

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

HSBC BANK USA, NATIONAL  
ASSOCIATION,

vs. Plaintiff,

CASE NO.

Defendant(s).  
\_\_\_\_\_ /

**DEFENDANT'S MOTION FOR CONTEMPT FOR FAILURE TO COMPLY  
WITH THIS COURT'S ORDER COMPELLING DISCOVERY**

COME NOW Defendant, \_\_\_\_\_ by and through his undersigned attorneys, and hereby moves this Honorable Court, in accordance with Rule 1.380, for an Order of contempt for failure to comply with this Court's *Ex Parte* Order granting Defendant's motion to compel discovery and as grounds therefore would state:

1. On October 22, 2009, Defendant served by facsimile a first set of interrogatories and a first request for production of documents on Plaintiff. Responses were due on or before November 23, 2010. However, Plaintiff failed to respond to the outstanding discovery in any way, as set forth in the Rules of Civil Procedure.
2. On November 27, in accordance with administrative order 3.202-9/08, Defendant moved for an *ex parte* Order compelling discovery.
3. On December 2, 2009, this Court entered an *ex parte* order that provided as follows:

Plaintiff shall have fifteen (15) days from the date of this Order to answer Defendant's first set of interrogatories consisting of sixteen (16) interrogatories.

Plaintiff shall have fifteen (15) days from the date of this Order to produce the documents requested by Defendant in his first request for production of documents, consisting of 20 categories of documents.

4. Plaintiff's responses to Defendant's outstanding discovery was ordered to be served on or before December 17, 2009.
5. Rule 1.380(d) provides as follows:

**The failure to act [including the service of answers to interrogatories] may not be excused on the ground that the discovery sought is objectionable, unless the party failing to act has applied for a protective order as provided by Rule 1.280(c).** [Emphasis added]

Plaintiff failed to timely apply for any protective order and thus waived all objections, excepting any claim of privilege. *Insurance Company of North America v. Noya*, 398 So.2d 836 (Fla. 5<sup>th</sup> DCA 1981) Moreover, a claim privilege requires a privilege log, and the failure to file same can constitute a waiver. *Gosman v. Luzinski*, 937 So.2d 293 (Fla. 4<sup>th</sup> DCA 2006) Plaintiff has failed to file any privilege log. Thus, Plaintiff has waived any and all objections to the discovery propounded by Defendant.

### INTERROGATORIES

6. On December 16, 2009, Plaintiff served **unverified** answers to Defendant's first set of interrogatories. However, Rule 1.340(a) unequivocally requires, "Each interrogatory shall be answered separately and fully in writing **under oath**...." [Emphasis added] Accordingly, Plaintiff has materially failed to answer the interrogatories *in toto*. Moreover, the answers to interrogatories 1-4, 12, and 15 were incomplete and evasive, and should be treated as a failure to answer. See Rule 1.380(a)(3).
7. Plaintiff raised the following objection to interrogatories 5 and 14:

Plaintiff objects to this request as unduly broad, overly burdensome, as not related to any issues raised in the pleadings, as seeking information not reasonably calculated to lead to the discovery of admissible evidence.

However, this objection is not valid because Plaintiff did not timely apply for a protective order as provided in Rule 1.280(c). In accordance with Rule 1.380(d), the failure to answer cannot be excused on the basis of Plaintiff's objection.

8. Plaintiff raised the following objection to interrogatories 6-11, and 13:

Plaintiff objects to this request as unduly broad, overly burdensome, as not related to any issues raised in the pleadings, as seeking information not reasonably calculated to lead to the discovery of admissible evidence, and proprietary and confidential information.

Rule 1.380(d) provides as follows:

The failure to act [including the service of answers to interrogatories] may not be excused on the ground that the discovery sought is objectionable, unless the party failing to act has applied for a protective order as provided by Rule 1.280(c).

Since Plaintiff never timely applied for a protective order, its objection has been waived. *Insurance Company of North America v. Noya*, 398 So.2d 836 (Fla. 5<sup>th</sup> DCA 1981)

### **PRODUCTION OF DOCUMENTS**

9. On December 16, 2009, Plaintiff served its responses to Defendant's First Request for Production of Documents. As a preface to its response, Plaintiff raised the following general objections:

1. Plaintiff objects to the Request to the extent that the Defendants seek information, documents or responses protected by the attorney-client privilege, prepared in anticipation of litigation, and/or attorney work product.
2. Plaintiff objects to the Request to the extent that the Defendants seek information, documents or responses not raised in the pleadings in this action, and not reasonable calculated to lead to the discovery of admissible evidence.
3. Plaintiff objects to the Request to the extent that it seeks the disclosure of confidential and/or proprietary information, documents or responses.
4. Plaintiff objects to the Request to the extent that the Request is overly broad, unduly burdensome, oppressive or vexatious.

5. Plaintiff reserves the right to supplement or amend the responses herein upon completion of discovery and/or further investigation and proceedings.
6. Plaintiff reserves the right to invoke the general objections set forth herein and does not waive the right to invoke same, nor waive the right to object to the relevancy or admissibility of the information, documents or responses provided herein by responding to the Request.

All of Defendant's general objections are invalid, excepting any claim of privilege. The claim of privilege is also invalid without the filing of a privilege log as mandated by Rule 1.280(b)(5). Even if the Court would consider that Plaintiff claim of privilege has not been waived, then this Court should hold an *in camera* inspection to review the discovery and determine whether the claim of privilege is valid. See Austin v. Barnett Bank of South Florida, N.A., 472 So.2d 830 (Fla. 4<sup>th</sup> DCA 1985)

10. Plaintiff's response to request #1 was incomplete and evasive and should be treated as a failure to answer. See Rule 1.380(a)(3). Plaintiff should be prevented from introducing any documents at trial.
11. Plaintiff's response to request #2 invoked general objections 2, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
12. Plaintiff's response to request #3 invoked general objections 2, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which

documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).

13. Plaintiff's response to request #4 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
14. Plaintiff's response to request #5 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
15. Plaintiff's response to request #6 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
16. Plaintiff's response to request #7 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).

17. Plaintiff's response to request #8 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
18. Plaintiff's response to request #9 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
19. Plaintiff's response to request #10 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
20. Plaintiff's response to request #11 invoked general objections 2, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
21. Plaintiff's response to request #12 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).

22. Plaintiff's response to request #13 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
23. Plaintiff's response to request #14 invoked general objections 1, 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
24. Plaintiff's response to request #15 was incomplete and evasive and should be treated as a failure to answer. See Rule 1.380(a)(3). Plaintiff should be prevented from introducing the original note at trial.
25. Plaintiff's response to request #16 invoked general objections 2, 3, 4, 5, and 6, and then, notwithstanding the objection, Plaintiff claims to have attached responsive documents. Firstly, the general objections are untimely and have been waived, as more specifically indicated above. Secondly, Plaintiff has failed to identify which documents produced correspond to the requested category of documents, in violation of Rule 1.350(b).
26. Plaintiff's response to request #17 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
27. Plaintiff's response to request #18 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
28. Plaintiff's response to request #19 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.

- ( v)
29. Plaintiff's response to request #20 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.
  30. Plaintiff's response to request #13 invoked general objections 2, 3, 4, 5, and 6, without producing a single document. All such objections are untimely and have been waived, as more specifically indicated above.

WHEREFORE Defendant prays this Honorable Court for the entry of an Order of contempt, declaring that all objections to discovery have been waived, and staying the instant action until such time as Plaintiff fully complies with Defendant's requested discovery demands.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was forwarded by ( ) U.S. mail ( ) facsimile ( ) hand delivery to \_\_\_\_\_, Attorneys for Plaintiff \_\_\_\_\_, forwarded by ( ) U.S. mail ( ) facsimile ( ) hand delivery to \_\_\_\_\_, this \_\_\_\_ day of February, 2009.

PETER J. SNYDER, P.A.  
 Attorneys for Defendant Ochoa  
 2234 North Federal Highway #490  
 Boca Raton, FL 33431  
 (561) 367-1581  
 FAX (561) 367-7322

By: \_\_\_\_\_  
 PETER J. SNYDER, ESQ.  
 Florida Bar No. 324353