevant and not likely to lead to the discovery of relevant evidence.

26. Subject to the foregoing General Objections, Defendant responds to Request No. 26 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control.

27. Defendant objects to Request No. 27 on the grounds that it seeks information that is not relevant and not likely to lead to the discovery of relevant evidence. Subject to the foregoing General and Specific Objections, Defendant responds to Request No. 27 by stating MRS never attempted to collect a debt associated with Plaintiff.

28. Subject to the foregoing General Objections, Defendant responds to Request No. 28 by stating that it will produce all non-privileged, responsive documents in its possession, custody or control.

EXHIBIT "G"

EXHIBIT "H"

EXHIBIT "I"

EXHIBIT "J"

EXHIBIT "K"

EXHIBIT "L"

EXHIBIT "M"

EXHIBIT "N"

EXHIBIT "O"

EXHIBIT "P"

[\[1\]](#) For example, MRS produced an email from its Dialer Group closing "Ticket #35724" because it could not find Plaintiff's number. MRS has not produced, however, a copy of the ticket itself. Nor has MRS produced a printout or screenshot showing that its system does not find results when searching for Plaintiff's telephone number.

[2] Because Plaintiff uses a Virgin Mobile pay-as-you-go phone, she does not have any cell phone records in the form of a monthly billing statement. *See* Exhibit "L" ("As Virgin Mobile accounts are prepaid, no bill reprints are available").

[3] MRS has offered to stipulate not to argue that the calls were "routed" by any party other than Sprint. *See* Exhibit "K" at 2. Plaintiff considers this to be insufficient, because it leaves open the possibility that MRS will attempt to continue to cast doubt on whether MRS *placed* the calls.