Superior Court of the State of California  
For the County of San Bernadino

Heartless Debt Collector, )

Plaintiff,  )

) Case No. CIVDS XXXXXX

vs. )

)

Joe Consumer, )

Defendant )

DEFENDANT JOE CONSUMER’S MOTION TO EXCLUDE EVIDENCE OR FOR FURTHER BILL OF PARTICULARS FROM PLAINTIFF HEARTLESS DEBT COLLECTOR

COMES NOW Defendant, Joe Consumer, and moves this court for an order excluding evidence of its claims or, in the alternative, requiring plaintiff to furnish a further bill of particulars for the reasons stated below.

1. Plaintiff debt collector is suing defendant on an account allegedly owned by it and on which defendant allegedly owes money. Defendant has denied owing the money.
2. On [date], defendant sent plaintiff her Request for Bill of Particulars seeking:

* The Agreement and/or contract of the relevant account
* All terms or conditions applying to the relevant account
* Documentation relating to plaintiff’s ownership of the account
* List of items for which payment is being sought
* List of dates associated with each item, transaction, or service
* List of charges per item, transaction or service
* All payments made upon the relevant account by defendant
* Means by which the plaintiff determined the amount owed and for what.

**See, Attached, Exhibit A** [the demand for bill of particulars].

1. On [date], plaintiff sent defendant a response to the Request for Bill of Particulars (1) objecting to the applicability of the right to a bill of particulars under California law, and (2) claiming that defendant “presumably” has all the information sought by the demand, but (3) “subject to these objections,” including three (3) electronically produced statements from a credit card account purporting to bear defendant’s name and purporting to show a balance owed of X dollars. Plaintiff stated that “further investigations were being conducted and information would be provided to defendant when such investigations revealed any information. ***See, Attached, Exhibit B*** [the response to the demand for bill of particulars].
2. Plaintiff’s document is so grossly inadequate and unresponsive as to amount to no response at all, or to be grossly negligent. Accordingly, defendant requests an order that plaintiff be precluded from providing evidence on these claims at trial, as provided in the California Code of Civil Procedure, Sec. 454. ***Burton v. Santa Barbara Nat. Bank, 247 Cal. App. 2d 427, 433 (Dist. 2, 1966), citing, e.g., Elmore v. Tingley, 78 Cal. App. 460, 467, 470, 248 P. 706***, and ***Id. at 434*** (the paper delivered was no bill of particulars at all, and… amounted to a total and unqualified noncompliance with the demand. In such case the extreme penalty provided by the section, of precluding the giving of evidence to prove the claim, is applicable,” ***citing Banchero v. Coffis, 96 Cal. App. 2d 717, 216 P.2d 151, Graham v. Harmon, 84 Cal 181, 185, 23 P. 1097***, and others.
3. Notwithstanding the immediate right to seek exclusion, defendant sent plaintiff a “meet and confer” letter in a good faith attempt to resolve the dispute. ***See Attached, Exhibit C*** [meet and confer]. This letter requested plaintiff withdraw its meaningless objection, since the right to a bill of particulars is plainly applicable in this case. ***See, Distefano v. Hall, 218 Cal. App. 2d 657, 677*** (“Section 454 has received a fairly broad interpretation and has been construed to cover almost any kind of contract action for a money claim made up of more than one item.” And it further requested a meaningful response to the request within five (5) days of the date of the letter.
4. Plaintiff’s response to defendant’s letter was to refuse to withdraw its objections, but again to offer only the same statements and material. ***See Attached, Exhibit D***.
5. Given plaintiff’s intransigence, defendant brings this motion for an Order precluding plaintiff from presenting any evidence on its claim or, in the alternative, for an Order requiring plaintiff to provide a further bill of particulars which provides the information sought in defendant’s demand for a bill of particulars.

Wherefore, defendant requests an Order precluding plaintiff from presenting any evidence of its claims against defendant or requiring plaintiff to provide a further bill of particulars which provides the information sought in defendant’s demand for a bill of particulars and for such other, and additional, relief this court deems meet and proper in all the circumstances.

[signed and served]