

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN FLORIDA
TALLAHASSEE DIVISION

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

OLP.com, Inc.

Defendant.

Case No. 4:20-MC-6

MOTION TO COMPEL
PRODUCTION OF
DOCUMENTS AND
INCORPORATED
MEMORANDUM OF LAW

Certificate of Counsel Under Local Rule 7.1(B)

Pursuant to N.D. Fla. Local Rule 7.1(B), the undersigned certifies that counsel for Plaintiff Bureau of Consumer Financial Protection (“Bureau”) has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised in this motion, but that opposing counsel does not agree to any of the relief sought in this motion.

Introduction

The Bureau filed the underlying action, *Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc. et al.*, No. 2:19-cv-00298-BSJ (D. Utah),

in the District of Utah on May 2, 2019.¹ The Bureau’s complaint alleges, among other things, that Progrexion Marketing, Inc., and related entities (“Progrexion”) have violated the Telemarketing Sales Rule (“TSR”), 16 C.F.R. §§ 310.3(a)(4), 310.3(b), 310.4(a)(2), and the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5531, 5536(a)(1)(B), during the course of marketing, selling, and providing credit repair products and services. In particular, the complaint alleges that Progrexion participated in or controlled or had the right to control, and had knowledge of, the deceptive and unlawful marketing activities of certain marketing partners (“Hotswap Partners”) that live-transferred consumers to Progrexion’s telemarketing call centers. Typically, these Hotswap Partners market to consumers credit products and services such as rent-to-own housing, mortgages, personal loans, and auto loans. As alleged in the Bureau’s complaint, the products and services were used as the entry point to Progrexion’s hotswap credit repair marketing program, with the products and services purportedly offered by the Hotswap Partners serving as an integral part of Progrexion’s telemarketed credit repair sales pitch.

OLP.com, Inc.² (“OLP”) is one of Progrexion’s largest Hotswap Partners, and has transferred thousands of consumers to Progrexion’s telemarketing

¹ See Complaint, attached as Exhibit 1.

² OLP’s principal address is 3717 Apalachee Parkway, Suite 201, Tallahassee, FL 32311. This is also the address of their registered agent Kurt Artecona.

operations for credit sales pitches every year for at least the last decade. As alleged in the Bureau's complaint, Progrexion pays its Hotswap Partners a commission for each consumer who signs up for Progrexion's credit repair services after being transferred to Progrexion's telemarketing call center. Progrexion works closely with individual Hotswap Partners to develop, refine, and execute their telemarketing practices in order to increase the number of credit repair sales and the Hotswap Partners' commissions. These collaborations involve, among other things, sharing consumer data, collaborating on drafting and revising telemarketing sales scripts, monitoring Hotswap Partners' telemarketing practices, and discussing consumer complaints regarding those Hotswap Partners.

On January 21, 2020 the Bureau issued a subpoena to OLP, pursuant to Fed. R. Civ. P. 45, requesting documents related to its business activities and marketing relationship with Progrexion ("Subpoena," attached as Exhibit 2).³ As discussed further below, OLP, through counsel, responded by letter on February 4, 2020 ("February Letter," attached as Exhibit 3), raised numerous general, boilerplate objections to the requests in the Subpoena ("RFPs"), and offered additional objections related to RFPs #3, 10, 19, and 22-31. On February 11, the Bureau and

³ The Bureau also issued a detailed litigation hold letter to OLP on May 8, 2019, with a copy of the Bureau's Complaint, notifying OLP of the Bureau's claims and the fact that OLP may have relevant records and stating that OLP should affirmatively preserve and not destroy any such records.

counsel for OLP met and conferred via telephone to discuss the issues raised in the February Letter. During this conversation, and in subsequent correspondence, the Bureau requested that OLP provide an affidavit regarding the burdens it faced in responding to the Subpoena to “allow the Bureau to understand [OLP’s] specific organizational, data, and time constraints and any specific modifications [OLP] is requesting in order to reduce its burden.”⁴ OLP initially agreed to provide an affidavit or declaration specifying the burdens faced in responding to the Subpoena,⁵ but later reneged on that agreement and failed to provide any such support. On July 10, 2020, OLP again responded to the subpoena via letter (“July Letter,” attached as Exhibit 5) and stated that it would “produce documents or materials in its possession, custody or control responsive to” RFPs #5, 6, 7, 12, 13, 15, 16, 17, and 18; provide partial responses to RFPs #2-4, 8-9, 11, 14, and 19; and refuse to provide responsive documents for the remaining RFPs.⁶ *See* Ex. 5. On July 17, 2020 OLP provided 24 files containing documents responsive to the Subpoena, but it still refuses to provide full responses, or for numerous RFPs, any response at all. Despite the Bureau’s continued efforts, including several meet and

⁴ February 11, 2020 email from Bureau counsel J. Reischl to OLP counsel D. Healy, attached as Exhibit 4.

⁵ February 11, 2020 email from OLP counsel D. Healy to Bureau counsel J. Reischl, Ex. 4.

⁶ The July Letter also stated that OLP had no documents in its possession, custody, or control responsive to RFPs #10 and 21. Ex. 5, pp. 5, 7.

confers, OLP refuses to provide any additional materials, citing boilerplate and unsubstantiated objections, many of which it untimely raised for the first time in early July.⁷

OLP did not file a motion to quash the Subpoena. Instead, OLP refuses to comply with most of the RFPs based largely on four grounds. First, OLP initially refused to respond due to the pendency of discovery disputes before the Utah District Court related to the Bureau's August 2019 requests to Progrexion. OLP continues to withhold responsive material even though the Utah District Court resolved the only pending discovery motion in June and, in doing so, ruled that Progrexion's relationship and marketing activities with OLP are discoverable. Second, OLP insists that the Bureau must reach an agreement with Progrexion about *Progrexion's* discovery obligations before OLP responds. Third, OLP demands that the Bureau seek material from Progrexion before requiring it to respond. Fourth, OLP makes unsubstantiated burden claims and has refused the Bureau's reasonable proposals to alleviate any undue burden. Not only are these objections meritless, they are also untimely and are therefore waived. In addition, the limited document production OLP has made is not in the form the Bureau

⁷ See July 22, 2020 Letter from Bureau counsel J. Reischl to OLP counsel D. Healy, attached as Exhibit 6; *see also* July 30, 2020 email from OLP counsel D. Healy to Bureau counsel J. Reischl, attached as Exhibit 7.

requested, nor in a form that the Bureau can efficiently use in the litigation, and it is therefore not compliant with Rule 45.

For the reasons stated below, the Court should overrule OLP's objections and require it to respond fully to the Subpoena within 14 days. Further, the Court should require OLP to produce all the material in a form that complies with the Subpoena's specifications.

Argument

I. The Bureau Is Entitled to the Requested Discovery

The Federal Rules define the scope of discovery as, “[u]nless otherwise limited by court order, . . . any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). The Utah District Court has authorized discovery of Progrexion’s relationship and marketing activities with OLP and has permitted discovery from July 21, 2011 forward. *See Orders, Bureau v. Progrexion Marketing*, No. 2:19-cv-00298-BSJ (D. Utah), March 13, 2020 [ECF No. 70] and June 18, 2020 [ECF No. 92] (attached as Exhibits 8 and 9). Thus, the court in the underlying action has ruled that such information is relevant and within the scope of the Complaint as pleaded.

The Subpoena seeks documents that are not only relevant and proportional to the needs of this case, but critical to the Bureau’s action. These include OLP’s

unique records regarding the customers it referred and transferred to Progrexion; copies of its own advertisements and websites used to generate leads for credit repair transfers; and substantiation of the claims OLP made to the population of consumers to whom it pitched Progrexion's credit repair services. These categories of documents go to the heart of the Bureau's claims that, in order to generate sales of its credit repair services, Progrexion relied on OLP's deceptive bait advertising.

II. OLP's General Objections Are Improper

This Court's Rules prohibit general objections. To be valid, an "objection to [a] . . . production request . . . must be set out specifically for the individual . . . production request" and "an objection cannot be set out generally for an entire set of discovery requests." L.R. 26.1(C). OLP's responses to the Subpoena, the February Letter and the July Letter, each contain a litany of general objections applicable to all of the RFPs. While OLP has withdrawn some of its original objections mooted by subsequent court rulings, it continues to press several general objections that lack merit because they are unmoored to any specific request. These include a general privilege objection and a general objection that the requested format of certain unspecified documents would "impose an unreasonable burden on the Company"—without identifying how. These general objections should be overruled by this Court because they violate L.R. 26.1(C) and because "[b]road-based, non-specific objections are almost impossible to assess on their merits, and

fall woefully short of the burden that must be borne by a party making an objection to [a] . . . document request.” *Russell v. Fast Payday Loans, Inc.*, No. 4:07cv488, 2008 WL 11338347, at *1 n.1 (N.D. Fla. June 27, 2008) (citation omitted). This Court should reject OLP’s attempts to withhold responsive documents based on these objections.

III. OLP’s Objections Are Unsupported by an Affidavit or Other Evidence

Courts in this Circuit “have made clear that to demonstrate an undue burden, the moving party must put forth either affidavits or other evidence that reveals the nature of the burden.” *TIC Park Centre 9, LLC v. Cabot*, No. 16-24569-Civ, 2017 WL 3099317, at *2 n.1 (S.D. Fla. April 12, 2017) (citations omitted); *Fast Payday Loans*, 2008 WL 11338347, at *1 n.1 (“Objections which state that a discovery request is ‘vague, overly broad, or unduly burdensome’ are, by themselves, meaningless” (citations omitted)); *Arval Service Lease S.A., v. Clifton*, No. 3:14-cv-1047, 2015 WL 12818837, at *2 (M.D. Fla. June 23, 2015) (“A ‘party asserting undue burden must present an affidavit or other evidentiary proof of the time or expense involved.’”). The Subpoena’s instructions were consistent with this guidance. *See* Ex. 2, Instructions ¶ 4. But despite the Bureau’s repeated requests for such information,⁸ OLP has refused to provide an affidavit or any other support for its objections.

⁸ *See, e.g.*, Ex. 4; Ex. 6.

Among other things, the Bureau repeatedly offered to discuss OLP's asserted burden in greater detail, including inviting it to submit an affidavit and have an individual familiar with OLP's document retention and data systems join a meet and confer with a data specialist from the Bureau.⁹ But each time, OLP rebuffed the Bureau's attempt to establish a "foothold for beginning the good faith process of conferral." *See Fast Payday Loans*, 2008 WL 11338347, at *1.

Because OLP has refused to provide any basis for its burden objections, the Court should not allow it to rely on those objections to limit the Bureau's discovery. *See Trinos v. Quality Staffing Svcs. Corp.*, 250 F.R.D. 696, 698 (M.D. Fla. 2008) ("[C]ourts should only limit discovery 'based on *evidence* of the burden involved, not a mere recitation that the discovery request is unduly burdensome.'" (citations omitted) (emphasis in original)). Therefore, the Court should reject OLP's unsupported burden, scope, and vagueness objections and rule they provide no basis on which to refuse to produce documents.

IV. OLP's July Objections Are Untimely and Are Therefore Waived

As a general rule, when a party fails to timely object to production requests, "the objections are deemed waived." *Bailey Inds., Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 668 (N.D. Fla. 2010). As discussed further below, OLP's July Letter includes numerous objections to individual RFPs, none of which were included in OLP's

⁹ *Id.*

February Letter. Rule 45 specifies that written objections must be served within 14 days after service of a subpoena. Fed. R. Civ. P. 45(d)(2)(B). For this reason, OLP's objections raised for the first time in July—six months after service of the Subpoena—should be deemed waived, and the Bureau's motion to enforce the Subpoena should be granted. *Bailey*, 270 F.R.D. at 668. Alternatively, the following objections, unrelated to any discovery issues considered by the Utah District Court, irrefutably could have been raised by the Subpoena response date, but were not: OLP's response to RFP #1 that the Bureau should first be required to seek the information from Progrexion, its attempt to limit its response to RFP #11, and its breadth objections to RFPs #22-31. These untimely objections are therefore waived.

V. This Court Should Overrule OLP's Specific Objections and Order OLP to Produce the Requested Documents

In accordance with L.R. 26.1(D), the following are the specific requests at issue, OLP's responses, and the reasons why the discovery should be compelled.

RFP #1:

Documents or data sufficient to show, for each Transferred Credit Repair Customer:

- a. Customer name;*
- b. Customer address;*
- c. Customer telephone number;*
- d. Date of transfer;*
- e. Credit repair brand enrolled with (i.e., Lexington Law or CreditRepair.com);*
- f. Progrexion campaign identification number;*

- g. Source of Customer lead;*
- h. Agent identification number;*
- i. Product or service You advertised, marketed, offered, or provided to Customer; and*
- j. Amount of payment You received as a result of Customer's enrollment with Lexington Law or CreditRepair.com.*

The Bureau expressly requests that the material responsive to this request be produced as structured, electronic data, to the extent it exists in that format within Your possession, custody, or control.

OLP's Response and Objection to RFP #1:

In the February Letter, OLP provided no specific response or objection to RFP #1. In the July Letter, OLP stated: "OLP.com objects to this Request as not being relevant because the district court in the Lawsuit has not required [Progrexion] to respond to a similar request. Moreover, to the extent relevant, [the Bureau] should first be required to obtain information contained in the Request from [Progrexion] so as not to unduly burden OLP.com." OLP has produced no documents responsive to RFP #1.

OLP Should Be Compelled to Produce Documents Responsive to RFP #1

RFP #1 seeks information about OLP customers whom OLP transferred to Progrexion's brands – Lexington Law and CreditRepair.com – for credit repair. These are consumers who may be entitled to redress or other relief. RFP #1 therefore is plainly relevant to the Bureau's action. And "[t]he burden is on the party resisting discovery to show that a request is not relevant." *Alliance of Automobile Manufacturers, Inc. v. Jones*, Case No. 4:08-cv-555, 2014 WL

12848659, at *11 (N.D. Fla. Jan. 7, 2014); *TIC Park Centre 9, LLC v. Cabot*, No. 16-24569-Civ, 2017 WL 3099317, at *2-3 (S.D. Fla. April 12, 2017) (Party seeking to quash or modify a subpoena faces burden of demonstrating compliance would be “unreasonable and oppressive.”). OLP does not meet this burden.

OLP’s relevance objection is baseless; it incorrectly cites the Utah District Court’s discovery rulings. The Utah District Court’s June 18, 2020 order, Ex. 9, required Progexion to produce “agreed-to discovery related to the seven hotswaps.” OLP is one of those seven “hotswaps,” and the “agreed-to discovery” included a request for documents and data related to credit repair customers obtained from OLP similar to RFP #1. *See* Joint Status Report, *Bureau v. Progexion Marketing* [ECF No. 80, p.8], attached as Exhibit 10.

OLP’s second objection, that the documents may be available from Progexion, is not only untimely,¹⁰ but also unavailing. The argument that documents are available from other sources “is insufficient to resist a discovery request.” *Alliance of Automobile Manufactures*, 2014 WL 12848659, at *9; *SEC v. Creative Capital Consortium, LLC*, 2009 WL 10664429, at *3 (S.D. Fla. May 20, 2009) (the mere fact that the requested information is available from another source is not the basis for denying or limiting discovery absent a showing of undue burden or expense).

¹⁰ *See* Section IV, *supra*.

Moreover, OLP mischaracterizes the similarities between RFP #1 and information requested from Progrexion. While there is overlap between the two, they are not co-extensive. For example, information responsive to RFP #1 subparts (g), (h), and (i) is unlikely to be in the possession, custody, or control of Progrexion. But producing that information without the remainder of the data responsive to RFP #1 would hinder or even prevent the Bureau from fully understanding those materials. *See Bailey*, 270 F.R.D. at 668 (rejecting the production of documents in a format “not helpful” to party’s request for relevant information). And, as noted above, OLP has not explained the “specific and particular way” in which RFP #1 is unduly burdensome, other than the insufficient recitation that the information may be available from Progrexion. Therefore, OLP should be ordered to produce all materials in response to RFP #1.

RFPs #2-4, 8-9, 14, and 19

RFP #2: *Documents sufficient to show the amount and the date of all payments received from Lexington Law or Progrexion, and the reason for such payment.*

RFP #3: *All quarterly or annual financial statements for the Company, including audited financial statements and accompanying notes, if available.*

RFP #4: *All communications between the Company and Lexington Law or Progrexion.*

RFP #8: *All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval, recommendation, or critique from Lexington Law or Progrexion (including any policies, procedures, or model language created or issued by Lexington Law or Progrexion) relating to Your Telemarketing activities, including any scripts used in Your Telemarketing, and all related communications.*

RFP #9: *All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval, recommendation, or critique from Lexington Law or Progrexion (including any policies, procedures, model language, or advertising copy and materials created or issued by Lexington Law or Progrexion) relating to Your marketing activities, including any offers used in Your marketing, and all related communications.*

RFP #14: *A copy of each version of each website used by the Company to market any product or service offered by the Company, Progrexion, or Lexington Law.*

RFP #19: *All Training Materials, including scripts, used in connection with Relevant Telemarketing.*

OLP's Response and Objection to RFPs #2-4, 8-9, 14, and 19:

In the July Letter, OLP stated: "OLP.com will produce any documents or materials in its possession, custody or control responsive [sic] these Requests, but only from January 1, 2017, the commencement of the period of time the district court determined was relevant, until January 21, 2020."¹¹

OLP Should Be Compelled to Produce Documents Responsive to RFPs #2-4, 8-9, 14, and 19

OLP is refusing to produce documents dating prior to January 1, 2017 on the erroneous grounds that the Utah District Court limited discovery to the period after

¹¹ OLP's response to RFP #14 states that it will produce responsive documents "only for the period of time the district court deemed relevant, namely for the period May of 2016 to January of 2019." The Bureau believes that the timeframe provided in this response is a drafting error. Regardless of whether the specified timeframe in OLP's response was written in error or it was OLP's intention to limit the responsive timeframe for RFP #14 in a different manner than RFPs #2-4, 8-9, and 19, the Bureau believes their objection should be similarly denied.

that date.¹² In fact, in its March 13, 2020 discovery order, the Utah District Court observed that “[t]he parties’ claims and defenses here date to at least 2012,” and accordingly permitted discovery dating back to July 2011, a period it found was appropriate and did not impose an undue burden. Ex. 8, p. 4. As OLP’s sole basis for refusing to provide responsive documents for the timeframe set forth in the Subpoena is a misinterpretation of the parameters set by the Utah District Court, it should be ordered to produce responsive documents.

RFP #11

All Consumer complaints regarding the Company’s products, services, marketing, or the products and services provided by any marketing partner or affiliate, including Lexington Law or Progrexion, and all responses, documents, or communications related to those complaints.

OLP’s Response and Objection to RFP #11:

In the July Letter, OLP stated: “OLP.com will produce any documents in its possession, custody or control responsive to this Request, but only to the extent the Consumer complaint resulted from a referral that OLP.com made to Lexington Law or Progrexion.”

OLP Should Be Compelled to Produce Documents Responsive to RFP #11

A party seeking to modify a subpoena must identify “specific reasons why the requested documents are not relevant or ... not subject to disclosure.” *TIC*

¹² In its July 17, 2020 production, OLP provided documents represented to be responsive to these RFPs for the period January 1, 2017 to January 21, 2020.

Parke Centre, 2017 WL 3099317, at *3. OLP has failed to do this with respect to its self-imposed limitation on RFP #11, even after the Bureau asked for such information in response to the July Letter.¹³ Thus, OLP should be required to respond to RFP #11 as written.¹⁴

RFP #20:

All recordings, notes, or other documents memorializing phone calls with Consumers that resulted in Direct Transfers, including all recordings, notes, or other documents memorializing each Direct Transfer.

OLP's Response and Objection to RFP #20:

In the July Letter, OLP stated: “The district court declined to require Defendants to produce these items, and OLP.com understands that there are ongoing discussions between CFPB and [Progrexion] to determine if agreement can be reached that would allow for the production of recordings with specifically identified Consumers, or samples of them. To the extent such agreement is reached, or [Progrexion is] otherwise required to produce recordings of any conversations with any Consumers that OLP.com referred, OLP.com will produce any phone call recordings, or other documents and materials, responsive to this Request and that occurred during the period of time the parties, or the district court

¹³ The Bureau sought to give OLP an opportunity to explain this objection, even though it was raised for the first time in the July Letter and is therefore untimely. *See* Section IV, *supra*.

¹⁴ In its July 17, 2020 production, OLP provided documents represented to be responsive to RFP #11 as unilaterally modified by the company.

in the Lawsuit, agreed or determined was relevant.” OLP has produced no documents responsive to RFP #20.

OLP Should Be Compelled to Produce Documents Responsive to RFP #20

OLP’s objection is without merit. First, the Utah District Court did not bar the Bureau from obtaining Progrexion’s call recordings and related materials in connection with OLP. Indeed, the Utah District Court has ordered, and Progrexion has agreed, that discovery concerning OLP is relevant to the case. The Bureau and Progrexion are addressing burdens that are particular to the Defendants in the Utah litigation. The documents sought by RFP #20 are uniquely within OLP’s possession, and there is no reason to assume, particularly in the absence of OLP’s promised affidavit, that OLP has a similar burden.¹⁵ The applicability of undue burden claims is specific to the circumstances demonstrated by each party asserting the objection. Courts do not approve general claims of undue burden asserted by different parties that are subject to similar discovery requests. For example, in *Alliance Automobile Manufactures*, the court, after consideration of the affidavits and specific basis provided by each recipient of the discovery requests at issue,

¹⁵ In its response to the July Letter, the Bureau offered to meet and confer with OLP regarding the particular issues unique to RFP #20. The Bureau requested that OLP provide information regarding the phone recordings in its possession, including the manner in which the call recordings are stored by the company, the data associated with the call recordings, and the volume of relevant call recordings, in order to facilitate a resolution of this dispute. OLP refused the Bureau’s offer to engage in any further discussions.

determined each particular party's discovery obligation based on the facts presented. 2014 WL 12848659, at *1-12. Such an individualized determination of undue burden is necessary given that factors such as how information is organized, its volume, and the manner in which it is kept are key to the analysis. *Russell*, 2008 WL 11338347, at *1. OLP, which has not provided any information regarding the burden it may face in responding to this RFP, or any other, cannot gesture at the circumstances faced by another party to justify its own refusal to produce responsive materials.

RFPs #22-31

RFP #22: *Documents sufficient to substantiate the following representation made in Company scripts: "They are credit analysts and have the legal ability to remove any questionable negative items on your credit report such as late payments, collections, and charge-offs."*

RFP #23: *Documents sufficient to identify all lenders described in any Company telemarketing script as "our lenders."*

RFP #24: *Documents sufficient to show the business relationship between the Company and each lender referred to in any Company telemarketing script as "our lenders," including the nature of the relationship and all terms of any contracts or agreements between the Company and the lender.*

RFP #25: *Documents sufficient to substantiate the following representation made in Company scripts: "our lenders move very quickly, assuming an approval today, you could receive your funds as early as tomorrow."*

RFP #26: *Documents sufficient to show how many Consumers were approved for a loan from one of "[Y]our lenders" on the same day the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.*

RFP #27: *Documents sufficient to show how many Consumers received funds from*

one of “[Y]our lenders” on the day after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

RFP #28: *Documents sufficient to show how many Consumers were approved for or received funds from one of “[Y]our lenders” any time after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.*

RFP #29: *Documents sufficient to substantiate the following representation made in Company scripts: “By removing these negative items, it will allow us to come back and look to refinance you with a more conventional lender that offers better rates and terms in the future.”*

RFP #30: *Documents sufficient to describe the Company’s process for “refinanc[ing] [a Consumer] with a more conventional lender” after the Consumer became a Lexington Law or CreditRepair.com Customer.*

RFP #31: *Documents sufficient to show how many Consumers the Company refinanced after the Consumer became a Lexington Law or CreditRepair.com Customer for each year since July 21, 2011.*

OLP’s Response and Objection to RFPs #22-31:

In the July Letter, OLP stated: “OLP.com objects to each of these Requests, and no documents or materials (to the extent they exist in OLP.com’s possession, custody and control) will be produced in response to them, for several reasons.

First, the Requests are overly broad in their temporal scope. Next and as was stated previously, CFPB and [Progrexion] have not identified which, if any, Consumers that OLP.com referred to Lexington Law or Progrexion are relevant to the issues pending in their litigation and, hence, would be even arguably relevant for the purposes of these Requests. To the extent such Consumers are identified and agreed upon by the parties, or the district court otherwise directs, and any such

Consumers were referred to any [Progrexion company] following the use of any script alluded to in these requests, OLP.com will further supplement these responses at that time.” OLP has produced no documents responsive to RFPs #22-31.

OLP Should Be Compelled to Produce Documents Responsive to RFP #22-31

RFPs #22-31 seek material that is both highly relevant to the Bureau’s action against Progrexion and uniquely within OLP’s possession, custody and control. The statements referenced in RFPs #22, 23, 25, and 29 are taken directly from telemarketing scripts that OLP told Progrexion were used as part of its process of selecting consumers for transfer to Progrexion’s telemarketing operations during the relevant time period. RFPs #24, 26, 27, 28, 30, and 31 seek information regarding the business practices referenced in those same OLP telemarketing scripts. These statements, and OLP’s purported business practices, were presented to consumers as part of OLP’s marketing of Progrexion’s credit repair services. OLP offers no legitimate grounds for refusing to respond to these requests.

OLP’s first objection to these RFPs, that the requests are “overly broad in their temporal scope,” is nothing more than a boilerplate objection offered without the required substantiation.¹⁶ *See Automobile Manufacturers*, 2014 WL 12848659,

¹⁶ This objection, raised for the first time in the July Letter, is also untimely. *See* Section IV, *supra*.

at *1 n.1 (“[I]ntoning the ‘overly broad and burdensome’ litany, without more, does not express a valid objection” (citations omitted)). The Utah District Court found that “discovery is appropriate beginning in 2011,” and that this temporal scope is “neither unlimited nor too large” and does not impose any undue burden. Ex. 8, p. 4. And OLP has articulated no special burden that it would experience in producing documents dating from 2011.

OLP’s second objection is no more convincing. The Utah District Court has not ruled — or even been asked to decide — that any discovery is contingent on the identification of a subset of consumers. And, as with OLP’s other objections, the company has not provided any facts justifying its failure to respond to RFPs #22-31. *See Pediatric Svcs. of Amer., Inc. v. Kendrick*, No. 3:18cv1372, 2019 WL 580786, at *2 (N.D. Fla. Jan. 17, 2019) (“the party resisting the discovery has the burden to establish facts justifying its objections by demonstrating that the requested discovery (1) does not come within the scope of relevance as defined under Fed.R.Civ.P. 26(b)(1) or (2) is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure”) (citation omitted). Therefore, OLP should be compelled to produce documents responsive to these requests.

VI. OLP’s Prior Productions Do Not Meet the Requirements of Rule 45

Rule 45 requires documents and electronically stored information to be

produced in the form specified by the requesting party. Fed. R. Civ. P. 45(a)(1)(C). The Subpoena includes clear specifications regarding document formatting, including the requirements for emails.¹⁷ *See* Ex. 2, pp. 48-58. OLP ignored these instructions and produced documents neither in the specified format nor in a form the documents are ordinarily maintained. In particular, OLP produced emails, spreadsheets, and other documents as combined .pdf documents for various custodians without the associated metadata for the individual documents. For example, it produced all of the responsive emails from OLP principal Kurt Artecona as a single, combined .pdf file that is 2,154 pages long and lacks any apparent organization. The .pdf format deprives the documents of most of their search functionalities. This formatting also separates attachments from their parent emails without any means to associate the originally paired documents, and excludes embedded images and other materials contained in the original emails. Even if the Subpoena had not specified the form in which the documents were to be produced, OLP was obligated under Fed. R. Civ. P. 45(e)(1)(B) to “produce it in a form ... in which it is ordinarily maintained or in a reasonably usable form.” The .pdf OLP produced was neither. Accordingly, OLP should be required to produce the documents in the form required by the Subpoena.

¹⁷ These specifications were not unilaterally adopted by the Bureau; they were negotiated and agreed to by all parties to the Utah litigation.

Conclusion

OLP has not provided any viable basis to withhold any documents responsive to the Subpoena. For the reasons stated above, the Bureau requests that the Court overrule OLP's general objections, overrule OLP's unsupported and untimely objections to the Bureau's document requests, and order OLP to comply fully with the Subpoena as written, including its specific document production standards, within 14 days.

Dated: August 25, 2020

Respectfully submitted,

/s/ Jonathan Reischl

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Certificate Regarding Word Limit

Pursuant to N.D. Fla. Local Rule 7.1(F), the undersigned certifies that the foregoing document contains 5,246 words, including headings, footnotes, and quotations, according to the word count of the word-processing system used to prepare the memorandum.

Dated: August 25, 2020

/s/ Jonathan Reischl
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC.; PGX
HOLDINGS, INC.; PROGREXION
TELESERVICES, INC.; EFOLKS, LLC;
CREDITREPAIR.COM, INC.; JOHN C.
HEATH, ATTORNEY AT LAW, PLLC,
D/B/A LEXINGTON LAW

Defendants.

Case No. 2:19-cv-00298-DBP

COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) brings this action against PGX Holdings, Inc. (PGX Holdings), and its subsidiaries Progrexion Marketing, Inc. (Progrexion Marketing), Progrexion Teleservices, Inc. (Progrexion Teleservices), eFolks, LLC (eFolks), and CreditRepair.com, Inc. (CreditRepair.com), and John C. Heath, Attorney at Law, PLLC (Heath PLLC), d/b/a Lexington Law Firm or Lexington Law, and alleges the following:

INTRODUCTION

1. The Bureau brings this action against Defendants alleging deceptive acts and practices in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536, and deceptive and abusive telemarketing acts or practices in violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq., and its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3 and 310.4.
2. Defendants operate two of the largest credit repair companies in the country, Lexington Law and CreditRepair.com. They market their services through various media, including online and over the telephone, offering to help consumers remove negative information from their credit reports and improve their credit scores. Consumers sign up for Defendants' credit repair services and pay hundreds of

dollars in fees seeking to improve their credit scores and get better access to credit products, on better terms.

3. To generate credit repair sales, Defendants rely on a network of marketing affiliates who advertise a variety of products and services, often related to consumer credit products. As alleged below, Progrexion's marketing affiliates have used deceptive, bait advertising to generate referrals to Lexington Law's credit repair service. For example, one of Progrexion's most productive marketing affiliates falsely advertised that it "guarantee[d] ANYONE a 0-3.5% Down Home Loan no matter how bad their Credit is when we start!" In reality, the affiliate did not provide any loans at all. Interested consumers were told that, to participate in the (non-existent) loan program, they had to sign up with Lexington Law. The Progrexion Defendants paid this marketing affiliate for each credit repair sale that resulted from its efforts, despite knowing that it engaged in deceptive practices.

4. Defendants also violated the law in another way. Federal law forbids requesting or receiving payment upfront for certain telemarketed credit repair services; if a company offers services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, fees can only be collected after a certain time period has elapsed and it has been demonstrated that the promised results have been achieved. As alleged below,

Defendants charged consumers when they signed up for the service and on a monthly basis thereafter, without waiting the prescribed period of time and demonstrating that the promised results were achieved, in violation of the federal ban on this type of upfront fee.

5. The Bureau brings this action to stop Defendants from engaging in ongoing, unlawful practices that harm consumers nationwide by charging consumers unlawful advance fees in connection with credit repair services and by marketing and telemarketing those services through deceptive representations, and to obtain relief for consumers who were harmed by these practices.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because it concerns federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

7. Venue is proper in this district because all Defendants reside in or do business in this district. 12 U.S.C. § 5564(f).

PARTIES

8. **The Bureau** is an independent agency of the United States. 12 U.S.C. § 5491. The Bureau is charged with enforcing Federal consumer financial laws. 12

U.S.C. §§ 5563 and 5564. The Bureau has independent litigating authority, 12 U.S.C. § 5564(a) and (b), including the authority to enforce the TSR with respect to the offering or provision of a consumer financial product or service subject to the CFPA, 15 U.S.C. § 6105(d).

9. **PGX Holdings** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It is the holding company that wholly owns and controls Defendants Progexion Marketing, Progexion Teleservices, eFolks, and CreditRepair.com (referred to collectively, with PGX Holdings, as Progexion or the Progexion Defendants). A subsidiary of PGX Holdings owns and licenses proprietary software that serves as the platform for most of the credit repair services provided by Heath PLLC and CreditRepair.com, including initiating challenges related to tradelines appearing on consumers' credit reports. Other subsidiaries of PGX Holdings perform telemarketing and telesales for Lexington Law and CreditRepair.com services. Through its subsidiaries and the Progexion common enterprise, PGX Holdings offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

10. **Progexion Marketing** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It provides advertising and marketing services,

including identifying consumer leads through telemarketing, to Heath PLLC and CreditRepair.com. It also provides key parts of the credit repair services marketed and sold to consumers under the brand names Lexington Law and CreditRepair.com. For example, Progexion Marketing contracted with one or more major consumer reporting agencies to obtain copies of Defendants' customers' credit reports and to allow Progexion to challenge its customers' credit report information directly through electronic portals between Progexion and the consumer reporting agency. Directly, through its affiliates, and through the Progexion common enterprise, Progexion Marketing offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

11. **Progexion Teleservices** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It telemarkets and sells Lexington Law credit repair services on behalf of Progexion and Heath PLLC. Progexion Teleservices employs approximately 1,200 people, most of whom are "telephone service representatives." Directly and through the Progexion common enterprise, Progexion Teleservices offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

12. **eFolks** is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. It generates leads for and telemarkets Lexington Law and CreditRepair.com credit repair services on behalf of Progrexion. eFolks also owns the trademarks for the CreditRepair.com name and logo and licenses them to CreditRepair.com. Directly and through the Progrexion common enterprise, eFolks offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

13. **CreditRepair.com** is a Florida corporation with its principal place of business in Salt Lake City, Utah. PGX Holdings created CreditRepair.com in January 2012 as PGX Holdings' direct-to-consumer brand of credit repair services. CreditRepair.com engages in its own telesales to enroll consumers, handling inbound, outbound, and live-transfer calls. It generates leads directly through its website and through Progrexion Marketing and eFolks. Directly and through the Progrexion common enterprise, CreditRepair.com offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

14. **Heath PLLC** is a law firm based in North Salt Lake, Utah that does business under the trade names Lexington Law Firm and Lexington Law. Heath PLLC has been associated with Progrexion, or its predecessors, and has licensed

the trademark “Lexington Law” since at least 2004. Progrexion conducts most of Lexington Law’s core business operations, but Heath PLLC, operating as Lexington Law Firm, serves as the face of Lexington Law. For example, Heath PLLC is the entity that formally registers as Lexington Law for purposes of the applicable state credit services or credit repair registrations and bonds. Heath PLLC also fields consumers’ complaints about the credit repair services, and consumers’ contracts are with Heath PLLC. Heath PLLC contracts with PGX Holdings’ subsidiaries, including Defendants Progrexion Marketing and Progrexion Teleservices, to: (1) have Progrexion market, telemarket, and sell over the telephone the credit repair services that Heath PLLC provides; (2) use Progrexion’s proprietary credit repair products, the tradename Lexington Law, and the domain name www.LexingtonLaw.com; and (3) obtain other business services, such as payment processing and payroll services. Because Heath PLLC is a law firm, Progrexion markets Lexington Law’s credit repair services as legal services.

15. Heath PLLC offers or provides financial advisory services and services relating to consumer report information that are for use by consumers primarily for personal, family, or household purposes, or that are delivered, offered, or provided in connection with such a consumer financial product or service; Heath PLLC thereby offers or provides a consumer financial product or service as that term is

defined by 12 U.S.C. § 5481(5). *See also* 12 U.S.C. § 5481(15)(A)(viii), (ix).

16. The Progrexion Defendants are, and have been at all times relevant to this Complaint, “covered persons,” as that term is defined by 12 U.S.C. § 5481(6)(A), because they offer or provide a financial product or service for use by consumers primarily for personal, family, or household purposes; or that is delivered, offered, or provided in connection with such a product or service. The products or services they offer or provide consist of financial advisory services, including credit counseling, and the service of “collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service.” 12 U.S.C. § 5481(15)(A)(viii), (ix).

17. Progrexion Marketing, Progrexion Teleservices, and eFolks are, and have been at all times relevant to this Complaint, “service providers” to a covered person as that term is defined by 12 U.S.C. § 5481(26), because they have provided material services to covered persons, including the persons offering or providing Lexington Law and CreditRepair.com credit repair services.

18. PGX Holdings is, and has been at all times relevant to this Complaint, a “related person,” as that term is defined by 12 U.S.C. § 5481(25), because it has

been, directly or indirectly, the controlling owner of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and because it has been a shareholder, consultant, joint venture partner, or other person who materially participated in the conduct of the affairs of those entities. By virtue of its status as a “related person” under the CFPA, PGX Holdings is also a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

19. The Progrexion Defendants operate as a common enterprise. They have conducted the business practices described below through interconnected companies that operate under common control, have common business functions, officers, employees, and office locations, and share advertising and marketing. Accordingly, an act by one entity constitutes an act by each entity comprising the common enterprise, and PGX Holdings, Progrexion Marketing, Progrexion Teleservices, CreditRepair.com, and eFolks are each jointly and severally liable for the acts and practices of the Progrexion Defendants, or the acts and practices for which the Progrexion Defendants are responsible, as alleged below.

20. The Progrexion Defendants and Heath PLLC are, and have been at all times relevant to this Complaint, “sellers,” as that term is defined by 16 C.F.R. § 310.2(dd), because, in connection with telemarketing transactions, they provide, offer to provide, or arrange for others to provide goods or services to customers in

exchange for consideration.

21. The Progexion Defendants are, and have been at all times relevant to this Complaint, “telemarketers,” as that term is defined by 16 C.F.R. § 310.2(ff), because, in connection with telemarketing, they initiate or receive telephone calls to or from customers.

22. Progexion Marketing has directed and controlled the telemarketing and telesales activities of Progexion Teleservices and eFolks, and authorized Progexion Teleservices and eFolks to market Lexington Law and CreditRepair.com credit repair services. Progexion Marketing has knowledge of and controls or has the ability to control the activities of Progexion Teleservices and eFolks discussed herein.

23. Progexion Marketing, as the principal of Progexion Teleservices and eFolks, is liable for the actions of its agents.

24. Progexion Marketing has directed and controlled the marketing and telemarketing activities of its marketing affiliates acting on its behalf, and authorized them to market Lexington Law and CreditRepair.com credit repair services. Progexion Marketing has knowledge of and controls or has the ability to control the activities of its marketing affiliates discussed herein.

25. Progexion Marketing, as the principal of its marketing affiliates, is liable for

the actions of its agents.

26. PGX Holdings has directed and controlled the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and authorized those entities to offer and provide credit repair services and to market Lexington Law and CreditRepair.com credit repair services. PGX Holdings has knowledge of and controls or has the ability to control the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com discussed herein.

27. PGX Holdings, as the principal of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, is liable for the actions of its agents.

FACTUAL ALLEGATIONS

Progrexion's "Hotswap Program"

28. Lexington Law and CreditRepair.com are among the largest credit repair brands in the United States.

29. Progrexion, or its predecessors, has been in the business of providing credit repair services to consumers under the trade names "Lexington Law Firm" and "Lexington Law" since approximately 1994, and through CreditRepair.com since at least 2012.

30. Progrexion receives the majority of the revenue generated from the sale of Lexington Law credit repair services.

31. To market Lexington Law’s and CreditRepair.com’s services, Progrexion employs affiliate marketing programs. As Progrexion says on its website, “One of the primary ways Progrexion generates massive quantities of leads for our clients is through our strong working relationships with numerous affiliates.”

32. One of the affiliate marketing programs Progrexion uses to generate such “massive quantities of leads” is its “Hotswap Program.”

33. The marketing affiliates that participate in this program — “Hotswap Partners” — are companies that offer certain products such as rent-to-own housing contracts, mortgages, auto loans, or personal loans.

34. Hotswap Partners use telemarketing campaigns consisting of inbound and outbound telephone calls to consumers across the country to market these products and services to consumers.

35. During these telemarketing calls, the Hotswap Partner identifies potential credit repair customers to refer to Progrexion, and live-transfers them to Progrexion’s telemarketing sales operations.

36. Progrexion refers to these live telephone transfers as “hotswaps.”

37. In some instances, however, the Hotswap Partner does not actually offer the products or services it purports to provide, and is instead functioning purely as a source of consumer leads for Progrexion.

38. Progrexion cultivates and manages its relationships with Hotswap Partners through Progrexion Marketing.

39. A significant amount of Progrexion's credit repair business is generated by its Hotswap Partners.

40. The Hotswap Program is intended to convince consumers to purchase credit repair services when they have been denied a product or service they wanted.

According to Progrexion's website, "This call-based program is so effective because it connects people to credit repair at the moment they've been denied credit."

41. Hotswap Partners typically offer their products and services through their websites. They drive consumer traffic to their websites through a variety of methods, including: Search Engine Optimization methods that make their websites more likely to appear in an internet search for a product or service; advertisements on third-party websites such as Facebook and Craigslist; and the use of affiliate marketing networks where the Hotswap Partners pay commissions to other companies for providing leads or directing consumers to their websites.

42. If consumers are interested in the products or services advertised by the Hotswap Partner, they are directed to either call the Hotswap Partner or provide their personal contact information and authorize the Hotswap Partner to contact

them via telephone.

43. Consumers who provide their information are either contacted via telephone by the Hotswap Partner, or their contact information — a “lead” — is sent to a third-party company that calls the consumer.

44. Some leads generated by Hotswap Partners are sent to eFolks for it to conduct outbound telemarketing for Lexington Law or CreditRepair.com.

45. When a Hotswap Partner contacts a consumer by phone, it provides the consumer with further information about the products and services advertised by the Hotswap Partner.

46. The Hotswap Partners also pitch Lexington Law’s and CreditRepair.com’s credit repair services, typically after telling the consumer that he or she has been denied a particular credit product or service, offering the consumer unfavorable terms on a loan, or telling the consumer that he or she will be eligible for the product or service, or for better terms on the product, if they first enroll in the credit repair service.

47. For example, a telemarketing script used by one or more of Progrexion’s marketing affiliates, which Progrexion reviewed and distributed to at least one marketing affiliate as a model script, says:

They are credit analysts and have the legal ability to remove questionable negative items on your credit report such as: **(LIST Negatives Client**

mentioned). By removing these negative items, it should allow us to come back and look to refinance you with a conventional lender offering better rates and terms in the future.

48. Progexion instructs Hotswap Partners to pre-qualify a consumer as suitable for Lexington Law or CreditRepair.com credit repair services prior to the hotswap transfer.

49. Prequalification involves Hotswap Partners ascertaining the following, prior to transferring a consumer to Progexion: (1) the consumer has derogatory tradelines on his or her credit reports; (2) the consumer is not already a customer of Lexington Law or CreditRepair.com; and (3) the consumer has a valid credit or debit card that they could use to pay for credit repair services.

50. Progexion instructs the Hotswap Partners to disguise these qualifications for Lexington Law and CreditRepair.com as purported qualifications for the Hotswap Partners' products and services.

51. Once pre-qualified, consumers are offered the opportunity to be connected with Lexington Law or CreditRepair.com for a "free credit repair consultation."

52. Progexion instructs Hotswap Partners to tie the credit repair consultation to obtaining the consumer's desired product or service.

53. Hotswap Partners follow this instruction. For example, one Hotswap Partner script told consumers, "in order for you to qualify, you need to work on improving

your credit score and the first step in the Rent to Own program is a credit consultation with Lexington Law.”

54. Once the Hotswap Partner completes its pitch, it transfers the consumer to a Progexion call center through a dedicated telephone line assigned to the particular Hotswap Partner.

55. Once connected, the Hotswap Partner indicates to the Progexion representative that he or she is calling on behalf of the Hotswap Partner, introduces the consumer, and states the consumer’s credit goal or the reason why they are seeking credit repair.

56. Progexion then proceeds to offer the consumer its free credit repair consultation and pitch its credit repair services, all the while repeatedly referencing the consumer’s credit goal, as provided by the Hotswap Partner during the live transfer.

57. Progexion tells consumers that during the credit repair consultation, “[w]e will ... go over your credit score, review the reasons for your score and then provide you solutions to improve your credit score and report.”

58. After reviewing a consumer’s summary credit report, Progexion Teleservice’s telemarketing script instructs its employees to tell consumers, “based on what we have discussed about your credit situation, it sounds like you may be a

good candidate for our services.” Thereafter, consumers are offered the opportunity to enroll in Lexington Law’s or CreditRepair.com’s credit repair services.

59. Progrexion pays a fee or a commission to its Hotswap Partners for each consumer transferred to Progrexion who signs up for Lexington Law or CreditRepair.com.

60. At times, Progrexion has trained its teleservices employees on the purported products and services of particular Hotswap Partners so that they could better connect credit repair to the initial offering by those Hotswap Partners.

61. For example, one Progrexion call center held training sessions with its telemarketing staff on the particular services of major Hotswap Partners, the demographics of the consumers the Hotswap Partners transferred to Progrexion, and key points that the Hotswap Partners wanted emphasized about their services and the importance of credit repair.

62. At other times, Progrexion provided written guidance to its telemarketing staff about the Hotswap Partners’ purported products and services, including whether the Hotswap Partner required consumers to sign up for Progrexion credit repair services as a condition of accessing the Hotswap Partner’s purported products or services.

63. Progrexion provided other assistance to Hotswap Partners, such as:
- a. Providing telemarketing scripts, editing Hotswap Partners' telemarketing scripts, and providing model telemarketing calls for training and scripting purposes;
 - b. Providing prizes and incentives to Hotswap Partner employees for increased credit repair sales;
 - c. Assisting with website design and the creation of new marketing campaigns to replace or supplement the Hotswap Partner's current lead generation activities;
 - d. Creating email templates for direct-to-consumer marketing; and
 - e. Providing Hotswap Partners with demographic information on Lexington Law clients so that the Hotswap Partners could target particular lead sources and optimize their scripting.
64. Progrexion provides this assistance to its Hotswap Partners because creating a clear connection between the products and services offered to consumers and credit repair is a key part of its marketing strategy.
65. Describing the Hotswap Program, Progrexion's website says, "This program provides a way for companies to monetize their non-qualified customers by live transferring them to our call centers for a free consultation with the hopes of

retaining them in one of our credit repair programs.”

66. This approach gives consumers the impression that they will be able to obtain the product they sought from the Hotswap Partner after their credit is fixed through Progrexion’s credit repair service.

67. Progrexion’s marketing to consumers includes representations that directly tie Lexington Law’s and CreditRepair.com’s services to particular products — what Progrexion calls, in its marketing and telemarketer training materials, a consumer’s aspirational credit “dreams.”

68. For example, in a general guidance document that appears to have been distributed widely to Hotswap Partners, Progrexion provided Hotswap Partners with a sample telemarketing script that references “key components” Hotswap Partners are required to say to generate credit repair leads. The script includes language telling consumers that credit repair services will get them one step closer to obtaining the Hotswap Partner’s purported products:

- Credit repair “can just make the whole process of getting this loan funded easier”; and
- “[Y]ou just need to get a few things taken care of with your credit in order to get qualified for a loan, that is *exactly* what Lexington specializes in.”

69. By creating a connection between the consumer's desired credit product and credit repair, through the representations of its Hotswap Partners, Progrexion sought to increase Lexington Law's and CreditRepair.com's sales.

70. As one Progrexion Marketing Affiliate Manager explained to a Hotswap Partner in an email dated December 9, 2015, the "biggest/main point to make (in order for this lead to convert on our end) is that the client has to feel that credit repair is a necessary and easy step in the RTO [rent-to-own]->Mortgage process."

Deceptive Hotswap Marketing

71. At least one, if not more, of Progrexion's Hotswap Partners have made misrepresentations to consumers to generate consumer leads and induce consumers to sign up for Lexington Law or CreditRepair.com.

72. Hotswap Partners have used advertisements that included fake real estate ads, fake rent-to-own housing opportunities, fake relationships with lenders, false credit guarantees, and false and unsubstantiated statements about past consumer outcomes. The ads have also included false and unsubstantiated statements about consumers' likelihood of success in obtaining products and services such as rent-to-own housing contracts, mortgages, or personal loans.

73. Additionally, although Progrexion's website portrays the Hotswap Partner program as an opportunity for partners to sell consumer leads as a source of

revenue when consumers do not qualify for the products or services the partner is providing, one or more Hotswap Partners did not actually offer or provide any such products or services. Instead, they offered illusory products or services to lure in consumers and market credit repair services.

74. From at least 2012 through 2017, one of Progrexion's most productive Hotswap Partners, referred to in this Complaint as "HSP1," used misrepresentations to induce consumers to sign up for Lexington Law.

75. From at least 2012 through 2017, HSP1 contacted consumers across the country through campaigns and programs of inbound and outbound phone calls, and transferred to Progrexion over 100,000 consumers who signed up for Lexington Law credit repair services.

76. HSP1 purported to offer consumers low-interest mortgages, access to rent-to-own housing, and other products or services, but in reality did not provide any such products or services.

77. HSP1, in its own words, acted "merely as an affiliate call center that transfers potential clients to Lexington Law."

78. Despite merely serving as an affiliate call center, HSP1 advertised extensively on Craigslist and Facebook, and through a network of paid affiliates, claiming to be able to help consumers with poor credit scores obtain favorable

mortgages and rent-to-own housing contracts.

79. At various times from 2012 through 2017, HSP1 employed numerous falsehoods to induce consumers to contact, or agree to be contacted by, its telemarketing operation, including:

- a. One of HSP1's websites stated that enrolling in its service guaranteed any consumer "a 0-3.5% down" mortgage "no matter how bad their Credit is when we start";
- b. Another HSP1 website represented that the company had helped "over 15,000 people buy a home that started with under a 500 Credit Score when they came to [HSP1]";
- c. HSP1's ads offered housing that was not actually available and instead routed interested consumers to HSP1 or, at times, directly to Progrexion;
- d. HSP1's Facebook advertisements often referenced a "90-day Blitz" program offering home financing in a very short timeframe with express promises such as: "BUY A HOME IN THE NEXT 30-90 DAYS NO MATTER WHERE YOUR CREDIT IS NOW"; and
- e. Other HSP1 advertisements said: "Are you tired of dead ends? Games? Gimmicks? Bad Houses and Fake Ads? Would You like to END all

that? We know you would.... We ... have helped over 12,000 people get homes who NEVER thought they could.”

80. Once consumers were on the phone with HSP1, HSP1 made additional misrepresentations. For example, some consumers were told that HSP1’s program for achieving home ownership “works every time.”

81. In some instances, consumers were told that if they achieved a 640 credit score they would “qualify with one of our lenders.” HSP1, which merely acted as a call center, had no associated lenders.

82. HSP1’s marketing also included specific claims about Progrexion’s credit repair services. For example, one of HSP1’s telemarketing scripts stated about Lexington Law: “They will review everything with you and put a plan together to eliminate any negative items to boost your score.”

83. At times, HSP1 told consumers that they had to sign up with Lexington Law in order to enroll in HSP1’s services and ultimately obtain the products or services advertised by HSP1.

84. HSP1 told consumers, without any review of their credit history or other eligibility factors, that their credit score was the only thing keeping them from their desired product.

85. For example, one HSP1 telemarketing script told consumers “you’d be the

perfect candidate for rent-to-own, but your credit is the only thing holding you back – this makes you a great match for credit repair.”

Progrexion’s Knowledge of Deceptive Practices in its Hotswap Program

86. Progrexion had knowledge that HSP1 engaged in the deceptive practices described in Paragraphs 74-85, above.

87. Progrexion claims that it prescreens and monitors Hotswap Partner websites prior to and during its marketing relationship with the Hotswap Partners.

88. Despite purportedly monitoring Hotswap Partner websites, Progrexion allowed the misrepresentations described in Paragraph 79(a) and (b) to remain on HSP1’s websites while HSP1 generated leads for Progrexion.

89. Progrexion also had knowledge that HSP1 used the fake ads described in Paragraph 79(c). For example, a Progrexion employee who reviewed one of HSP1’s ads posted on Craigslist noted: “Seeing the ad firsthand, I understand why so many of these clients feel misled when they call in.”

90. Consumer complaints to the Better Business Bureau and law enforcement agencies describe other Progrexion Hotswap Partners using Craigslist ads with fake housing opportunities to draw in customers.

91. Progrexion had a company policy in place in 2016 that restricted Hotswap Partners’ use of Craigslist to generate traffic for Progrexion.

92. Despite this policy, Progexion knew that certain Hotswap Partners were using Craigslist ads in their marketing and continued to do business with them for years.

93. At least one other rent-to-own housing Hotswap Partner continued to use Craigslist rent-to-own housing ads in its marketing activities through at least 2018.

94. Progexion was also aware of HSP1's 90-Day Blitz advertising on Facebook described in Paragraph 79(d), in which it told consumers that they could get into a home in 90 days regardless of their credit situation. At one point a Progexion employee emailed the owner of HSP1 and stated that the company was aware of the 90-Day Blitz program and was concerned that the program was setting "unreal expectations for clients" and creating confusion. She noted that "[m]ost of these clients need more than 3 months of credit repair...."

95. Despite Progexion's acknowledgement that most consumers would not be able to obtain a mortgage in the promised timeframe, Progexion continued its marketing relationship with HSP1 even as HSP1 continued to advertise the 90-Day Blitz on Facebook.

96. Progexion also provided model scripts to HSP1 and its other Hotswap Partners, and even created entire scripts for some affiliates, including HSP1, that set consumer expectations about the likely results of the credit repair services.

97. For example, Progrexion authored a telemarketing script for HSP1 that included statements asking if consumers were interested in “repairing [their] credit to get approved for a [mortgage, refinance, rent-to-own, or car]” and telling consumers that their credit was “the only thing holding you back” from the products they desired.

98. Progrexion also routinely reviewed, and provided edits and suggestions for, the telemarketing scripts used by HSP1 and other Hotswap Partners.

99. For example, Progrexion reviewed the telemarketing script from which HSP1 made representations regarding the ability of consumers to qualify with one of its purported lenders as well as Lexington Law’s capability to “eliminate any negative items to boost your score.”

100. Progrexion also had knowledge that HSP1 did not offer or provide the products and services it advertised, such as low-down-payment mortgages and rent-to-own housing contracts.

101. For example, Progrexion learned that HSP1 did not collect location information from consumers inquiring about its rent-to-own housing and mortgage offers when eFolks entered into an agreement with HSP1 to receive leads generated by its marketing activities.

102. The failure to collect location information was unusual among Progrexion’s

rent-to-own housing Hotswap Partners.

103. One eFolks employee noted that such information was necessary to “know the area [consumers are] looking to buy.” In fact, eFolks’ system required such information in order for the leads to upload into its automatic dialer.

104. Despite such warnings, Progrexion continued its marketing relationship with HSP1 and suggested that the company simply make up zip codes for the consumer leads so that eFolks could upload them into its automatic dialer for the purpose of contacting the consumers directly to market Progrexion and Heath PLLC’s credit repair services.

105. Progrexion was aware that other Hotswap Partners marketing rent-to-own housing engaged in questionable marketing activities.

106. For example, in a July 2016 email, a Progrexion employee reported concerns to another Progrexion employee that certain Hotswap Partners offering rent-to-own housing were making implicit guarantees that credit repair would result in consumers obtaining the rent-to-own housing advertised. The Progrexion employee suggested that this situation be handled by changing the scripting used by Hotswap Partners in order to “avoid our agents hearing those expectations. The logic being that it is easier to plead ignorance if you’re truly ignorant.”

107. In another example, in a December 2014 email, Progrexion’s Senior

Director of Compliance reported that “[m]any [clients] have claimed that [a marketing affiliate] is guaranteeing loan approval as long as they sign up for Lexington’s services.” In response, one of Progexion’s marketing directors noted that the affiliate “is one of our largest Hotswap Partners” and that the company had previously heard the same complaint before.

108. In August 2016, a consumer filed a complaint with the Bureau claiming that the same marketing affiliate discussed in Paragraph 107 represented that “after enrollment with Lexington Law I was guaranteed a loan.” The Bureau forwarded the complaint to Heath PLLC, who replied to the Bureau and the consumer that it had “no knowledge” of the affiliate. Despite it being one of the “largest Hotswap Partners” sending consumers to Lexington Law, and despite Progexion’s prior knowledge of similar guarantee claims, Heath PLLC claimed that the consumer “appears to have constructed a relationship between us and [the marketing affiliate]...that we are unaware of.” Heath PLLC further stated that it could not “take responsibility for the alleged representations that may or may not have been made to this person” by the marketing affiliate.

Defendants’ Marketing and Sale of Services to Fix Consumers’ Credit

109. The Telemarketing Sales Rule prohibits telemarketers and sellers from “[r]equesting or receiving payment” upfront for “goods or services represented to

remove derogatory information from, or improve, a person's credit history, credit record, or credit rating.”

110. On behalf of consumers, Lexington Law and CreditRepair.com initiate disputes with furnishers and consumer reporting agencies related to tradelines appearing on consumers' credit reports.

111. Progrexion markets Lexington Law and CreditRepair.com as providing services that will assist consumers in removing derogatory information from, or improving, the consumers' credit history, credit record, or credit rating.

112. For example, at various times since July 21, 2011, the Lexington Law website included the following representations:

- a. “If questionable negative items are hurting your credit, removing them can improve your score. Here's how we do it:
 1. ANALYZE
We work with you to identify any questionable negative items hurting your score.
 2. ADDRESS
We challenge those negative items with the bureaus and your creditors.
 3. ACCELERATE
We keep the process going, helping you reach your credit goals.”
- b. “Lexington Law is here to help you meet your credit score goals. No matter your credit history and financial standing, our credit repair services are designed to help you improve your credit score”;

- c. “Lexington Law’s lawyers have the knowledge and tools to start fixing your credit score by working to remove inaccurate items on your report”;
- d. “**Our results prove it can be done.** From late payments to charge-offs to bankruptcies, our firms [sic] clients have improved their credit, by removing practically every type of questionable negative item” (bolded language in larger font type on the website);
- e. “**Ask for professional help:** If you want to dramatically improve your credit standing — ultimately leading to approval for bigger loans with better terms — consider asking a professional. You can considerably improve your financial standing with the right help”; and
- f. “Lexington Law has developed tools and strategies that have proven to be effective at removing unfair, inaccurate, and unsubstantiated negative items.”

113. Other examples are found in Lexington Law’s advertisements published online at various times since July 21, 2011, such as:

- a. “Need Credit Repair Help? Lexington Law can help you remove negative items on your credit reports. . . . Lexington Law | Trusted Leaders in Credit Repair.”
- b. “Credit not where you need it to be? . . . Fix Your Bad Credit. Lexington

Law® has assisted over 500,000 clients with their credit profile.”

- c. “40 POINTS ON YOUR CREDIT COULD COST YOU \$40,000 ON A 30-YEAR MORTGAGE. Challenge questionable items with bureaus . . . TRUSTED LEADERS IN CREDIT REPAIR FOR A REASON.”

114. Another Lexington Law advertisement published online in at least January 2019 stated:



The advertisement is a dark blue rectangular graphic. At the top, it features a light blue rectangular redaction box followed by the text: ", you may be able to remove 5 of your 9 negative items on your Credit Report*". Below this text is a green rounded rectangular button with the text "Learn More". Underneath the button is the Lexington Law logo, which consists of a stylized white icon of a hand or a building, followed by the text "Lexington Law®". At the bottom of the graphic, the text "Call Now for a FREE Consultation" is displayed above the phone number "844-713-4411". At the very bottom, in smaller white text, is a disclaimer: "*On average, Credit Sesame users who signed up with Lexington Law removed 60% of their existing collections."

115. Another Lexington Law advertisement published online in at least January 2019 stated:

LexingtonLaw. Tap to Call

How much will a negative item hurt my credit score?

According to CreditCards.com and CNNMoney, even a single negative on your credit could cost you over 100 points.

NEGATIVE ITEM	SCORE DECREASE
Late payment	up to 110 points
Debt settlement	up to 125 points
Foreclosure	up to 160 points
Bankruptcy	up to 240 points
Collection	up to 110 points
Hard inquiry	up to 15 points

Negative items on your credit could cost you thousands of dollars in higher interest rates, or you could be denied altogether.

Lexington Law can help
Call 1-844-868-2710

116. Another Lexington Law advertisement published online in at least January 2019 stated:

Credit Report

Your Credit Score: **760**

Credit Score Range: **Excellent**

Credit Score Grades: **A+**, **A+**

Payment History - 35% of Score

Debt Usage - 30% of Score

Age - 15% of Score

Lexington Law® Firm

Repair Your Credit Report

Free Credit Report Summary. Call Us To Start Repairing Your Credit!

117. At various times since July 21, 2011, CreditRepair.com's services were marketed as follows:

- a. "We work with the credit bureaus and your creditors to challenge the unfair or inaccurate negative report items that affect your credit score This can all help to fix your credit";
- b. "CreditRepair.com will help you challenge the negative items on credit reports with the intention of getting them removed";
- c. "Our credit repair services help to fix your credit report";
- d. "Previous members have seen an average 40 point TransUnion credit score gain during four months of membership";
- e. "CreditRepair.com Averages 11.6 removals in 4 months";
- f. "TURN A HIGH CREDIT SCORE INTO A LOW MORTGAGE RATE. IMPROVE YOUR CREDIT SCORE AND QUALIFY FOR A LOW INTEREST MORTGAGE THAT FITS YOUR NEEDS"; and
- g. "Not Sure What to Do About Bad Credit? Let us help guide the way. You don't have to live with bad credit and high interest rates. Take advantage of our knowledge, experience, and advanced technology, and we'll help you create a personal game plan to help you repair your credit. Call 1-844-372-1974 to get started. Sign Up Today! Our System is Proven and It Works."

118. One CreditRepair.com advertisement published online in at least August 2018 stated:



119. During telemarketing calls, Progrexion and its marketing affiliates make additional representations that their credit repair services will result in the removal of derogatory tradelines from credit reports or improvements to the consumer’s credit rating.

120. For example, one Progrexion telemarketing script from 2012 says: “. . . our service includes an array of letters with your creditors . . . designed to persuade your creditors to remove items;” and “[we] will analyze your credit reports . . . and show specific ways you can improve your credit” The script tells consumers:

You can see that your credit score can have dramatic effects on your life. Your credit score is comprised solely from the information found in your credit report. In other words, if you want to improve your score, you have to improve your credit report.

The script also asks the consumer: “[h]ow would your life be different in a year from now with good credit?”

121. In an audio recording of a telemarketing call from May 2016, a Progrexion agent told a consumer “we assist our clients with cleaning up their credit reports completely by working on getting every single negative item, amount, and remark completely deleted off their reports altogether. It is what we do best. In other words, credit repair.”

Illegal Upfront Fees for Telemarketed Credit Repair Services

122. The Telemarketing Sales Rule states that fees for telemarketed “goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating” cannot be charged until the time frame in which the seller has represented all of the goods or services will be provided to that person has expired and the seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved.

123. At the time of enrollment with Lexington Law or CreditRepair.com, Progrexion charges consumers a fee, which has been between \$9.99 and \$14.99 since July 2011, for a complete copy of their TransUnion credit report.

124. Consumers are told that paying this fee is necessary to begin the credit repair process.

125. After enrolling with Lexington Law or CreditRepair.com, consumers are then charged their first credit repair service work fee, typically \$99.95, five to fifteen days after enrollment.

126. Consumers are then charged ongoing monthly fees by Progrexion and Heath PLLC for their credit repair services of \$79.95 to \$129.95, depending on the service level the consumer chooses.

127. Heath PLLC and Progrexion request and receive these fees from consumers prior to providing consumers with documentation, in the form of a consumer report from a consumer reporting agency, demonstrating that the promised credit repair results have been achieved, such report having been issued more than six months after the results were achieved.

128. Heath PLLC and Progrexion continue to charge monthly fees until consumers affirmatively cancel their Lexington Law or CreditRepair.com contracts.

COUNT I

The Progexion Defendants and Heath PLLC Charged Advance Fees for Credit Repair Services in Violation of the TSR

129. The Bureau re-alleges and incorporates by reference Paragraphs 1-128.

130. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, until:

- a. The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
- b. The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. 16 C.F.R. § 310.4(a)(2).

131. The Progexion Defendants and Heath PLLC are sellers and the Progexion Defendants are telemarketers under the TSR. 16 C.F.R. § 310.2(dd), (ff).

132. The Progexion Defendants' and Heath PLLC's credit repair services are represented to consumers as services to remove derogatory information from, or improve, the consumers' credit histories, credit reports, or credit ratings.

133. Progrexion Defendants and Heath PLLC routinely requested and received payment of a fee or consideration for their credit repair services before:

- a. The time frame in which they represented all of their goods or services would be provided to the consumer expired; or
- b. They provided the consumer with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results were achieved, such report having been issued more than six months after the results were achieved.

134. Therefore, the Progrexion Defendants' and Heath PLLC's conduct constitutes abusive telemarketing acts or practices in violation of 16 C.F.R. § 310.4(a)(2).

COUNT II
The Progrexion Defendants Engaged in Deceptive Acts
or Practices in Violation of the CFPA

135. The Bureau re-alleges and incorporates by reference Paragraphs 1-128.

136. It is unlawful for any covered person or service provider to engage in a deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

137. The Progrexion Defendants are covered persons, service providers, or both,

under the CFPA. 12 U.S.C. § 5481(6), (26).

138. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Lexington Law and CreditRepair.com credit repair services, the Progrexion Defendants, directly or through at least one affiliate, acting on Progrexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the affiliate, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

139. In truth and in fact:

- a. The advertised product or service was not available through the affiliate; or
- b. Neither Progrexion nor the affiliate had a reasonable basis for representing that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan

or rent-to-own housing contract.

140. These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

141. The Progexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by at least one affiliate.

142. Despite this knowledge, the Progexion Defendants continued to sign up consumers through the affiliate or participated in the affiliate's deceptive conduct.

143. Therefore, the representations as set forth in Paragraph 138 of this Complaint are false and misleading, and constitute deceptive acts or practices in violation of 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

COUNT III

The Progexion Defendants Made False or Misleading Statements to Induce Another Person to Pay for Goods or Services in Violation of the TSR

144. The Bureau re-alleges and incorporates by reference Paragraphs 1-128.

145. It is a deceptive telemarketing act or practice and a violation of the TSR for a seller or telemarketer to make a false or misleading statement to induce another person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

146. The Progexion Defendants are telemarketers, sellers, or both, under the

TSR. 16 C.F.R. § 310.2(dd), (ff).

147. In connection with the telemarketing of Lexington Law and CreditRepair.com credit repair services, the Progrexion Defendants, directly or through at least one affiliate, acting on Progrexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the affiliate, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

148. In truth and in fact:

- a. The advertised product or service was not available through the affiliate; or
- b. Neither Progrexion nor the affiliate had a reasonable basis for representing that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

149. These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

150. The Progrexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by at least one affiliate.

151. Despite this knowledge, the Progrexion Defendants continued to sign up consumers through the affiliate or participated in the affiliate's deceptive conduct.

152. Therefore, the representations as set forth in Paragraph 147 of this Complaint are false and misleading, and constitute deceptive telemarketing acts or practices in violation of 16 C.F.R. § 310.3(a)(4).

COUNT IV

The Progrexion Defendants Violated the CFPA by Substantially Assisting a Covered Person Engaged in Deceptive Acts or Practices

153. The Bureau re-alleges and incorporates by reference Paragraphs 1-128.

154. It is unlawful for any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of 12 U.S.C. § 5531. 12 U.S.C. § 5536(a)(3).

155. At least one of the Progrexion Defendants' affiliates, HSP1, was, at all times relevant to this Complaint, a "covered person," as that term is defined by 12 U.S.C.

§ 5481(6)(A), because it offered or provided financial products or services for use by consumers primarily for personal, family, or household purposes, or that were delivered, offered, or provided in connection with such a product or service. The products or services HSP1 offered or provided included consumer credit, including mortgages; financial advisory services, including credit counseling; and services relating to consumer report information, including credit repair services. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

156. At least one of the Progrexion Defendants' affiliates, HSP1, was also, at all times relevant to this Complaint, a "service provider" to a covered person as that term is defined by 12 U.S.C. § 5481(26), because it provided material services to one or more covered persons, including Progrexion.

157. At all times relevant to this Complaint, at least one affiliate, HSP1, engaged in deceptive acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service. These misrepresentations have been material and likely to mislead consumers acting reasonably under the circumstances.

158. The Progrexion Defendants provided substantial assistance to at least one

affiliate, HSP1, including by providing advice and content for the affiliate's telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the affiliate and Progrexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

159. The Progrexion Defendants had the requisite knowledge of or reckless disregard for the deceptive conduct described in Paragraph 157.

160. Therefore, the Progrexion Defendants violated 12 U.S.C. § 5536(a)(3).

COUNT V

The Progrexion Defendants Assisted and Facilitated Violations of the TSR

161. The Bureau re-alleges and incorporates by reference Paragraphs 1-128.

162. It is a deceptive telemarketing act or practice and a violation of the TSR for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 16 C.F.R. §§ 310.3(a), (c), (d), or 310.4. 16 C.F.R. § 310.3(b).

163. At least one of the Progrexion Defendants' affiliates, HSP1, was, at all times relevant to this Complaint, a "telemarketer," as that term is defined by 16 C.F.R. § 310.2(ff), that was offering or providing consumer financial products or services, including consumer credit, financial advisory services, or services relating to

consumer report information. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

164. At all times relevant to this Complaint, at least one affiliate, HSP1, made false or misleading statements to induce another person to pay for goods or services in violation of the TSR, 16 C.F.R. § 310.3(a)(4), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service.

165. The Progrexion Defendants provided substantial assistance or support to at least one affiliate, HSP1, including by providing advice and content for the affiliate's telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the affiliate and Progrexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

166. The Progrexion Defendants provided substantial assistance or support to at least one affiliate telemarketer, HSP1, when the Progrexion Defendants knew or consciously avoided knowing that the affiliate made false or misleading statements to induce consumers to pay for goods and services, in violation of the TSR, 16 C.F.R. § 310.3(a)(4).

167. Therefore, the Progrexion Defendants violated 16 C.F.R. § 310.3(b).

THIS COURT'S POWER TO GRANT RELIEF

168. The CFPA empowers this Court to grant any appropriate legal or equitable relief including, without limitation, a permanent or temporary injunction, rescission or reformation of contracts, the refund of monies paid, restitution, disgorgement or compensation for unjust enrichment, damages, and monetary relief, including but not limited to civil money penalties, to prevent and remedy any violation of any provision of law enforced by the Bureau. 12 U.S.C. §§ 5564(a), 5565.

PRAYER FOR RELIEF

169. The Bureau requests that the Court, as permitted by 12 U.S.C. § 5565:
- a. Impose appropriate injunctive relief against the Progrexion Defendants for their violations of the CFPA and the TSR and other provisions of Federal consumer financial law as defined by 12 U.S.C. § 5481(14);
 - b. Impose appropriate injunctive relief against Heath PLLC for its violations of the TSR;
 - c. Grant additional injunctive relief as the Court may deem to be just and proper;
 - d. Award monetary relief, including, but not limited to, rescission or reformation of contracts; the refund of monies paid; restitution;

- disgorgement or compensation for unjust enrichment; and payment of damages;
- e. Award Plaintiff civil money penalties;
 - f. Award Plaintiff the costs of bringing this action; and
 - g. Award such other and additional relief as the Court may determine to be just and proper.

Dated: May 2, 2019

Respectfully submitted,

KRISTEN DONOGHUE
Enforcement Director

DAVID RUBENSTEIN
Deputy Enforcement Director

CYNTHIA GOOEN LESSER
Assistant Deputy Enforcement Director

/s/ Maureen McOwen
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*Attorneys for Plaintiff Bureau of
Consumer Financial Protection*

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552



January 21, 2020

Via Process Server to Registered Agent and Overnight Mail to OLP.Com, Inc.

OLP.Com, Inc.
c/o Kurt Antecona, Registered Agent
3717 Apalachee Pkwy, Ste. 201
Tallahassee, FL 32311

Re: *Bureau of Consumer Financial Protection v. Progrexion Marketing, et al.*, Case No. 2:19-cv-00298-BSJ (D. Utah)

To Whom It May Concern:

Please find enclosed a subpoena issued to OLP.Com, Inc. (the Company) by the Bureau of Consumer Financial Protection (Bureau) pursuant to Rule 45 of the Federal Rules of Civil Procedure in the matter *Bureau of Consumer Financial Protection Bureau v. Progrexion Marketing*, 2:19-cv-00298-BSJ (D. Utah).

The subpoena package includes a copy of District of Utah Local Civil Rule 37-1 (DUCivR 37-1); instructions, definitions, and document requests from the Bureau; the protective order that currently governs this litigation; ESI specifications; and a declaration of business records. We ask that the Company complete the declaration and return it with the production of documents in order to authenticate the records. Doing so may obviate a need to call a custodian of records to testify at trial or in a deposition as to the authenticity of the records produced.

The subpoena calls for documents to be produced to the Bureau on or before February 20, 2020. Please contact me as soon as possible if you have any questions. My telephone number is (202) 435-9202.

Thank you for your prompt attention to this matter.

Sincerely,

Jonathan Reischl
Enforcement Attorney

Attachment
Subpoena to OLP.Com, Inc.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Utah

Bureau of Consumer Financial Protection

Plaintiff

v.

Progrexion Marketing, et al.

Defendant

Civil Action No. 2:19-cv-00298-BSJ

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: OLP.Com, Inc.

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit 1

Place: 1700 G Street NW, Washington, DC 20552 or contact Plaintiff's counsel for an address within 100 miles of your location
Date and Time: Feb. 20, 2020, 4:00pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/21/2020

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Bureau of Consumer Financial Protection

_____, who issues or requests this subpoena, are:
Jonathan Reischl, 1700 G Street NW, Washington, DC 20552, jonathan.reischl@cfpb.gov, (202) 435-9202

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:19-cv-00298-BSJ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A)** within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i)** is a party or a party's officer; or
 - (ii)** is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A)** production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B)** inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i)** At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i)** fails to allow a reasonable time to comply;
- (ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv)** subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i)** disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii)** ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i)** expressly make the claim; and
- (ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

District of Utah Civil Rules

DUCivR 37-1 DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO MAGISTRATE JUDGE

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the response(s) thereto, and specifying why those responses/objections are inadequate, and;

(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also email chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

(6) The opposing party must file its response five business days¹ after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

¹ This provision is not subjected to the addition of three (3) days provided by Fed. R. Civ. P. (6)(d).

Motions

Start typing to find another event.

Available Events (click to select events)	Selected Events (click to remove events)
Dismiss Case as Frivolous	Disqualify Judge
Dismiss Party	Expedite
Dismiss for Failure to State a Claim	
Dismiss/Lack of Jurisdiction	
Dismiss/Lack of Prosecution	
Disqualify Counsel	
Disqualify Judge	
Disqualify Juror	
Enforce	
Enforce IRS Summons	
Enforce Judgment	
Entry of Default	
Entry of Judgment	
Exclude	
Expedite	

Next Clear

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. [DUCivR 72-3](#) continues to govern the handling of objections.

Exhibit 1

INSTRUCTIONS

1. If, in responding to this subpoena, you encounter any ambiguities when construing a Definition or a Request for Production below, the response shall set forth the matter deemed ambiguous and the construction used in responding.

2. If you are asked to identify or produce a document that you deem to be properly withheld from production for inspection or copying:

a. If you are withholding the document under claim of privilege (including the work product doctrine), provide the information set forth in Federal Rule of Civil Procedure 26(b)(5), including the privilege or protection being claimed, the type of document, the general subject matter of the document, the date of the document, and such other information as is sufficient to identify the document, including the author, custodian, addressee, and any other recipient of the document, in a manner that, without revealing the information claimed to be protected, will enable the Bureau to assess the applicability of the privilege or protection that you are claiming.

b. If you are withholding the document for any other reason, state the reason with respect to each document so withheld and provide the information requested in Paragraph 2.a above as

well as any other information necessary to support your claim that withholding the document is justified and to enable the Bureau to assess the reasons that you are withholding the document.

3. If a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. When a document has been redacted based on an assertion of privilege, provide the information set forth in paragraph 2.a above as to the information that has been redacted. Any redaction must be marked as such on the face of the redacted documents.

4. If you object to production of any requested document(s) on the grounds that production is unduly burdensome, describe with particularity the burden or expense of the proposed discovery with respect to each category of document(s) to which you are lodging an objection so as to enable the Bureau to assess the appropriateness of the objection.

5. The time period for all Requests for Production is July 21, 2011 to the present.

6. The present tense shall be construed to include the past and future tenses, and the past tense shall be construed to include the present and future tenses, in order to bring within the scope of any request below all information that

otherwise might be construed to be outside the scope of the request.

7. The singular shall be construed to include the plural, and the plural shall be construed to include the singular, and all forms thereof (e.g., participles and infinitives) shall be construed to include each other in order to bring within the scope of any request below all information that otherwise might be construed to be outside the scope of the request.

8. If any material called for by this subpoena contains sensitive personally identifiable information or sensitive health information of any individual, please contact Enforcement Attorney Jonathan Reischl at 202-435-9202 before sending this material to discuss ways to protect such information during the production of the material to the Bureau. The Bureau expects that you will encrypt electronic copies of such material, such as with BitLocker encryption software. The Bureau also expects that, when submitting encrypted material, you will provide the encryption key, certificate, or passcode in a separate communication.

9. The Protective Order that currently governs this action is attached as Exhibit 2.

10. If there are no documents responsive to any request below, provide a written response so stating.

11. Please produce electronic or electronically stored documents according to the ESI Specifications attached as Exhibit 3. If any of the information

requested in this subpoena is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or, punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or a record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address, and telephone number of each person who is familiar with the program.

12. Please produce the documents responsive to this subpoena via FedEx or UPS to the following address: Consumer Financial Protection Bureau, 1700 G Street NW, Attn: Elizabeth Rosario, Washington, DC 20552. Alternatively, please contact Enforcement Attorney Jonathan Reischl at 202-435-9202 to receive instructions for delivering the material to an address within 100 miles of your location.

13. Attached as Exhibit 4 is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Declaration and provide it with your response.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in this Subpoena is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in this subpoena, the following terms shall be interpreted in accordance with these definitions:

1. “Advertisement” means any written or verbal statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in the purchasing or acquisition of goods or services, whether it appears in, on, or over the Internet, email, radio, television, paper, text message, telephone, or any other medium.¹

2. “Affiliate” means any person that participates in a joint, integrated, or connected marketing, advertising, or customer acquisition campaign, informally or subject to a contract or agreement, including those with whom you share consumer information, leads, or direct access.

3. “And,” as well as “or,” shall be construed both conjunctively and

¹ As used in these requests, Advertisement should be understood to mean an exemplar of each materially different advertisement; the Bureau is not seeking production of every email or phone call that contained duplicative copies of the same advertisements. The word Advertisement should be understood to include recorded marketing messages played to Consumers over the phone, but to exclude interactive telephone conversations. Advertisement should also be understood to include pre-determined marketing messages sent by email or social media, but to exclude unique, interactive email conversations with Consumers.

disjunctively, as necessary, in order to bring within the scope of any request below all information that otherwise might be construed to be outside the scope of the request.

4. “Any” shall be construed to include “all,” and “all” shall be construed to include the word “any.”

5. “Bureau” means the Bureau of Consumer Financial Protection, a/k/a the Consumer Financial Protection Bureau.

6. “Communication” means the transmittal of information by any means, including emails, electronic instant messages, PowerPoint presentations, written reports, letters sent by courier or postal mail, faxes, meeting agendas, meeting minutes, and documents posted to an intranet or extranet. Communications are a subset of documents, and accordingly a request for documents shall be deemed to encompass communications.

7. “Company” means OLP.Com, Inc. and Rocket Daddy, Inc., d/b/a One Loan Place, and their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, and operations under assumed names, and all principals, directors, officers, owners, employees, agents, representatives, consultants, attorneys, accountants, independent contractors, and other persons working for or on behalf of the foregoing.

8. “Consumer” means an individual or an agent, trustee, or

representative acting on behalf of an individual. 12 U.S.C. § 5481(4).

9. “CreditRepair.com” means CreditRepair.com, Inc., as well as its predecessors in interest and successors in interest.

10. “Customer” means any person who is or may be required to pay for goods or services offered through telemarketing. 16 C.F.R. § 310.2(n).

11. “Direct Transfer” means the transfer of a Consumer during a phone call from the Company or its agent to Lexington Law, CreditRepair.com, Progrexion, or their agents.

12. “Document” is defined to be synonymous in meaning and equal in scope to both the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A) and “tangible things” in Federal Rule of Civil Procedure 34(a)(1)(B). A draft or non-identical copy is a separate document within the meaning of this term.

13. “Each” shall be construed to include “every,” and “every” shall be construed to include “each.”

14. “Including” means including but not limited to.

15. “Lexington Law” means John C. Heath, Attorney at Law, PLLC, d/b/a Lexington Law Firm and or Lexington Law, as well as its predecessors in interest and successors in interest.

16. “Progrexion” means PGX Holdings, Inc., Progrexion Holdings, Inc.,

Progrexion ASG, Inc., Progrexion IP, Inc., Progrexion Marketing, Inc., Progrexion Teleservices, Inc., efolks, LLC, and CreditRepair.com, Inc., as well their wholly-owned subsidiaries, predecessors in interest, and successors in interest.

17. “Person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, governmental agency or entity, or other entity.

18. “Relating to” means discussing, identifying, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, comprising, showing, setting forth, considering, recommending, concerning, explaining, referring to, or pertaining to, in whole or in part.

19. “Relevant Telemarketing” means Telemarketing conducted, in whole or in part, for the purpose of generating leads, transfers, sales, or interest in credit repair services, including services provided under the brand names Lexington Law and CreditRepair.com.

20. “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller;

includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit Customers by telephone but only receives calls initiated by Customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the Customer with information about, or attempting to sell, any other item included in the same catalog which prompted the Customer’s call or in a substantially similar catalog. 16 C.F.R. § 310.2(gg).

21. “Training Materials” means manuals, guides, policies, procedures, guidance, scripts, frequently asked questions, talking points, best practices, rules, and other instructions provided to telephone agents.

22. “Transferred Credit Repair Customer” means a Consumer who enrolled in Lexington Law or CreditRepair.com services after being transferred or referred from or by the Company, including any Consumer for whom the Company was compensated in connection with that Consumer’s enrollment in Lexington Law or CreditRepair.com services.

23. “You” or “Your” means the Company.

REQUESTS FOR PRODUCTION

1. Documents or data sufficient to show, for each Transferred Credit Repair Customer:

- a. Customer name;
- b. Customer address;
- c. Customer telephone number;
- d. Date of transfer;
- e. Credit repair brand enrolled with (i.e., Lexington Law or CreditRepair.com);
- f. Progexion campaign identification number;
- g. Source of Customer lead;
- h. Agent identification number;
- i. Product or service You advertised, marketed, offered, or provided to Customer; and
- j. Amount of payment You received as a result of Customer's enrollment with Lexington Law or CreditRepair.com.

The Bureau expressly requests that the material responsive to this request be produced as structured, electronic data, to the extent it exists in that format within Your possession, custody, or control.

2. Documents sufficient to show the amount and the date of all payments received from Lexington Law or Progexion, and the reason for each such payment.

3. All quarterly or annual financial statements for the Company, including audited financial statements and accompanying notes, if available.

4. All communications between the Company and Lexington Law or Progexion.

5. All documents relating to any potential or actual terms, provisions, or requirements of any contract or agreement between You and Lexington Law or Progexion, relating to the marketing of credit repair, improvement, education, or

monitoring services, including the contracts and agreements themselves; all amendments or modifications thereto; all documents relating to any proposal or request to alter, modify, or waive the terms, provisions, or requirements of any such contract or agreement, and all responses to such requests; and all documents seeking or providing guidance or clarification with respect to the terms, provisions, or requirements of any such contract or agreement.

6. All documents relating to any discussion, evaluation, analysis, or dispute relating to any party's performance or failure to perform under any contract or agreement produced in response to Request No. 5, including all documents relating to any instruction, guidance, or advice from Lexington Law or Progrexion relating to any party's performance; any notices of breach; any response to any notice of breach; and all documents relating to party's actual or alleged violation or failure to comply with any term, provision, or requirement of any such contract or agreement.

7. All documents relating to any evaluation, auditing, monitoring, oversight, due diligence, quality assurance, or compliance review undertaken by Lexington Law or Progrexion relating to any aspect of Your marketing, including Your marketing of credit repair, improvement, education, or monitoring services, including any audit or compliance review, due diligence, or evaluation performed prior to entering into a contract or agreement with Lexington Law or Progrexion.

8. All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval, recommendation, or critique from Lexington Law or Progrexion (including any policies, procedures, or model language created or issued by Lexington Law or Progrexion) relating to Your Telemarketing activities, including any scripts used in Your Telemarketing, and all related communications.

9. All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval, recommendation, or critique from Lexington Law or Progrexion (including any policies, procedures, model language, or advertising copy and materials created or issued by Lexington Law or Progrexion) relating to Your marketing activities, including any offers used in Your marketing, and all related communications.

10. All documents constituting and describing the Company's business plans, business strategies, and business models related to acquiring consumer information and generating revenue through lead generation or referrals, including those provided to other marketing partners or affiliates, potential marketing partners or affiliates, or Cost Per Action (CPA) networks.

11. All Consumer complaints regarding the Company's products, services, marketing, or the products and services provided by any marketing

partner or affiliate, including Lexington Law or Progrexion, and all responses, documents, or communications related to those complaints.

12. A copy of each different Advertisement, including any content placed on third-party platforms (including, for example, Craigslist) or social-media sites, that references Lexington Law, CreditRepair.com, credit repair, credit improvement, removal of items from a credit report or record, credit monitoring, or the acquisition of a credit score.

13. A copy of each different Advertisement, including any content placed on third-party platforms (including, for example, Oodle or Advertigo) or social-media sites, that was used, in whole or in part, to attract Consumers or acquire leads in connection with Relevant Telemarketing.

14. A copy of each version of each website used by the Company to market any product or service offered by the Company, Progrexion, or Lexington Law.

15. Documents sufficient to identify all Facebook pages maintained, managed, or used by the Company to promote its products or services.

16. A chronological printout of all Company Facebook posts, including the date, time, and author of each post, for each of the Facebook pages identified in Request No. 15.

17. Documents sufficient to identify all Craigslist accounts maintained,

used, or managed by the Company.

18. A chronological printout of all ads posted by each of the Craigslist accounts identified in Request No. 17.

19. All Training Materials, including scripts, used in connection with Relevant Telemarketing.

20. All recordings, notes, or other documents memorializing phone calls with Consumers that resulted in Direct Transfers, including all recordings, notes, or other documents memorializing each Direct Transfer.

21. All agreements, contracts, or memoranda related to a common interest privilege, joint defense privilege, or other privilege applicable to communications between You and Progrexion and/or Lexington Law, including, but not limited to, any common interest agreement or joint defense agreement.

22. Documents sufficient to substantiate the following representation made in Company scripts: “They are credit analysts and have the legal ability to remove any questionable negative items on your credit report such as late payments, collections, and charge-offs.”

23. Documents sufficient to identify all lenders described in any Company telemarketing script as “our lenders.”

24. Documents sufficient to show the business relationship between the Company and each lender referred to in any Company telemarketing script as “our

lenders,” including the nature of the relationship and all terms of any contracts or agreements between the Company and the lender.

25. Documents sufficient to substantiate the following representation made in Company scripts: “our lenders move very quickly, assuming an approval today, you could receive your funds as early as tomorrow.”

26. Documents sufficient to show how many Consumers were approved for a loan from one of “[Y]our lenders” on the same day the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

27. Documents sufficient to show how many Consumers received funds from one of “[Y]our lenders” on the day after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

28. Documents sufficient to show how many Consumers were approved for or received funds from one of “[Y]our lenders” any time after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

29. Documents sufficient to substantiate the following representation made in Company scripts: “By removing these negative items, it will allow us to come back and look to refinance you with a more conventional lender that offers

better rates and terms in the future.”

30. Documents sufficient to describe the Company’s process for “refinanc[ing] [a Consumer] with a more conventional lender” after the Consumer became a Lexington Law or CreditRepair.com Customer.

31. Documents sufficient to show how many Consumers the Company refinanced after the Consumer became a Lexington Law or CreditRepair.com Customer for each year since July 21, 2011.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____, Plaintiffs, vs. _____, Defendants.</p>	<p>STANDARD PROTECTIVE ORDER</p> <p>Civil No.</p> <p>Honorable</p> <p>Magistrate</p>
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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) For entities covered by the Health Insurance Portability and

Accountability Act of 1996 (“HIPAA”), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information. Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

- (1) names;
- (2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- (3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;
- (4) telephone numbers;
- (5) fax numbers;
- (6) electronic mail addresses;
- (7) social security numbers;
- (8) medical record numbers;

- (9) health plan beneficiary numbers;
- (10) account numbers;
- (11) certificate/license numbers;
- (12) vehicle identifiers and serial numbers, including license plate numbers;
- (13) device identifiers and serial numbers;
- (14) web universal resource locators (“URLs”);
- (15) internet protocol (“IP”) address numbers;
- (16) biometric identifiers, including finger and voice prints;
- (17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party’s PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party’s TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party’s counsel, are reasonably necessary for development and presentation of that party’s case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until seven (7) days after the executed Disclosure Agreement is served on the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall

move within seven (7) days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the Disclosure Agreement or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by

the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, "Qualified Recipient" means

- (a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation.

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that are served or filed include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must be appropriately designated pursuant to paragraphs 4(a) and (b) and governed by DUCivR 5-3.

(b) All documents, including attorney notes and abstracts, that contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL

INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts that are filed with the court and contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and filed in accordance with DUCivR 5-3.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation of a document or documents, stating with particularity the reasons for that request, and specifying the category to which the challenged document(s) should be de-designated. The producing party shall then have seven (7) days from the date of service of the request to:

- (i) advise the receiving parties whether or not it persists in such designation; and
- (ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within seven (7) days after service of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the request under subparagraph (b) above is responded to under subparagraph (b)(i) and (ii), within seven (7) days the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until

the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

- (i) the information in question has become available to the public through no violation of this Order; or
- (ii) the information was known to any receiving party prior to its receipt from the producing party; or
- (iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall

return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2
EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____, Plaintiffs, vs. _____, Defendant.</p>	<p>DISCLOSURE AGREEMENT Honorable Magistrate Judge</p>
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I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order)

(Describe: _____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to

any person not entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

Signed by Recipient

Name (printed)

Date: _____

Exhibit 3

Agreed Specifications for
Production of Documents and Electronically Stored Information
CFPB v. Progrexion Marketing et al., Case No. 19-cv-00298-BSJ (D. Utah)

A. Transmittal Instructions

(1) Cover Letter

A cover letter should be included with each production. The following information should be included in the letter:

- (a) Name of the party making the production and the date of the discovery request to which the submission is responsive;
- (b) List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production (refer to the media by the unique number assigned to it, see section A(3));
- (c) List of email custodians to the extent the production contains documents collected through agreed-upon ESI custodians and search terms; and
- (d) General description of the material contained in the production.

(2) Production Media

Data may be produced on CD, DVD, USB thumb drive, or hard drive.

- (a) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
 - i) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
 - ii) "MAY BE OPENED FOR POSTAL INSPECTION"
- (b) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
- (c) DVD-ROMs for Windows-compatible personal computers are acceptable;
- (d) USB 2.0 thumb drives for Windows compatible personal computers are acceptable;
- (e) USB 3.0 or USB 3.0/eSATA external hard drives, formatted in a Microsoft Windows –compatible file system (FAT32 or NTFS), uncompressed data are acceptable.

(3) Labels

Label all media with the following:

- (a) Case caption

- (b) Production date
- (c) Bates range
- (d) Disk number (1 of X), if applicable
- (e) Name of producing party
- (f) A unique production number

(4) Viruses

All productions must be produced free of computer viruses.

(5) Encryption

All produced media must be encrypted and/or password protected. The parties will discuss and agree upon acceptable encryption software. Data delivery should be encrypted at the disc level, and decryption keys should be provided separately via email or phone. Passwords for documents, files, and compressed archives including within the produced media should be provided separately either via email or in a separate cover letter from the data.

B. Delivery Formats

(1) General ESI Standards

All productions must follow the specifications outlined below:

De-duplication

De-duplication of documents should be applied across custodians (global); each custodian should be identified in the Custodian field in the metadata load file separated by semi-colon. The first name in the Custodian list should represent the original holder of the document.

Bates Numbering Documents

The Bates number must be a unique, sequential, consistently formatted identifier, i.e., an alpha prefix unique to each producing party along with a fixed length number, i.e., ABC0000001. This format must remain consistent across all productions. There should be no space in between the prefix and the number. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should hyphens or other separators be added or deleted.

Document Retention / Preservation of Metadata

The recipient of a discovery request should use reasonable measures to maintain the original native source documents in a manner so as to preserve the metadata

associated with these electronic materials as it existed at the time of the original creation.

(2) Native and Image Production

In general, and subject to the specific instructions below:

- produce all documents as bates-labeled single-page TIFF images, except as otherwise specified in this paragraph. Produce PowerPoint files, Excel files, audio/video files, and other files that are not conducive to conversion to TIFF in their native format with a placeholder, bates-labeled TIFF image indicating the document has been produced in native format. Produce Word files that contain track changes or comments as bates-labeled single page TIFF images and in their native format. Produce emails as bates-labeled single-page TIFF images, with all attachments produced as they would be if they were standalone documents;
- unless following the Alternative Protocol for Paper Document Production as Adobe PDF Files, below, scan and process all paper documents into single-page TIFF images, OCR the images, and apply bates numbers to each page of the image;
- for every document produced, produce fully searchable document level text. When possible, text should be extracted from the native file. If a document has been redacted or does not contain text that can be extracted, OCR shall be provided;
- to the extent available, produce metadata in Table 2 for every produced document in a data file that conforms to the specific instructions below; and
- in the event that documents produced solely as TIFF images are illegible, contain translation errors, or are in any other way materially different from the native documents, the producing party shall, once notified by the receiving party, provide replacement documents in native format for the affected documents.

(a) Metadata File

All produced documents, regardless of their original file format, must be produced with the below-described metadata fields in a data file (.DAT).

- i) The first line of the .DAT file must be a header row identifying the field names.
- ii) The .DAT file must use the following default delimiters:

TABLE 1: DAT FILE DELIMITERS

Comma	,	ASCII character (020)
Quote	"	ASCII character (254)
Newline	Ⓜ	ASCII character (174)

- iii) Date fields should be provided in the format: mm/dd/yyyy
- iv) All attachments should sequentially follow the parent document/email.
- v) All documents shall be produced as bates-labeled single-page TIFF images, except as stated in Section B(2) above.
- vi) All documents produced in native format will provide a link to the original/native document in the NATIVELINK field.
- vii) Produce extracted metadata for each document, to the extent they are available, in the form of a .DAT file, and include these fields (fields should be listed but left blank if not applicable):

TABLE 2: DAT FILE FIELDS

Field Name	Description
Required Fields	
BATES_BEGIN	First Bates number of native file document/email
BATES_END	Last Bates number of native file document/email **The BATES_END field should be populated for single page documents/emails
ATTACH_BEGIN	First Bates number of attachment/family range
ATTACH_END	Last Bates number of attachment/family range
ATTACH_NAME	Populates parent records with original filenames of all attached records, separated by semi-colons.
PRIV	Indicate "YES" if document has a Privilege claim

RECORDTYPE	<p><u>Email</u>: Populate field as "E-Mail"</p> <p><u>Email Attachment</u>: Populate field as "Attachment (E-mail)"</p> <p><u>Loose Native</u>: Populate field as "E-Document"</p> <p><u>Other Attachment</u>: Populate field as "Attachment"</p> <p><u>Scanned Paper</u>: Populate field as "Paper"</p>
CUSTODIAN	<p>Individual(s) or department(s) from which the record originated</p> <p>**semi-colon should be used to separate multiple entries</p>
FILENAME	<p>Email: Filename of loose email or subject of non-loose email</p> <p>Non-email: original file name</p>
PGCOUNT	Number of pages in document/email
MD5HASH	The 32 digit value representing each unique document
SOURCE	<p>Email: Path to email container and email container name</p> <p>Non-email: Original path to source archive folder or files</p>
FOLDERPATH	<p>Email: Folder path within email container</p> <p>Non-email: Folder path to file</p>
DATE_CREATED	The date the electronic file was created
TIME_CREATED	The time the electronic file was created
DATE_MOD	Date an electronic file was last modified
TIME_MOD	Time an electronic file was last modified
PRINT_DATE	Date the document was last printed
PRINT_TIME	Time the document was last printed

FILE_SIZE	Size of native file document/email in KB
FILE_EXT	The file extension representing the email or native file document
AUTHOR	Email: (empty) Non-email: Author of the document
SUBJECT	Subject metadata from electronic files (non-email)
NATIVELINK	Hyperlink to the native file document **The linked file must be named per the BATES_BEGIN Number
TEXTPATH	Contains path to OCR/Extracted text file that is titled after the document BATES_BEGIN
CONFIDENTIALITY	Contains the confidentiality designation of the document pursuant to the Protective Order.
Additional Fields for Email Productions	
FROM	Sender of email
TO	Recipient(s) of email **semi-colon should be used to separate multiple entries
CC	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
EMAIL_SUBJECT	"Subject" line of the email
DATE_SENT	Date and time that the email message was sent.
DATE_RECVD	Date and time that the email message was received.
TIME_ZONE	Time Zone processed in
CONVERSATION_INDEX	Conversation thread ID/Index value
PARENT_ID	Populated only for email attachments, this field will display the Image Tag field value of the attachment record's parent.

(b) Document Text

Searchable text of the entire document must be provided for every record, at the document level.

- i) Extracted text must be provided for all documents that originated in electronic format. Note: Any document in which text cannot be extracted must be OCR'd.
- ii) For documents redacted on the basis of any privilege, provide the OCR text for unredacted/unprivileged portions.
- iii) The text should be delivered in the following method: As multi-page ASCII text files with the files named the same as the Bates_Begin field. Text files can be placed in a separate folder or included with the .TIFF files.

(c) Linked Native Files

Copies of native file documents/attachments identified above must be included for all electronic productions.

- i) Native file documents must be named per the BATES_BEGIN number (the original file name should be preserved and produced in the FILENAME metadata field).
- ii) The full path of the native file must be provided in the .DAT file in the NATIVELINK field.

(d) Images

- i) Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
- ii) File names should be titled per endorsed bates number.
- iii) Color should be preserved, including through use of .JPG files, when necessary to interpret the document.
- iv) Bates numbers should be endorsed on the lower right corner of all images.
- v) For documents partially redacted on the basis of any privilege, ensure the redaction box is clearly labeled "REDACTED".

(e) Image Cross Reference File

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

Field Title	Description
ImageID	The unique designation use to identify an image.
	<i>Note: This imageID key must be a unique and fixed length number. This number will be used in the.DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be an eight digit number to allow for the possible increase in the size of a production.</i>
VolumeLabel	Optional
ImageFilePath	The full path to the image file.
DocumentBreak	The letter “Y” denotes the first page of a document. If this field is blank, then the page is not the first page of a document.
FolderBreak	Leave empty
BoxBreak	Leave empty
PageCount	Optional

SAMPLE:

```

IMG0000001,OPTIONALVOLUMENAME,E:\001\IMG0000001.TIF,Y,,,3
IMG0000002,OPTIONALVOLUMENAME,E:\001\IMG0000002.TIF,,,,
IMG0000003,OPTIONALVOLUMENAME,E:\001\IMG0000003.TIF,,,,
IMG0000004,OPTIONALVOLUMENAME,E:\001\IMG0000004.TIF,Y,,,1
IMG0000005,OPTIONALVOLUMENAME,E:\001\IMG0000005.TIF,Y,,,2
IMG0000006,OPTIONALVOLUMENAME,E:\001\IMG0000006.TIF,,,,

```

(3) Alternative Protocol for Paper Document Production as Adobe PDF Files

Adobe PDF files may be produced in lieu of TIFF images for scanned paper productions, provided the following requirements are met:

- (a) PDF files should be produced in separate folders named by the Custodian.

- (b) All PDFs must be unitized at the document level. Each PDF should represent a discrete document; a single PDF cannot contain multiple documents.
- (c) All attachments should sequentially follow the parent document.
- (d) All PDF files must contain embedded text that includes all discernible words within the document, not selected text only. This requires all layers of the PDF to be flattened first.
- (e) If PDF files are Bates endorsed, the PDF files must be named by the Bates range.
- (f) Associated metadata must also be produced in accordance with the instructions above, including the metadata load file listed in 4.a.

(4) Transactional Data

If transactional data must be produced, further discussion must be had to ensure the intended export is properly composed. If available, a data dictionary should accompany the production, if unavailable; a description of fields should accompany transactional data productions. The following formats are acceptable:

- MS Access
- XML
- CSV
- TSV
- Excel

(5) Audio/Video/Electronic Phone Records

- (a) The Parties will work together to reach agreement on appropriate metadata fields and production format for audio files. At this time, the parties agree that audio files produced in the following format are acceptable:

- Nice Systems audio files (.aud). AUD files offer efficient compression and would be preferred over both NMF and WAV files.
- Nice Systems audio files (.nmf).
- WAV Files
- MP3, MP4
- WMA

- AIF

- (b) Video files must be produced in a format that is playable using Microsoft Windows Media Player along with any available metadata. If it is known that the video files do not contain associated audio, indicate this in the accompanying transmittal letter.

Types of video files accepted include:

- MPG
- AVI
- WMV
- MOV
- FLV

C. Production of Partially Privileged Documents

If a portion of any produced material is withheld based on a claim of privilege, those portions may be redacted from the produced material as long as the following conditions are met.

- (a) If originally stored as native electronic files, the image(s) of the unredacted portions are submitted in a way—to the extent feasible and if not unduly burdensome—that preserves the same appearance as the original without the redacted material (i.e., in a way that depicts the size and location of the redactions). The OCR text will be produced from the redacted image(s). Any redacted, privileged material should be clearly labeled to show the redactions on the tiff image(s). Any metadata not being withheld for privilege should be produced in the DAT file; any content (e.g., PowerPoint speaker notes, Word comments, Excel hidden rows, sheets or columns) contained within the native and not being withheld for privilege should be tiffed and included in the production.
- (b) In the instance that a party elects to natively redact a document that otherwise must be produced in its native format (e.g., Excel files), it will provide the redacted native format of the document along with the OCR'd text from the redacted file and original metadata associated with the document in Table 2, (i.e., metadata from the unredacted document), to the extent the metadata itself is not privileged or otherwise prohibited from disclosure.
- (c) If originally in hard copy form, the unredacted portions are submitted in a way that depicts the size and location of the redactions; for example, if all of the content on a particular page is privileged, a blank, sequentially numbered

page should be included in the production where the responsive material, had it not been privileged, would have been located.

Exhibit 4

**DECLARATION CERTIFYING RECORDS OF
REGULARLY CONDUCTED BUSINESS ACTIVITY**
Pursuant to 28 U.S.C. § 1746

I, _____, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by _____ as _____ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by OLP.Com, Inc., and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by OLP.Com, Inc., are true copies of records of regularly conducted activity that were:
 - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
 - b. kept in the course of the regularly conducted business activity; and
 - c. made by the regularly conducted business activity as a regular practice.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____.

Signature

Dudley, Sellers, Healy, Heath & Desmond

A Professional Limited Liability Company

Attorneys and Counselors at Law

3522 Thomasville Rd., Suite 301
Tallahassee, Florida 32309

David P. Healy, Esq.

E mail: dhealy@davidhealylaw.com
Main: 850.222.5400 Fax: 805.222.7339

February 4, 2020

Via Electronic Transmission & U.S. Mail
(jonathan.reischl@cfpb.gov)

Jonathan Reischl
Enforcement Attorney
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 32311

Re: *Bureau of Consumer Financial Protection Bureau v. Progrexion Marketing*, Case No 2:19-cv-00298-BSJ (D. Utah) (the “Lawsuit”); Response and Objections to Subpoena for Records Directed to OLP.com, Inc., a Florida corporation (“OLP.com”)

Dear Mr. Reischl:

I represent OLP.com. My client and I have the records subpoena that you caused to issue to OLP.com that is dated, and was served, on January 21 (the “Subpoena”). Pursuant to Fed. R. Civ. P. 45(d), this letter contains OLP’s responses and objections (both general and specific) to the Subpoena. As a result of them, OLP.com is not producing any documents or materials at this time.

General Background

According to the materials available to me online, CFPB commenced the Lawsuit on June 29, 2019 against lead Defendant Progrexion Marketing, Inc. and several affiliated entities. The Lawsuit generally alleges that Defendants improperly charged consumers certain fees related to Defendants’ credit repair services, or engaged in deceptive marketing or other unfair practices related to such services either directly or through one or more unidentified “affiliates.” OLP.com is not named in the Lawsuit and has not been charged with any wrongdoing.

The Subpoena through its 31 enumerated items or categories (collectively the “Requests”) directs my client’s production of extensive electronic and physical records and other information, with the relevant period for production purposes being defined as July 21, 2011 to January 21, 2020 (Subpoena Instruction No. 5). Moreover, I understand that the Subpoena is one of at least three records subpoenas that CFPB has caused to issue in the Lawsuit to alleged “affiliates” of one or more of the named Defendants.

Jonathan Reischl
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Defendants, however, have moved to dismiss the Lawsuit in its entirety, which motion was fully and extensively briefed by each side, was argued to the assigned district judge in December, and awaits a ruling. The motion to dismiss generally asserted that the pending complaint failed to state any viable cause of action for several reasons. Moreover, CFPB filed in the Lawsuit on October 21, 2019 its notice that the Supreme Court of the United States granted certiorari in *Seila Law, LLC v. CFPB* and will consider, among other things, the issue of whether CFPB is organized and acting in an unconstitutional manner.

Next, I understand that the parties in the Lawsuit have initiated limited discovery while the district court considers the pending motion to dismiss. I further understand that many of the items or materials now requested from OLP.com in the Subpoena were requested directly from one or more Defendants who then timely objected. Those objections have not been addressed or resolved by the district court.

Finally, CFPB should note that due to recent corporate reorganizations and down-sizings, OLP.com has dramatically shrunk to a mere fraction of its former size. Frankly, my client's ability to remain in business as a going concern is now in significant doubt. More particularly, the company at this point has few remaining officers and employees, with many former officers, employees or other agents having left the company over the past several months. All of this will significantly impact OLP.com's practical ability to respond to the Subpoena, to locate or retrieve any documents or information the company may be required to provide, and to then make any production.

General Objections Applicable to All Requests

The following objections and responses apply to each of the Requests and, as stated previously, in light of them OLP.com at this time will not be producing any documents, communications, materials or other information in response to the Subpoena:

(A) The time for OLP.com to respond to and comply with the Subpoena should be extended to a reasonable time until after the Utah district court issues its rulings with regard to Defendants' pending motion to dismiss so that the issues relevant to the Lawsuit, including any relevant periods of time, may be determined and, as appropriate, thereby limit the Subpoena's proper scope;

(B) The time for OLP.com to respond to and comply with the Subpoena should be extended to a reasonable time after Supreme Court of the United States issues its opinion in *Seila Law* on CFPB's constitutionality and, necessarily, its authority to cause the Subpoena to issue;

(C) To avoid undue burden and expense on OLP.com, CFPB should first be required to seek and then obtain directly from the Defendants any records or materials identified in the Requests from the Defendants, to the extent such materials are in the possession, custody or control of any of

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them. More particularly, the time for OLP.com to respond to and to comply with the Subpoena should be extended until a reasonable time after the Utah district court rules on any pending discovery disputes pending between the named parties to the Lawsuit, and until after CFPB reasonably certifies that documents, information or materials requested from OLP.com are unavailable from, or otherwise cannot be obtained via legal process, directly from any the Defendants;

(D) OLP.com objects to the Requests, and any Instructions or Definitions contained in the Subpoena, to the extent they alter or expand OLP.com's duties and responsibilities to respond or make production as is set forth at Fed. R. Civ. P. 45 or any other governing rule of procedure;

(E) OLP.com objects to the Subpoena's designated date, time and place of production. To the extent OLP.com agrees or is required to produce any documents or materials responsive to the Subpoena, such production will occur at a reasonable date, time and place, and in a reasonable manner, as agreed upon by the parties or as is otherwise ordered;

(F) The Subpoena's temporal scope for responsive materials is overly broad and burdensome, and also seeks documents, materials and information that are not relevant to the issues as framed in the Lawsuit;

(G) The Subpoena otherwise seeks documents, materials or other information that are overly broad;

(H) To the extent the Requests do seek relevant documents, materials or other information, the Requests either individually or collectively seek to impose an unreasonable burden on OLP.com, both in terms of time and expense of compliance, particularly when that burden is weighed against the likely benefit to the parties in the Lawsuit from what is being required or OLP.com;

(I) OLP.com objects to any of the Requests calling, either directly or indirectly, for the disclosure of communications or other documents and materials protected from involuntary disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege;

(J) OLP.com objects to any of the Requests' requirement that "any," "all" or "every" of the indicated documents and materials be produced when a more limited amount of such information would suffice. Such requests are overly broad, unduly burdensome, oppressive, and constitute an impermissible "blockbuster"-type request condemned by numerous federal courts. *See, e.g., Cook v. City of Dallas*, 2017 WL 9534098 at *9 (N.D. Tex. 2017); *Bat v. A.G. Edwards & Sons, Inc.*, 2005 WL 6776838 at *11 (D. Colo. 2005);

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(K) OLP.com objects to any of the Requests that require the company to prepare or compile documents or information in any particular manner or format to the extent that the documents or information does not already exist in records that OLP.com keeps, or that would otherwise impose an unreasonable burden on the company.

Additional Responses and Objections to Particular Requests

In addition to the General Objections, and without intending to waive or modify any of them, OLP.com further responds and objects to the following numbered Requests:

(L) Requests 3, 10, 19. These requests seeks documents and materials that are proprietary or confidential.

(M) Requests 22 through 31. CFPB has failed to provide OLP.com with any scripts, advertisements or other documents and materials that are the apparent focus of these requests sufficient to (i) identify the particular matters at issue in these requests, and (ii) that any statement or communication at issue is being properly attributed to OLP.com. These omissions render these requests impermissibly vague, burdensome and overly broad. Moreover, CFPB appears with these requests to be using the litigation subpoena power not to obtain documents and materials that are relevant to the Lawsuit but, instead, as a form of investigatory subpoena or “fishing expedition” related to some form of implicit investigation of OLP.com. CFPB, however, is not authorized to act in this manner.

Other Matters

OLP.com reserves the right to assert other objections and concerns related to the Subpoena. Moreover, after reviewing the Subpoena, it appears that CFPB has not sought “to avoid imposing undue burden or expense on the person subject to the subpoena,” in this instance OLP.com. *See Fed. R. Civ. P. 45(d)(1)*. OLP.com therefore reserves any right to seek an appropriate award of costs and attorney’s fees in the event CFPB seeks to enforce the Subpoena as drafted. *Id.*

I am generally available to discuss all of the foregoing.

Sincerely,

David P. Healy

David P. Healy

cc: W. Kyle Tayman (via Electronic Transmission)

From: [David Healy](#)
To: [Reischl, Jonathan \(CFPB\)](#)
Subject: RE: CFPB v. Progexion Marketing, et al.
Date: Tuesday, February 11, 2020 4:30:44 PM

Thank you for your email and, yes, I will be conferring with my client to obtain an affidavit or declaration addressing our side's pending burdensome objections.

But to expand somewhat on your email below regarding our call this morning, I understood this was merely to be an initial call to discuss, in general terms, your client's subpoena and our side's objections to it. I frankly was hoping to hear that your side, after considering those objections, would be willing to significantly narrow the Subpoena's scope to allow me to then meet with the client to see what could be provided in response to a slimmed-down subpoena. That unfortunately was not the case. Also, I was not asked to be prepared to discuss during this initial call the burdensome objection in any particular way or any of the other matters you note below and, for that reason, was not in a position to do so.

But, as you state, I will confer with my client regarding those matters in particular, provide a declaration or affidavit from the client to you, and then schedule a convenient time to discuss those issues in greater detail, along with our side's other pending objections which, as you have seen, include significant matters in addition to what we consider the burdensome nature of the Subpoena as it is currently drafted.

David P. Healy
Dudley, Sellers, Healy, Heath & Desmond, PLLC
SunTrust Financial Center
3522 Thomasville Rd., Suite 301
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dhealy@davidhealylaw.com

From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Tuesday, February 11, 2020 2:40 PM
To: David Healy <dhealy@davidhealylaw.com>
Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>
Subject: CFPB v. Progexion Marketing, et al.

Mr. Healy,

Thank you for your time this morning. We appreciate your willingness to speak with us regarding OLP.com's responses and objections to the Bureau's subpoena. As you noted on the call, you were

not yet prepared to provide specific information regarding the burden faced by your client in responding to the individual requests for production. However, you stated that you will be working with your client to provide an affidavit addressing these issues shortly. We look forward to your client's affidavit, which we hope will allow the Bureau to understand your client's specific organizational, data, and time constraints and any specific modifications your client is requesting in order to reduce its burden. As you are aware, issues of breadth and burden cannot be determined without a thorough understanding of the issues in the matter and "without knowing how the information is organized, how much there is, and where the information is kept." *Russell v. Fast Payday Loans, Inc.*, 2008 WL 11338347 at *1 (N.D. Fla. June 27, 2008). Please provide this needed detail in the affidavit.

Once the Bureau has this information, we look forward to meeting and conferring with you and your client about further tailoring the subpoena to reduce your client's burden. Likewise, the Bureau is open to discussing the least burdensome way to obtain the requested material and whether it can provide assistance with any data retrieval, processing, or storage in light of your indication that your client is thinly staffed.

We look forward to continuing our discussion regarding the subpoena. Please do not hesitate to reach out to me at any time.

Best regards,

Jonathan

Jonathan Reischl
Attorney | Office of Enforcement
Office: (202) 435-9202 | Mobile: (202) 308-3273

Consumer Financial Protection Bureau
[consumerfinance.gov](https://www.consumerfinance.gov)

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

Dudley, Sellers, Healy & Heath

A Professional Limited Liability Company

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E-mail: dhealy@davidhealylaw.com
Main: 850.222.5400 Fax: 805.222.7339

July 10, 2020

Via Electronic Transmission & U.S. Mail
(jonathan.reischl@cfpb.gov)

Jonathan Reischl
Enforcement Attorney
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 32311

Re: *Bureau of Consumer Financial Protection Bureau v. Progrexion Marketing*, Case No 2:19-cv-00298-BSJ (D. Utah) (the “Lawsuit”); Amended Responses and Objections to Subpoena for Records Directed to OLP.com, Inc., a Florida corporation (“OLP.com” or the “Company”)

Dear Mr. Reischl:

This letter will supplement OLP.com’s previous response to your client’s records subpoena dated January 21, 2020, that was the subject of my prior letter dated February 4. More particularly, my client in light of intervening events has withdrawn some of its prior objections while renewing or refining others. Also, my client will be making production of any responsive materials to which there is no pending objection.

General Background

According to the materials available to me online, CFPB commenced the Lawsuit on June 29, 2019, against lead Defendant Progrexion Marketing, Inc. and several affiliated entities, including Lexington Law. The Lawsuit generally alleges that Defendants improperly charged consumers certain fees related to Defendants’ credit repair services, or engaged in deceptive marketing or other unfair practices related to such services, either directly or through one or more unidentified “affiliates.” OLP.com is not expressly named in the Lawsuit and has not been charged with any wrongdoing.

The Subpoena through its 31 enumerated items or categories (collectively the “Requests”) directs my client’s production of extensive electronic and physical records and other information, with the relevant period for production purposes being defined as July 21, 2011 to January 21, 2020 (Subpoena Instruction No. 5). Moreover, I understand that the Subpoena is one of at least three records subpoenas that CFPB has caused to issue in the Lawsuit to alleged “affiliates” of one or more of the named Defendants.

Next, I understand that your client in discovery requests directed to one or more of the named Defendant has sought many of the same documents or materials, or the same categories of documents and materials, that are the subject of many of the Requests. Further, I understand that following Defendants' objections and resulting discovery motion practice, the district court overseeing the Lawsuit has significantly narrowed your client's ability to obtain many of these items from the defense. More particularly, I understand that the district court has significantly narrowed the temporal scope of many of similar or identical production requests directed to the Defendants, and has prohibited your client from seeking several items now sought in the Requests.

With the scope of relevant materials being thus limited, your client in our side's view is not permitted to seek discovery of materials from a third party such as OLP.com that could not be the subject of a proper discovery request directed to a named party. As you will see, this position is reflected in several of the responses to specific production requests contained in the Subpoena that follow our side's General Objections.

General Objections Applicable to All Requests

The following objections and responses apply to each of the Requests:

(A) OLP.com objects to the Requests, and any Instructions or Definitions contained in the Subpoena, to the extent they alter or expand the Company's duties and responsibilities to respond or make production as is set forth at Fed. R. Civ. P. 45, or any other governing rule of procedure;

(B) OLP.com objects to the Subpoena's designated date, time and place of production. To the extent OLP.com agrees or is required to produce any documents or materials responsive to the Subpoena, such production will occur at a reasonable date, time and place, and in a reasonable manner, as agreed upon by the parties or as is otherwise ordered;

(C) OLP.com objects to any of the Requests calling, either directly or indirectly, for the disclosure of communications or other documents and materials protected from involuntary disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege;

(D) OLP.com objects to any of the Requests' requirement that "any," "all" or "every" of the indicated documents and materials be produced when a more limited amount of such information would suffice. Such requests are overly broad, unduly burdensome, oppressive, and constitute an impermissible "blockbuster"-type request condemned by numerous federal courts. *See, e.g., Cook v. City of Dallas*, 2017 WL 9534098 at *9 (N.D. Tex. 2017); *Bat v. A.G. Edwards & Sons, Inc.*, 2005 WL 6776838 at *11 (D. Colo. 2005);

(E) OLP.com objects to any of the Requests that require the company to prepare or compile documents or information in any particular manner or format to the extent that the

Jonathan Reischl
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documents or information do not already exist in records that OLP.com keeps, or that would otherwise impose an unreasonable burden on the Company.

Additional Responses and Objections to Particular Requests

In addition to the General Objections, and without intending to waive or modify any of them, OLP.com further responds to, and objects as appropriate to, the following numbered Requests:

1. Documents or data sufficient to show, for each Transferred Credit Repair Customer:
 - a. Customer name;
 - b. Customer address;
 - c. Customer telephone number;
 - d. Date of transfer;
 - e. Credit repair brand enrolled with (i.e., Lexington Law or CreditRepair.com);
 - f. Progexion campaign identification number;
 - g. Source of Customer lead;
 - h. Agent identification number;
 - i. Product or service You advertised, marketed, offered, or provided to Customer; and
 - j. Amount of payment You received as a result of Customer's enrollment with Lexington Law or CreditRepair.com.

The Bureau expressly requests that the material responsive to this request be produced as structured, electronic data, to the extent it exists in that format within Your possession, custody, or control.

Response to Request No. 1: OLP.com objects to this Request as not being relevant because the district court in the Lawsuit has not required Defendants to respond to a similar request. Moreover, to the extent relevant, CFPB should first be required to obtain the information contained in the Request from the Defendants so as not to unduly burden OLP.com.

2. Documents sufficient to show the amount and the date of all payments received from Lexington Law or Progexion, and the reason for each such payment.

3. All quarterly or annual financial statements for the Company, including audited financial statements and accompanying notes, if available.

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4. All communications between the Company and Lexington Law or Progrexion.

Response to Requests 2, 3 and 4. OLP.com will produce any documents or materials in its possession, custody or control responsive these Requests, but only from January 1, 2017, the commencement of the period of time the district court determined was relevant, until January 21, 2020.

5. All documents relating to any potential or actual terms, provisions , or requirements of any contract or agreement between You and Lexington Law or Progrexion, relating to the marketing of credit repair, improvement, education, or monitoring services, including the contracts and agreements themselves; all amendments or modifications thereto; all documents relating to any proposal or request to alter, modify, or waive the terms, provisions , or requirements of any such contract or agreement, and all responses to such requests; and all documents seeking or providing guidance or clarification with respect to the terms, provisions , or requirements of any such contract or agreement.

6. All documents relating to any discussion, evaluation, analysis, or dispute relating to any party's performance or failure to perform under any contract or agreement produced in response to Request No. 5, including all documents relating to any instruction, guidance, or advice from Lexington Law or Progrexion relating to any party's performance; any notices of breach; any response to any notice of breach; and all documents relating to party's actual or alleged violation or failure to comply with any term, provision , or requirement of any such contract or agreement.

7. All documents relating to any evaluation, auditing, monitoring, oversight, due diligence, quality assurance, or compliance review undertaken by Lexington Law or Progrexion relating to any aspect of Your marketing, including Your marketing of credit repair, improvement , education, or monitoring services, including any audit or compliance review, due diligence, or evaluation performed prior to entering into a contract or agreement with Lexington Law or Progrexion.

Response to Requests 5, 6 and 7. OLP.com will produce any documents or materials in its possession, custody or control responsive these Requests.

8. All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval, recommendation , or critique from Lexington Law or Progrexion (including any policies , procedures, or model language created or issued by Lexington Law or Progrexion) relating to Your Telemarketing activities, including any scripts used in Your Telemarketing, and all related communications.

9. All documents relating to the provision, issuance, or communication of any instruction, requirement, command, directive, advice, guidance, suggestion, approval,

Jonathan Reischl
July 10, 2020
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recommendation , or critique from Lexington Law or Progrexion (including any policies, procedures, model language, or advertising copy and materials created or issued by Lexington Law or Progrexion) relating to Your marketing activities, including any offers used in Your marketing, and all related communications.

Response to Requests 8 and 9. OLP.com will produce any documents or materials in its possession, custody or control responsive this request, but only from January 1, 2017, the commencement of the period of time the district court determined was relevant, until January 21, 2020.

10. All documents constituting and describing the Company's business plans, business strategies, and business models related to acquiring consumer information and generating revenue through lead generation or referrals, including those provided to other marketing partners or affiliates, potential marketing partners or affiliates, or Cost Per Action (CPA) networks.

Response to Request 10. OLP.com has no documents in its possession, custody or control responsive to this Request.

11. All Consumer complaints regarding the Company's products, services, marketing, or the products and services provided by any marketing partner or affiliate, including Lexington Law or Progrexion, and all responses, documents, or communications related to those complaints.

Response to Request No. 11. OLP.com will produce any documents in its possession, custody or control responsive to this Request, but only to the extent the Consumer complaint resulted from a referral that OLP.com made to Lexington Law or Progrexion.

12. A copy of each different Advertisement, including any content placed on third-party platforms (including, for example, Craigslist) or social-media sites, that references Lexington Law, CreditRepair.com , credit repair, credit improvement , removal of items from a credit report or record, credit monitoring, or the acquisition of a credit score.

13. A copy of each different Advertisement, including any content placed on third-party platforms (including, for example, Oodle or Advertigo) or social media sites, that was used, in whole or in part, to attract Consumers or acquire leads in connection with Relevant Telemarketing.

Response to Requests 12 and 13. OLP.com will produce any documents in its possession, custody or control responsive to these Requests.

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14. A copy of each version of each website used by the Company to market any product or service offered by the Company, Progrexion, or Lexington Law.

Response to Request 14. OLP.com will produce any responsive documents or materials in its possession, custody or control responsive to this Request, but only for the period of time the district court deemed relevant, namely for the period May of 2016 to January of 2019.

15. Documents sufficient to identify all Facebook pages maintained, managed, or used by the Company to promote its products or services.

16. A chronological printout of all Company Facebook posts, including the date, time, and author of each post, for each of the Facebook pages identified in Request No. 15.

17. Documents sufficient to identify all Craigslist accounts maintained, used, or managed by the Company.

18. A chronological printout of all ads posted by each of the Craigslist accounts identified in Request No. 17.

Response to Requests 15, 16, 17 and 18. OLP.com will produce any documents or materials in its possession, custody or control responsive to these Requests.

19. All Training Materials, including scripts, used in connection with Relevant Telemarketing.

Response to Request 19. OLP.com will produce any responsive documents or materials in its possession, custody or control responsive to this Request, but only from January 1, 2017, the commencement of the period of time the district court determined was relevant, until January 21, 2020.

20. All recordings, notes, or other documents memorializing phone calls with Consumers that resulted in Direct Transfers, including all recordings, notes, or other documents memorializing each Direct Transfer.

Response to Request 20. The district court declined to require the Defendants to produce these items, and OLP.com understands that there are ongoing discussions between CFPB and the Defendants to determine if agreement can be reached that would allow for the production of recordings with specifically identified Consumers, or samples of them. To the extent such agreement is reached, or Defendants are otherwise required to produce recordings of any conversations with any Consumers that OLP.com referred, OLP.com will produce any phone call recordings, or other documents and materials, responsive to this Request and that occurred during the period of time the parties, or the district court in the Lawsuit, agreed or determined was relevant.

Jonathan Reischl
July 10, 2020
Page 7

21. All agreements, contracts, or memoranda related to a common interest privilege, joint defense privilege, or other privilege applicable to communications between You and Progrexion and/or Lexington Law, including, but not limited to, any common interest agreement or joint defense agreement.

Response to Request 21. OLP.com has no documents in its possession, custody or control responsive to this Request.

22. Documents sufficient to substantiate the following representation made in Company scripts: "They are credit analysts and have the legal ability to remove any questionable negative items on your credit report such as late payments, collections, and charge-offs."

23. Documents sufficient to identify all lenders described in any Company telemarketing script as "our lenders."

24. Documents sufficient to show the business relationship between the Company and each lender referred to in any Company telemarketing script as "our lenders," including the nature of the relationship and all terms of any contracts or agreements between the Company and the lender.

25. Documents sufficient to substantiate the following representation made in Company scripts: "our lenders move very quickly, assuming an approval today, you could receive your funds as early as tomorrow."

26. Documents sufficient to show how many Consumers were approved for a loan from one of "[Y]our lenders" on the same day the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

27. Documents sufficient to show how many Consumers received funds from one of "[Y]our lenders" on the day after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

28. Documents sufficient to show how many Consumers were approved for or received funds from one of "[Y]our lenders" any time after the Company transferred the Consumer to Lexington Law, CreditRepair.com, or Progrexion, for each year since July 21, 2011.

29. Documents sufficient to substantiate the following representation made in Company scripts: "By removing these negative items, it will allow us to come back and look to refinance you with a more conventional lender that offers better rates and terms in the future."

30. Documents sufficient to describe the Company's process for "refinanc[ing] [a Consumer] with a more conventional lender" after the Consumer became a Lexington Law or CreditRepair.com Customer.

Jonathan Reischl
July 10, 2020
Page 8

31. Documents sufficient to show how many Consumers the Company refinanced after the Consumer became a Lexington Law or CreditRepair.com Customer for each year since July 21, 2011.

Response to Requests 22 through 31. OLP.com objects to each of these Requests, and no documents or materials (to the extent they exist in OLP.com's possession, custody and control) will be produced in response to them, for several reasons. First, the Requests are overly broad in their temporal scope. Next and as was stated previously, CFPB and the Defendants have not identified which, if any, Consumers that OLP.com referred to Lexington Law or Progexion are relevant to the issues pending in their litigation and, hence, would be even arguably relevant for purposes of these Requests. To the extent such Consumers are identified and agreed upon by the parties, or the district court otherwise directs, and any such Consumers were referred to any Defendant following the use of any script alluded to in these requests, OLP.com will further supplement these responses at that time.

Sincerely,

A handwritten signature in black ink that reads "David P. Healy". The signature is written in a cursive, slightly slanted style.

David P. Healy

cc: W. Kyle Tayman, Esq. (via Electronic Transmission)

1700 G Street NW,
Washington, DC 20552



July 22, 2020

Via e-mail

David P. Healy, Esq.
Dudley, Seller, Healy & Heath, PLLC
3522 Thomasville Rd., Suite 301
Tallahassee, FL 32309
dhealy@davidhealylaw.com

Re: *Bureau of Consumer Financial Protection v. Progrexion Marketing, et al.*,
Case No. 2:19-cv-00298-BSJ, Subpoena issued to OLP.com, Inc.

Dear Mr. Healy,

Thank you for your July 10, 2020 letter (“Letter”), and your production on July 17, 2020. The Bureau has reviewed your client OLP.com, Inc.’s (“OLP”) updated objections to the subpoena issued to OLP on January 21, 2020 (“Subpoena”) in the matter *Bureau of Consumer Financial Protection v. Progrexion Marketing, et al.*, Case No. 2:19-cv-00298-BSJ (D. Utah) (“Progrexion Litigation”) and provides this letter in response.

Having considered the issues raised in the Letter, it is the Bureau’s position that OLP’s objections are invalid for the reasons described below and do not justify OLP’s failure to produce the required information, and as such its response to the Subpoena is, to date, inadequate and incomplete.¹

¹ Additionally, the objections raised for the first time in the Letter are untimely. *See Bailey Indus., Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 668 (N.D. Fla. 2010) (untimely objections waived).

General Background

At the outset, we would like to clarify the nature of the Progrexion Litigation and the status of discovery, as OLP's characterization in the "General Background" section, and throughout the Letter, is inaccurate. Relevant to OLP's specific objections to the requests for production ("RFPs"), it is not the case that the discovery requests propounded on the Defendants² seek "many of the same documents or materials, or the same categories of documents and materials, that are the subject of many of the Requests" to OLP. In fact, nearly all of the RFPs in the Subpoena seek materials that have not been requested from the Defendants because we believe they are more likely to be in your client's possession, custody, or control and are more directly accessible by OLP than by the Defendants. *See* RFPs 1(g)-(i), 3, 10-31. Additionally, RFPs 1 and 5-9 seek materials beyond those that are also likely to be in the possession, custody, or control of the Defendants. Moreover, the Bureau is entitled to those documents even if there is overlap among the requests.³

Likewise, the Letter's characterization of the Court's discovery orders is inaccurate. The Court has not limited the Bureau's ability to obtain similar responsive materials from Defendants, nor limited the temporal scope of discovery in this matter as described in the Letter. The key limitation imposed by the Court in its June 18, 2020 discovery order [ECF No. 92] was to restrict a subset of the Bureau's document requests to seven sample Progrexion marketing affiliates, of which OLP is one. But no part of any order issued by the Court in this matter "prohibited [the Bureau] from seeking" any items sought pursuant to the Subpoena. Indeed, the Court's March 13, 2020 order [ECF No. 70] stated that "discovery is appropriate beginning in 2011." To the extent the Bureau has agreed to limit third party-related discovery from Defendants to January 1, 2017 forward, those limitations were set to account for prior document productions that the Bureau received from Defendants and third parties other than OLP. Where the Bureau has not previously received documents or materials, the Court's ruling clearly permits it to obtain, and the Defendants have agreed to provide, discovery back to 2011. Because OLP has previously produced no such materials, it must produce documents going back to 2011 as required by the Subpoena.

² Progrexion Marketing, Inc., PGX Holdings, Inc., Progrexion Teleservices, Inc., eFolks, LLC, Creditrepair.com, Inc., and John C. Heath, Attorney at Law, PC, D/B/A Lexington Law.

³ *See SEC v. Creative Capital Consortium, LLC*, 2009 WL 10664429, at *3 (S.D. Fla. May 20, 2009) (The mere fact that the requested information is available from another source is not the basis for denying or limiting discovery absent a showing of undue burden or expense.); *United States v. PBGC*, 301 F.R.D. 20, *30 (D.D.C. 2014).

Objections

Previously, the Bureau requested an affidavit from OLP regarding the initial objections raised in its February 4, 2020 letter and the specific burdens it faced in responding to the RFPs. The purpose of such an affidavit was to allow the Bureau to understand OLP's specific organizational, data, and time constraints and to receive any specific modifications OLP was requesting in order to reduce its burden. As the Bureau noted following our February 11, 2020 meeting, issues of breadth and undue burden cannot be determined without a thorough understanding of the issues in the matter and "without knowing how the information is organized, how much there is, and where the information is kept."⁴ You advised us in February that your client was working on providing such an affidavit, but one was never provided to the Bureau. In the Letter, OLP raises two breadth and burden objections, for RFPs 1 and 22-31 respectively, that contain nothing more than the same type of boilerplate breadth and burden objections contained in your February 4, 2020 letter. These objections are likewise unsupported, lacking an affidavit or sufficient detail regarding the issues faced by the company, and provide no basis to withhold any materials responsive to RFPs 1 and 22-31.

Objections to Particular Requests

RFP 1

The Letter states: "OLP.com objects to this Request as not being relevant because the district court in the Lawsuit has not required Defendants to respond to a similar request." This statement is incorrect. The Court's June 18, 2020 order [ECF No. 92] required Defendants to produce "agreed-to discovery related to the seven hotswaps by July 10, 2020." The "agreed-to discovery" included a request for data related to credit repair customers obtained from OLP that overlaps in part with RFP 1. *See* ECF No. 80, p.8.⁵

You also claim that "CFPB should first be required to obtain the information contained in the Request from the Defendants so as not to unduly burden OLP.com." As noted above, OLP has provided no support for its claim of burden; an unsupported burden claim is no basis to withhold responsive materials. And while there is overlap between

⁴ *Russell v. Fast Payday Loans, Inc.*, 2008 WL 11338347 at *1 (N.D. Fla. June 27, 2008).

⁵ The Bureau and Defendants continue to discuss matters related to phone recordings potentially responsive to Bureau request to RFP 19, but issues germane to those discussions are not applicable here.

RFP 1 and information requested from Defendants, they are not coextensive. For example, information responsive to RFP 1 subparts (g), (h), and (i) is unlikely to be in the possession, custody, or control of the Defendants. But producing that information without the remainder of the data responsive to RFP 1 would hinder or even prevent the Bureau from fully understanding those materials. Moreover, there appears to be no additional burden to OLP in producing all data responsive to RFP 1 rather than just the data responsive to RFP 1 subparts (g), (h), and (i).

Because no order from the Court affects OLP's obligation to produce documents responsive to RFP1, and it has not demonstrated any burden related to responding to the request, OLP must provide materials responsive to RFP 1.

RFPs 2-4, 8-9, 14, and 19

For each of these RFPs, the Letter states OLP will only produce responsive documents and materials from January 1, 2017.⁶ But as noted above, the Court determined that "discovery is appropriate beginning in 2011." [ECF No. 70]. The applicable period for all RFPs is the one set forth in the Subpoena, and OLP must produce such documents immediately.

RFP 11

The Letter states that OLP will only produce documents "to the extent the Consumer complaint resulted from a referral that OLP made to Lexington Law or Progrexion." The Letter provides no basis for this limitation, nor does it explain what the limitation means. Absent a valid objection as the basis for withholding documents responsive to RFP 11 as written, OLP must comply with this request without any such limitation.

RFP 20

The Letter states that OLP is withholding recordings, notes, or other documents memorializing phone calls with Consumers that resulted in Direct Transfers until either the Bureau and Defendants reach an agreement on, or the Defendants are ordered to produce, recordings related to specifically identified Consumers or a sample of them. The Letter notes that when such an agreement is made, or Defendants are so required to produce, "OLP.com will produce any phone call recordings, or other documents and

⁶ The Letter also states that OLP will only provide responsive materials for RFP 14 from May 2016 forward.

materials, responsive to [RFP 20] and that occurred during the period of time the parties, or the district court in the Lawsuit, agreed or determined was relevant.”

OLP’s assertions provide no basis to withhold documents responsive to RFP 20. First, the documents sought by RFP 20 are uniquely within OLP’s possession, and, as noted above, the court has ordered, and Defendants have agreed, that discovery concerning OLP is relevant to this case. Second, the Bureau and the Defendants’ further discussions concerning Defendants’ discovery responses address burdens that are particular to Defendants. There is no reason to assume, particularly in the absence of OLP’s promised affidavit, that OLP’s production burden is the same as Defendants’ given the differences of their respective business operations; indeed, OLP’s burden may well be less.

The Bureau nevertheless remains willing to engage in further discussions regarding OLP’s production of materials responsive to RFP 20. To facilitate that discussion, please state the time period (or periods) for which OLP has retained responsive call recordings and notes or other documents memorializing phone calls with consumers; the media on which those records are retained (e.g., server, cloud storage, backup tapes); the name of each available data field associated with such call recordings (e.g., phone number, date, duration, customer ID, agent ID, disposition); and the number of call recordings or records in each relevant category. Additionally, we request a telephonic conference within the next 10 days that includes attendance by an individual with detailed knowledge of OLP’s relevant data systems. The Bureau will also include its own data expert on the call so that we can discuss the most efficacious and least burdensome way for the Bureau to obtain from OLP the material it needs for this case. If OLP is not willing to engage in such discussions and provide such information, it must produce all materials responsive to RFP 20 within 14 days.

RFPs 22-31

The Letter states that OLP is refusing to provide materials responsive to these requests for two reasons. First, OLP states that the requests are “overly broad in their temporal scope.” However, as noted above, the Court has stated that “discovery is appropriate beginning in 2011” and that the Bureau’s and Defendants’ claims and defenses date to at least 2012. [ECF No. 70]. Therefore, this boilerplate objection provides no basis to withhold any responsive materials. Second, the Letter states that materials are being withheld because the Bureau and the Defendants have not identified a “relevant” subset of consumers that OLP.com referred to Lexington Law or Progrexion. But there is no requirement that a *subset* of affected consumers be defined before relevant materials are

provided. Moreover, the statements, representations, and purported business practices referenced in RFPs 22-31 originate from telemarketing scripts that OLP itself claimed to have used in the marketing of Lexington Law and Progrexion products and services to consumers. Thus RFPs 22-31 seek information directly relevant to the Progrexion Litigation, with or without a subset of consumers being identified.

RFPs 5-7, 12-13, 15-18

The Letter states OLP will produce any documents or materials in its possession, custody, or control responsive to these RFPs. Please confirm that these documents were provided in your July 17, 2020 production, and indicate whether any such documents have been withheld. If they have not been provided, please provide the date on which you anticipate providing those documents.

RFPs 10, 21

The Letter states OLP has no documents in its possession, custody, or control responsive to these RFPs. The Bureau requests that if OLP subsequently discovers any responsive materials that they be produced to the Bureau.

Privilege Claims

Finally, if OLP withholds any responsive materials under a claim of privilege, it must produce a log or document that meets the requirements of Federal Rule of Civil Procedure 45(e)(2)(A) with respect to any such materials.

To address the issues raised in this letter as well as issues related to your July 17, 2020 production, the Bureau requests as follows:

OLP must produce all remaining responsive materials, other than those responsive to RFP 20, no later than August 5, 2020.

Please contact us to set up a call in the next 10 days to discuss any of the outstanding issues addressed in this letter as well as issues related to your July 17, 2020 production. To facilitate further discussion of RFP 20, please provide the following prior to the call: the time period (or periods) for which OLP has retained responsive call recordings and notes or other documents memorializing phone calls with consumers; the media on

which those records are retained (e.g., server, cloud storage, backup tapes); the name of each available data field associated with such call recordings (e.g., phone number, date, duration, customer ID, agent ID, disposition); and the number of call recordings or records in each relevant category.

We will send you proposed times for the meeting referenced above by email.

Sincerely,

/s/ Jonathan Reischl
Jonathan Reischl
Enforcement Attorney
jonathan.reischl@cfpb.gov

From: [David Healy](#)
To: [Reischl, Jonathan \(CFPB\)](#)
Subject: RE: CFPB v. Progrexion Marketing - Subpoena
Date: Thursday, July 30, 2020 11:08:04 AM

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I reviewed your client's response with my client and also reviewed the status of the litigation.

My client disagrees with the positions stated in the response and adheres to its positions set forth in my letter of July 10. With the parties at this point apparently agreeing to disagree, I do not see the need for a conference particularly if it will merely rehash the parties' respective positions.

David P. Healy
Dudley, Sellers, Healy & Heath, PLLC
3522 Thomasville Rd., Suite 301
Tallahassee, Florida 32309
(850) 222-5400
(850) 322-4784 (cell)
dhealy@davidhealylaw.com

From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Wednesday, July 22, 2020 3:23 PM
To: David Healy <dhealy@davidhealylaw.com>
Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Mr. Healy,

Attached please find the Bureau's response to your July 10, 2020 letter. As noted in the letter, we are requesting a telephone conference to discuss outstanding issues related to your client's response to the subpoena. Please let us know when you are available in the next 10 days and we will set up a time to for the conference.

Best regards,

Jonathan

Jonathan Reischl
Attorney | Office of Enforcement
Office: (202) 435-9202 | Mobile: (202) 308-3273

Consumer Financial Protection Bureau

consumerfinance.gov

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From: David Healy <dhealy@davidhealylaw.com>
Sent: Monday, July 13, 2020 1:51 PM
To: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Cc: Tayman, Kyle <KTayman@goodwinlaw.com>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

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Thanks.

My client is dropping off tomorrow additional materials for my review. I still expect to make production this week of the materials we said we would be providing in our side's amended responses dated July 10, 2020. To the extent that your email below is requiring production on a timeframe sooner than that, we are unable to comply and would merely note our side's further, pending objection regarding such matters, namely "such production will occur at a reasonable date, time and place, and in a reasonable manner, as agreed upon by the parties or as is otherwise ordered."

Also, I have not received any email containing any uploading instructions. As was also stated in our last responses, we will use that portal, and will follow any uploading instructions, to the extent they are reasonable and not unduly burdensome on our side, which we assume will be the case. Otherwise, our side will continue to reserve the right to make production via other, reasonable means.

David P. Healy
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(850) 222-5400
(850) 322-4784 (cell)
dhealy@davidhealylaw.com

From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Monday, July 13, 2020 10:44 AM

To: David Healy <dhealy@davidhealylaw.com>
Cc: Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>; McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Mr. Healy,

We have received the below communication regarding your client OLP.com's response to the Bureau's Rule 45 subpoena. Our ediscovery team will be sending you, if they have not done so already, an email with instructions for uploading your client's responsive materials to the Bureau's electronic document transfer portal. If you have any questions regarding the procedures for uploading documents, please do not hesitate to reach out to me and I will coordinate assistance. We will produce copies of the materials provided by your client to the defendants as we have done with previous productions responsive to Rule 45 subpoenas.

We are reviewing the letter that you provided on Friday and we will send a response to the issues referenced in the near future. In the meantime, please provide the responsive materials that you indicated were forthcoming without further delay.

Best regards,

Jonathan

Jonathan Reischl
Attorney | Office of Enforcement
Office: (202) 435-9202 | Mobile: (202) 308-3273

Consumer Financial Protection Bureau
[consumerfinance.gov](https://www.consumerfinance.gov)

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From: David Healy <dhealy@davidhealylaw.com>
Sent: Friday, July 10, 2020 2:45 PM
To: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Cc: Tayman, Kyle <KTayman@goodwinlaw.com>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

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Following on this, I attached my client's revised responses and objections to your side's records Subpoena. As for responsive materials, my client continues to gather them for my review. I expect therefore to make production this coming week.

As for the manner or method of production, we are open to any electronic transfer portal, particularly one that will allow our side to make production both to CFPB and the defense because I assume they will want to see what my client produces.

David P. Healy
Dudley, Sellers, Healy & Heath, PLLC
3522 Thomasville Rd., Suite 301
Tallahassee, Florida 32309
(850) 222-5400
(850) 322-4784 (cell)
dhealy@davidhealylaw.com

From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Friday, July 10, 2020 11:54 AM
To: David Healy <dhealy@davidhealylaw.com>
Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Mr. Healy,

Good morning. I'm writing to follow-up on your client OLP.com's response to the Bureau's subpoena. I have not heard from you on the status of the production since June 22. Please give me a call as soon as possible to discuss how your client will deliver the documents required by the subpoena. As noted below, the Bureau requests that the documents be provided through a secure electronic file transfer.

Best regards,

Jonathan

Jonathan Reischl
Attorney | Office of Enforcement
Office: (202) 435-9202 | Mobile: (202) 308-3273

Consumer Financial Protection Bureau
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From: Reischl, Jonathan (CFPB)

Sent: Tuesday, June 23, 2020 9:17 AM
To: David Healy <dhealy@davidhealylaw.com>
Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Mr. Healy,

Thank you for getting back to us. I've attached the relevant Order as well as the Joint Status Report that was before the court for your reference. In light of your vacation we will extend your client the courtesy of additional time to provide its production. Please provide your client's production by July 10.

Due to Covid-19 related changes in protocol, the Bureau requests that the production be provided through a secure electronic file transfer. When you return to the office, please reach out to me and we can set up the necessary arrangements for the file transfer system.

Best regards,

Jonathan

Jonathan Reischl
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From: David Healy <dhealy@davidhealylaw.com>
Sent: Monday, June 22, 2020 1:37 PM
To: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Subject: Re: CFPB v. Progrexion Marketing - Subpoena

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Thanks. Please send the order and I will review with my client. As I am away this week on vacation it is very unlikely that any production will occur within 10 days.

Sent from my iPhone

On Jun 22, 2020, at 1:09 PM, Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>

wrote:

Dear Mr. Healy,

I hope this finds you well. We write to return to the matter of your client OLP.com's compliance with the Bureau's Rule 45 subpoena. On June 18, the court issued an order memorializing the Bureau and Progrexion's agreement to include One Loan Place within the scope of discovery. (see the attached order) Per your email, please provide your client's responsive production to the Bureau's subpoena within 10 days. Please reach out to me if you have any questions.

Best regards,

Jonathan

Jonathan Reischl
Attorney | Office of Enforcement
Office: (202) 435-9202 | Mobile: (202) 308-3273

Consumer Financial Protection Bureau
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From: David Healy <dhealy@davidheallylaw.com>
Sent: Monday, March 30, 2020 5:49 PM
To: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Thanks for your note. Our respective clients are apparently in fundamental disagreement regarding the scope and effect of the Magistrate Judge's order on the subpoena issued to my client.

That being the case, our side therefore adheres to the positions stated in my last email. To reiterate, our side declines for those reasons to continue with any additional efforts to respond to your client's Subpoena. Moreover, those efforts will remain suspended until our side receives a superseding order requiring that those efforts recommence, or the parties enter into some form of judicially approved stipulation with the same effect, at which time our side will endeavor to make an appropriate production, in an appropriate manner, within 10 days thereafter.

David P. Healy

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From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Monday, March 30, 2020 9:11 AM
To: David Healy <dhealy@davidhealylaw.com>
Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

David,

Thank you for your response. Below is our response to each of the issues raised in your email.

- (1) We disagree with your assessment of the Court's March 13 Order and your assertion that it has any bearing on the Rule 45 subpoena issued to your client. In particular, the court did not make a determination that requests regarding other hotswap partners were not relevant to the claims at issue in the complaint.
- (2) The Bureau and Progrexion are in the process of meeting and conferring as required by the March 13 Order. We will keep you informed of any pertinent developments. However, whether or not the Bureau and Progrexion come to an agreement regarding document production will not be determinative of your client's obligation to respond to the Rule 45 subpoena. As noted in the Order, the purpose of the parties' meet and confer is to assess issues of proportionality. As Rule 26 notes, issues of proportionality may turn on "the parties' relative access to relevant information," and as such, the fact that certain information may be available to the Bureau through a Rule 45 subpoena may affect a decision regarding the appropriate scope of discovery requests served on Progrexion.
- (3) We are cognizant that local and national events may have an impact on your client's ability to respond to the subpoena. However, we cannot agree to a request for an open-ended, undefined deadline.
- (4) The Bureau's new production procedures provide the option of using an online document transfer protocol in lieu of sending a disc or hard drive containing the documents. The new production option is not intended to supersede or alter Rule 45(c)

(2).

In light of the ongoing, acute public health crisis, the Bureau is willing to provide a 30-day extension for your client's deadline for compliance with the Rule 45 subpoena. The Bureau expects you to continue to take all necessary steps to preserve documents requested by the subpoena. Additionally, this extension should not delay any discussions regarding issues that your client is encountering collecting or preparing for production the materials requested in the subpoena. We expect that any issues will be brought to our attention as soon as possible so that they do not delay document production beyond the extended deadline.

We are available to discuss any of these issues. Please let us know if you would like to set up a phone conference to clarify any of the above.

Best regards,

Jonathan

Jonathan Reischl
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Consumer Financial Protection Bureau
consumerfinance.gov

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From: David Healy <dhealy@davidhealylaw.com>
Sent: Tuesday, March 24, 2020 1:17 PM
To: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Subject: RE: CFPB v. Progrexion Marketing - Subpoena

Thanks for your note and, as an update and response, here are several things –

(1) We monitor the underlying litigation and have recently noted the magistrate judge's order entered on March 13, attached. As we read the order, it restricts (at least at the present time) the Bureau's ability to seek discovery of information related to "hot swap partners" only to that partner identified in the pending Complaint as "HSP1," which I understand is not my client OLP.com. That being the case, our side's view is that the Subpoena to OLP.com was not properly issued under Rules 26 and 45 because it seeks, according to the Order, document and information that was not relevant to the issues and matters currently framed in the Bureau's Complaint;

(2) We have also noted the requirement in the Order that the parties meet and confer to see if agreement can be reached regarding the expansion of the currently limited scope of discovery to other “hot swap partners,” including OLP.com. The docket does not report that the meeting has occurred or the results of any meeting. If agreement is reached with the defendants allowing the Subpoena to proceed in whole or in part, my client and I will endeavor to make production, subject to the other matters and concerns you and I had already discussed, either with 10 days of the date we are informed of that agreement, or within 10 days of our side being provided with any subsequent order that the district court enters directing or allowing discovery related to other “hot swap partners,” and OLP.com in particular, to proceed;

(3) The foregoing of course assumes that there will not be undue impact on OLP.com’s ongoing business operations due to the continuing states of emergency ordered at the federal and state levels. The date of any production will need to be adjusted as appropriate to take that additional matter into account which has arisen since our last discussion. In other words, a proposed ten day production period is aspirational;

(4) As for the mode or manner in which any production may later occur, we will see at the proper time what the Bureau is proposing. If reasonable, we will likely agree to what the agency is proposing. However, our side must reserve its right, if necessary, to make production in this district if the agency’s requested manner of production should later prove burdensome, time consuming or otherwise unworkable given the current work environment.

The foregoing is meant to supplement OLP.com’s previously raised objections to the Subpoena.

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From: Reischl, Jonathan (CFPB) <Jonathan.Reischl@cfpb.gov>
Sent: Tuesday, March 24, 2020 8:33 AM
To: David Healy <dhealy@davidhealylaw.com>

Cc: McOwen, Molly (CFPB) <Maureen.McOwen@cfpb.gov>; Hilmer, Tracy (CFPB) <Tracy.Hilmer@cfpb.gov>; Rounseville, Isaac (Volunteer)(CFPB) <Isaac.Rounseville@cfpb.gov>

Subject: CFPB v. Progrexion Marketing - Subpoena

David,

Good morning. I'm reaching out to check on the status of your client's production in response to the Rule 45 subpoena. As you are aware, the extended deadline for your clients' response is this Friday, March 27. The Bureau has instituted a new procedure regarding document productions in light of the national emergency related to Coronavirus/COVID-19. I'd like to set up a phone call for tomorrow to discuss the new procedure and to discuss any other issues you may be encountering related to the production. I'm available all day tomorrow except 2-3:00. Please let me know a time that works for you.

Best regards,

Jonathan

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<[92] Order on CFPB Discovery Motion.pdf>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING ET AL,

Defendant.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
SHORT FORM DISCOVERY MOTION**

Case No. 2:19-CV-00298-BSJ-DBP

District Judge Bruce S. Jenkins

Magistrate Judge Dustin B. Pead

INTRODUCTION

This matter was referred to the Court under 28 U.S.C. § 636(b)(1)(A).¹ On March 10, 2020, this matter came before the Court for oral argument on Plaintiff Bureau of Consumer Financial Protection's ("BCFP") Short Form Discovery Motion ("Motion").² Jonathan Reischl, Maureen McOwen, and Tracy Hilmer appeared on behalf of BCFP. William Harrington, W. Kyle Tayman, and Karra Porter appeared on behalf of Defendants Progrexion Marketing ("Progrexion"). Having considered the parties' briefs, the evidence presented, the arguments of counsel, and the relevant law, the Court hereby **GRANTS IN PART** and **DENIES IN PART** the Motion.

BACKGROUND

BCFP served Requests for Production ("RFPs") on Progrexion.³ Progrexion objected to many of the requests on three bases: 1) The requests sought information beyond the relevant time

¹ ECF No. 63.

² ECF No. 50.

³ *Id.*

period; 2) The requests sought information from hotswap partners other than HSP1, but HSP1 was the only hotswap partner mentioned in the complaint; 3) The requests sought information regarding advertisements on fake news sites, but the complaint does not mention fake news sites.⁴

ANALYSIS

I. The Scope of Discovery

Federal Rule of Civil Procedure 26(b) governs the scope of discovery. Generally, “parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” *Id.* The trial court has broad discretion in determining the scope of discovery. *Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1386 (10th Cir. 1994). A court must limit discovery if it determines that the discovery sought is outside the scope permitted by Rule 26(b)(1). Fed. R. Civ. P. 26(b)(2)(C)(iii).

II. Statute of Limitations

A. Parties’ arguments

BCFP requested documents dating back to 2011.⁵ Progrexion objected to many of the RFPs on the basis that they seek information beyond the relevant time period.⁶ Progrexion believes the relevant time period is either when the statute of limitations began to run or defined by the dates in the complaint.⁷ Accordingly, Progrexion states that because the complaint does not allege actionable pre-2016 conduct, they limited their responses to conduct from 2016 forward.⁸ BCFP counters that a statute of limitations is an affirmative defense which Progrexion

⁴ *Id.*; ECF No. 51.

⁵ ECF No. 50, Exhibit 2.

⁶ *Id.*

⁷ ECF No. 50; ECF No. 51.

⁸ ECF No. 51.

has neither plead nor proved.⁹ Further, BCFP argues that unproven defenses do not preclude discovery.¹⁰

B. The statute of limitations does not define discovery

Discovery is not precluded by the statute of limitations. The Court notes that other cases from this district have permitted discovery beyond the applicable statute of limitations. In *United States ex rel. Brooks v. Stevens-Henager College*, the court permitted discovery back to 2001 even though the statute of limitations began to run in 2007. *United States ex rel. Brooks v. Stevens-Henager College, Inc.*, No. 2:15-cv-00119, 2018 WL 296088, at *3–4 (D. Utah Jan. 4, 2018). The Court in *Brooks* reasoned that discovery beyond the applicable statute of limitations may be necessary to prove conduct that was evidence of illegal activity that occurred within the statute of limitations. *Brooks*, 2018 WL 296088, at *4. *Brooks* is persuasive here, because BCFP has alleged a long-running scheme dating back to at least 2012 and evidence of that scheme may conceivably be relevant to proving conduct that occurred after 2016.

Progrexion cites to *Thomas v. Mitsubishi Motors* to support the argument that the Court should narrow discovery requests with “unlimited” or “too large” timeframes.¹¹ However, in *Mitsubishi Motors*, the court stated, “when a party objects to discovery as going beyond the claims or defenses, the court would become involved to determine whether the discovery is relevant to the claims and defenses.” *Mitsubishi Motors*, 2014 WL 280495, at *2 (internal quotations omitted).

⁹ ECF No. 50. The Court notes that BCFP has not conceded the statute of limitations in this case. Progrexion filed an answer shortly before the hearing that plead the statute of limitations as an affirmative defense. ECF No. 65.

¹⁰ *Id.*

¹¹ ECF No. 51 (quoting *Thomas v. Mitsubishi Motors Corp.*, No. 2:12-cv-1215, 2014 WL 280495, at *1-3 (D. Utah Jan. 24, 2014)).

With these fundamental discovery principles in mind, the Court turns to BCFP's allegations. BCFP has alleged conduct relating to HSP1 dating back to at least 2012.¹² The parties' claims and defenses here date to at least 2012. Accordingly, the Court finds the allegations in the complaint permit the discovery requested in the RFPs. The Court finds that the time period requested is not unreasonable. In *Mitsubishi Motors*, the court spoke of "unlimited" or "too large" time frames where plaintiff had requested some documents with no time limit and some from a 20-year period. *Mitsubishi Motors*, 2014 WL 280495, at *3-4. The court limited the request to a "time frame of five years preceding the date of the incident underlying the case." *Id.* at *3. The requests here are for a period of about eight years.¹³ They are neither unlimited nor too large. Eight years is not an unlimited amount of time. In *Mitsubishi Motors*, the court limited the time frame to five years preceding the incident underlying the case. Using a similar look-back period here suggests discovery is appropriate beginning in 2011. Progexion has not convinced the Court that such a time period imposes any undue burden.

III. Hotswap Partners

A. Parties' arguments

Progexion objected to many of the RFPs related to hotswap partners as irrelevant because the complaint only mentions one hotswap partner, HSP1.¹⁴ Further, Progexion states that because BCFP has demanded information from nearly 300 hotswaps, the requests are overly burdensome and disproportionate to the needs of the case.¹⁵ BCFP counters that the acts of other hotswap partners are relevant to the case because the complaint alleges a long-running scheme

¹² ECF No. 2, ¶¶74-74, 79.

¹³ ECF No. 51, Exhibit 1.

¹⁴ ECF No. 51.

¹⁵ *Id.*

involving multiple hotswap partners.¹⁶ Further, BCFP stated at oral argument that HSP1 was used in the complaint as an exemplar and not intended to limit the scope of discovery.¹⁷

Additionally, BCFP argues that many of their requests are limited to ten hotswap partners and should not be overly burdensome, though they acknowledge the burden is hard to gauge without more information from Progexion.¹⁸ The ten hotswap partners are referred to in the RFP instructions as “sample marketing affiliates.”¹⁹ At the hearing, BCFP declined to discuss protected work product when asked how the sample marketing affiliates were selected.²⁰ However, BCFP did state that internal and external complaints to government agencies and defendants were one source consulted to help define the sample marketing affiliates.²¹

B. The Court will limit discovery to HSP1 only and order a renewed meet and confer

As mentioned above, the scope of discovery is relatively broad. The 2015 advisory committee note to Rule 26 states that information of “other incidents of the same type, or involving the same product” would be relevant to the parties’ claims and defenses. Fed. R. Civ. P. 26, 2015 advisory committee’s note. As in every discovery dispute, the court must “balance the inquirer’s right to know against the responder’s right to be free from unwarranted intrusions.” *United States v. Medtronic, Inc.*, No. 95-1236, 2000 WL 1478476, at *1 (D. Kan. July 13, 2000) (quoting *Koch v. Koch Industries, Inc.*, No.85-1636, 1992 WL 223816 (D. Kan. Aug. 24, 1992)). Overly broad requests which constitute no more than a fishing expedition will not be allowed. See *McGee v. Hayes*, 43 F. App’x 214, 217 (10th Cir. 2002). For example, in *Medtronic*, the District of Kansas concluded plaintiff’s discovery requests were overly broad where plaintiff

¹⁶ ECF No. 50.

¹⁷ Hr’g on Mar. 10, 2020.

¹⁸ ECF No. 50.

¹⁹ *Id.*, Exhibit 1.

²⁰ Hr’g on Mar. 10, 2020.

²¹ *Id.*

requested nationwide discovery of all salesmen over a twenty-year period even though the complaint only alleged wrongful conduct against two salesmen in a single sales district.

Medtronic, 2000 WL 1478476, at *2.

The Court finds BCFP has adequately demonstrated relevance and proportionality as to HSP1 because the complaint alleges a long-running scheme between HSP1 and defendants. However, BCFP has not provided a reasoned justification for its discovery requests to the other hotswap partners or sample marketing affiliates. The complaint speaks of HSP1 but does not name other hotswap partners. Although the requests could conceivably produce relevant information, BCFP has not provided an adequate justification to overcome Progrexion's proportionality objections. As in *Medtronic*, where discovery to all salesmen was found overly broad when plaintiff did not provide a justification, the discovery requests here must be justified.

BCFP is not foreclosed from propounding requests related to hotswap partners other than HSP1 in the future, but first must provide some basis to believe the requests are likely to yield discoverable information. To that end, the parties shall meet and confer within the next 14 days. At the meet and confer, BCFP is advised to provide a reasoned basis for discovery requests related to hotswap partners other than HSP1, to determine whether the parties can come to an agreement about further discovery of Progrexion marketing affiliates. BCFP should focus on the internal and external complaints mentioned at the hearing as a basis to seek discovery.

IV. Fake News Sites

A. Parties' arguments

Two of the RFPs were in regard to the use of fake news sites by hotswap partners.²² Progrexion objected to these RFPs because that the complaint does not allege the use of fake

²² ECF No. 50, Exhibit 1.

news sites to deceptively advertise Progrexion's products.²³ BCFP counters that the complaint alleges deceptive advertising by hotswap partners.²⁴ Those advertisements were alleged to induce customer to purchase Progrexion's products.²⁵ Additionally, BCFP proposed using the definition of "fake news site" used by the Second Circuit.²⁶

B. The Court GRANTS the requests as they relate to fake news sites and approves BCFP's proposed definition of "fake news sites"

As mentioned above, the scope of discovery includes "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). The complaint alleges deceptive advertisements were used by hotswap partners to induce customers to purchase Progrexion's products.²⁷ The complaint refers to deceptive advertising.²⁸ Fake news fits comfortably in discovery because it is a subcategory of deceptive advertising. Discovery of such advertisements may lead to the discovery of admissible evidence and is relevant to the case. Furthermore, the Court finds the Second Circuit's definition of "fake news site" provides a sufficiently clear definition to allow Progrexion to respond to BCFP's requests.

ORDER

Based on the foregoing, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's short form discovery motion without prejudice. Specifically, the Court orders as follows:

²³ ECF No. 51.

²⁴ ECF No. 50.

²⁵ ECF No. 2.

²⁶ *Id.*; ECF No. 50, Exhibit 4, pp.11–12 (*quoting FTC v. LeadClick Media, LLC*, 838 F.3d 158, 163–64 (2d Cir. 2016)).

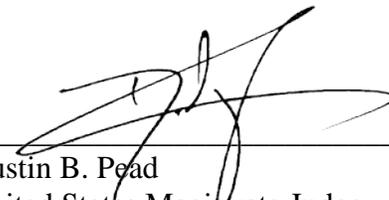
²⁷ *See* ECF No. 2.

²⁸ *Id.*

- 1) The Court **GRANTS** BCFP's requests in both time and scope as they relate to HSP1. The requests are not limited by the time period set out in the complaint or the statute of limitations.
- 2) The Court **DENIES** BCFP's requests as they relate to other hotswap partners not mentioned in the complaint. The Court **ORDERS** the parties to meet and confer within the next fourteen days. BCFP should explain the basis to seek discovery of hotswap partners other than HSP1. The parties should determine whether they can reach an agreement about further discovery of Progrexion's marketing affiliates. BCFP should focus on the internal and external complaints mentioned at oral argument as a basis for discovery, or similar objective evidence tending to suggest relevance of proposed discovery.
- 3) The Court **GRANTS** BCFP's requests relating to "fake news sites" and finds the definition of "fake news sites" BCFP proposed is appropriate.²⁹
- 4) The Court **ORDERS** the parties to provide a status report within 60 days. The status report should inform the Court as to whether a scheduling conference will be necessary.

IT IS SO ORDERED.

DATED this 13th day of March, 2020.



Dustin B. Pead
United States Magistrate Judge

²⁹ BCFP proposed the definition of "fake news sites" as described by the Second Circuit in *FTC v. LeadClick Media, LLC*. See ECF No. 50-5 pp.11-12 (quoting *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 163-64 (2d. Cir. 2016)).

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING ET AL,

Defendant.

ORDER ON DISCOVERY DEADLINES

Case No. 2:19-CV-00298-BSJ

District Judge Bruce S. Jenkins

This matter came before the Court for oral argument on June 3, 2020. Jonathan Reischl, Tracy Hilmer, and Maureen McOwen appeared on behalf of Plaintiff Bureau of Consumer Financial Protection (“the Bureau”). William Harrington, W. Kyle Tayman, William Hefferon, and Karra Porter appeared on behalf of Defendants Progrexion Marketing, Inc., PGX Holdings, Inc., Progrexion Teleservices, Inc., Efolks, LLC, Creditrepair.com, Inc. (collectively, “Progrexion”), and John C. Heath, Attorney at Law, PC. The parties presented a joint status report¹ regarding the Court’s prior ruling² on the Bureau’s Short Form Discovery Motion³ (“Motion”). The Motion sought responses to the Bureau’s first set of requests for production.⁴

The Court ruled at the hearing and instructed the Bureau to prepare a suggested form of order. The parties disagree about the scope of the Court’s ruling. The Bureau’s proposed order

¹ ECF No. 80.

² ECF No. 70.

³ ECF No. 50.

⁴ *Id.*

included several items: 1) A definition of the entities included in the “sample marketing affiliates”; 2) Incorporation of an exhibit to the Motion clarifying and narrowing requests 5–11, 13, 15–19, and 21–24; 3) Production of documents sufficient to identify the name, address, and telephone number of all Hotswap Partners responsive to Bureau request number 1; 4) Production of non-privileged documents responsive to the Bureau’s requests 5–6, 8–10, 15–17, and 19 by July 10, 2020; 5) Production of all non-privileged documents responsive to request 7 by July 24, 2020; and 6) Production of all non-privileged documents responsive to Requests 2–4, 11, 13–14, 18, and 20–24. Defendants’ proposed order required the Progrexion defendants to 1) Produce the agreed-to discovery related to the seven hotswaps by July 10, 2020 and 2) Produce a list providing the names, addresses, and telephone numbers of hotswaps by July 10, 2020.

After reviewing the transcript from the hearing, the Court finds the Bureau’s proposed order exceeds the scope of the Court’s ruling. The parties represented at the hearing and in the joint status report they had come to an agreement regarding discovery for a sample of marketing affiliates (the seven hotswap partners),⁵ but had not come to an agreement regarding a second category of discovery requests.⁶ The Court’s ruling was limited to the agreement the parties

⁵ ECF No. 80, Plaintiff’s status report: (“The Bureau . . . has substantially narrowed its hotswap-related document requests to: (1) ten requests limited to a sample of six hotswap partners; and (2) the targeted operations-and compliance-related requests described in Exhibit A.”); *Id.* (For the first category of requests, the Bureau agreed to Defendants’ proposal to limit the SMAs to six entities, and accordingly to limit Defendants’ responses to Requests 5–10, 15–17, and 19 to those SMAs.”); *Id.*, Defendant’s status report (“We conferred with Plaintiff . . . and, in a compromise it accepted, offered to provide discovery on 6 of 10 additional hotswaps Plaintiff sought.”); Hr’g Tr. at 45–46 (Mr. Reischl: “[W]e have two categories. So for a sample, which the Defendants and the Bureau have met and conferred and come to agreements, that sample would be limited to six particular Hotswap partners.”; *Id.* at 52 (The Court: “Let’s talk about the seven. They’ve agreed to furnish the seven.”)).

⁶ ECF No. 80, Plaintiff’s status report: (“For the second category of requests – those not limited to the SMAs—the Bureau offered the compromises set forth in Exhibit A . . . But Defendants have rejected those compromises and insist that the Bureau agree to limit all of its discovery—apparently unalterably for the duration of the case—to the SMAs.”).

came to regarding the seven hotswap partners.⁷ At the hearing, Defendants stated the parties had not come to an agreement as to the date and scope of production of telephone calls for the seven hotswap partners.⁸ The Bureau did not dispute this or present a counter argument.⁹ Because production of the telephone calls was not part of the parties' agreement, it was not included in the Court's ruling at the hearing. The Bureau brought up several other production requests, but the Court repeatedly focused on the agreed production regarding the seven hotswap partners.¹⁰

The Court further ordered Defendants to produce a list of names, addresses, and telephone numbers in response to the Bureau's request number 1.¹¹ As to any other requests, the Court instructed the Bureau to first look at the seven exemplars and then to file a motion or take a deposition if more information is needed.¹²

⁷ Hr'g Tr. at 63 (The Court: "I'll ask the United States to prepare an order in reference to the seven exemplars that you've talked about and agreed to and indicate that they should be furnished to the United States by the 10th day of July.").

⁸ Hr'g Tr. at 52–53 (Mr. Harrington: "There's one category of documents, one category of information that is extremely time consuming and we haven't discussed with the Bureau, and that is telephone calls. They have asked us for telephone calls, and that will take longer. We need to figure out what that will be. So apart from the phone calls, all other materials we expect will be produced in the next 30 days.").

⁹ See Hr'g Tr at 53–54.

¹⁰ Hr'g Tr. at 51 (The Court: "I'm interested in talking about the seven."); 52 (The Court: "Let's talk about the seven. They've agreed to furnish the seven."); *Id.* at 58 (Mr. Harrington: "[T]here might be some limited audits. We've agreed to do this for the seven."), (The Court: "Give them the audits for the seven."); *Id.* at 59 ("[T]ake a look at the seven and see what they show."); *Id.* at 60 (Mr. Harrington: "We've agreed to search for communications related to the seven."), (The Court: "We'll see if we need to go beyond that. The compliance group related to the seven, give them the documents that you have.").

¹¹ Hr'g Tr. at 56 ("[N]ames, addresses, telephone numbers.").

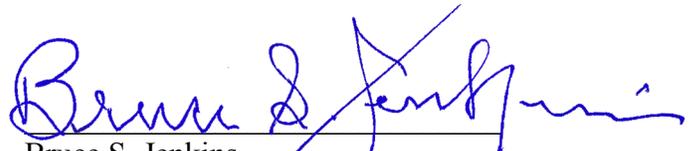
¹² Hr'g Tr. at 61 (Mr. Reischl: "There are other requests in Exhibit A." The Court: "Look at the seven. The seven may be enlightening . . . And if you have something beyond that, either depose somebody or file a motion.").

As such, the Court ORDERS as follows:

1. Plaintiff's Motion is GRANTED in part and DENIED in part.
2. Progrexion is ORDERED to produce the agreed-to discovery related to the seven hotswaps by July 10, 2020.
3. Progrexion shall produce a list providing the names, addresses, and telephone numbers of hotswaps in response to the Bureau's request 1 by July 10, 2020.
4. Matters not addressed herein may be raised by an appropriate motion with the Court as needed.

IT IS SO ORDERED.

DATED this 18th day of June, 2020.


Bruce S. Jenkins
United States Senior District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC., *et al,*

Defendants.

Case No. 2:19-cv-00298-BSJ

**JOINT STATUS REPORT
PURSUANT TO MARCH 13, 2020
ORDER**

Pursuant to the Court’s March 13, 2020 Order Granting in Part and Denying in Part Plaintiff’s Short Form Discovery Motion, the parties met and conferred “to determine whether the parties [could] come to an agreement about further discovery of Progexion marketing affiliates.” ECF 70, p. 6. After extensive conferences and written correspondence, the parties were unable to reach agreement. Plaintiff’s and the Progexion Company Defendants’ (PGX Defendants) statements, which were simultaneously exchanged, are presented separately below. For the convenience of the Court, the Parties are submitting a combined index of attached exhibits.

PLAINTIFF’S STATEMENT

Since filing its Motion to Compel (ECF 50), after extensive conferences with the Defendants, the Bureau of Consumer Financial Protection (Bureau) has substantially narrowed its hotswap-related document requests to: (1) ten requests limited to a sample of six hotswap partners; and (2) the targeted operations- and compliance-related requests described in Exhibit A. Defendants have failed to identify any particular (much less disproportionate) burden involved in responding to these requests, particularly after the Bureau’s significant compromises. Instead, they wrongly say that the Bureau is seeking broad discovery of all their 300 hotswap partners. It is not. The Bureau is propounding targeted requests focused on a narrow subset of issues that are central to this case. Defendants want to limit all the Bureau’s requests relating to hotswap partners to the six sample hotswap partners. But proportional discovery does not mean one-size-fits-all discovery; it means, as the Bureau has done, tailoring each request to achieve its discovery needs.

I. The Bureau's Requests

On December 4, 2019, the Bureau sought an order requiring Defendant PGX Holdings, Inc. (Holdings) to produce, *inter alia*, documents responsive to Requests 1–24 about Defendants' hotswap program and certain of its hotswap partners. ECF 50. The motion was referred to Magistrate Judge Pead. Following a hearing on March 10, 2020, the Court granted in part and denied in part (without prejudice) the Bureau's motion. ECF 70. The Court ruled that the Bureau "is not foreclosed from propounding requests related to hotswap partners other than HSP1 in the future, but first must provide some basis to believe the requests are likely to yield discoverable information." ECF 70, p. 6. To that end, the Court ordered the parties to meet and confer within 14 days and advised the Bureau "to provide a reasoned basis for discovery requests related to hotswap partners other than HSP1, to determine whether the parties can come to an agreement about further discovery of Progrexion marketing affiliates." *Id.*

The relevant requests fall into two categories. The first category, Requests 5–10, 15–17, and 19, encompasses contracts, payments, customer call recordings, email correspondence, and advertisements, among other things, related to a small sample of Defendants' hotswap partners, the Sample Marketing Affiliates (SMAs). The second category, Requests 1–4, 11–14, 18, and 21–24, encompasses information about the scope of Defendants' hotswap marketing program and related compliance activities, including lists of certain types of hotswap partners, consumer complaints, and Defendants' directives to the participants in the program.¹ These requests concern Defendants' internal activities and their knowledge of particular deceptive acts and practices and do not require burdensome searching or collection of materials from across

¹ Defendants have represented that there is no longer any dispute regarding Request 12.

Defendants' business operations.

Following the hearing, the parties held extensive oral and written discussions and the Bureau provided substantial material demonstrating a reasoned basis for its requests. For the first category of requests, the Bureau agreed to Defendants' proposal to limit the SMAs to six entities, and accordingly to limit Defendants' responses to Requests 5–10, 15–17, and 19 to those SMAs. But despite this agreement, Defendants refuse to produce documents responsive to these requests until *all* the parties' disputes are resolved.

For the second category of requests—those not limited to the SMAs—the Bureau offered the compromises set forth on Exhibit A. These compromises further focus the Bureau's discovery on the information most likely to yield material relevant to the parties' claims and defenses. But Defendants have rejected those compromises and insist that the Bureau agree to limit all of its discovery—apparently unalterably for the duration of case—to the SMAs.

II. Defendants Should Immediately Commence Production Regarding the Agreed SMAs

The Court's March 13 ruling advised the Bureau “to provide a reasoned basis for discovery requests related to hotswap partners other than HSP1,” in support of its claim that Defendants engaged in deception through their hotswap program, which cultivated or condoned lucrative lead generators who use the kind of misleading marketing described in the Complaint to lure consumers into signing up for credit repair.

As the Court advised, the Bureau provided Defendants a detailed letter supported by dozens of consumer complaints and documents produced by Defendants themselves. Ex. B, Mar. 25, 2020 Letter from Bureau. The letter described the Bureau's reasoned basis for selecting the ten SMAs to which the first category of requests pertained. The attached complaints and

Progrexion communications provide a reasoned basis for discovery related to each of the original SMAs selected by the Bureau concerning the deceptive marketing practices that form the basis of Counts II–V and Progrexion’s relationship with its hotswap partners.

The parties conferred extensively about the SMA evidence on March 26 and April 1. During the April 1 conference, the Bureau also sought to discuss whether Defendants had reconsidered their objections to the second category of requests, those not limited to the SMAs. Defendants declined to discuss those requests or to provide any information supporting their claimed burden regarding those requests.

On April 8, Defendants proposed to narrow the original list of ten SMAs to six. The evidence supplied by the Bureau justified discovery as to all ten SMAs, and, indeed, demonstrated that HSP1’s misleading marketing was not an aberration, but part of a pattern or practice by Defendants’ hotswap partners and that Defendants knew or should have known about these activities. Nevertheless, in the spirit of compromise, the Bureau accepted this narrowed list for Defendants’ responses to the document requests pertaining to SMAs, agreeing to hold its requests concerning the other SMAs in abeyance.² Ex. C, Apr. 10, 2020 Email from Bureau. The Bureau also sought a 30-day production schedule for the SMA-related requests. But Defendants refused to move discovery along by agreeing to *any* production schedule for these documents until all disputes were settled. *See* Ex. D, Apr. 13, 2020 Email from Defs.; Ex. E, Apr. 16, 2020 Letter from Bureau re: SMAs.

² As the Bureau explained to Defendants, its agreement to hold the discovery requests for the other SMAs in abeyance means that, consistent with the Court’s March 13 ruling, the Bureau “is not foreclosed” from seeking discovery regarding other affiliates if, as discovery proceeds, additional evidence emerges implicating these entities in the deceptive marketing scheme alleged in the Complaint. Ex. E, Apr. 16, 2020 Letter from Bureau re: SMAs.

III. The Bureau's Other Requests Are Well-Founded, Narrowly Tailored, and Focused on Key Issues in the Case

On April 13, 2020 Defendants made known their intention to limit *all* of the disputed requests to the SMAs. In answer to this, and in further compliance with the Court's instructions, the Bureau sent Defendants a second detailed letter providing additional support for its requests and explaining why certain requests that were never limited to a list of SMAs should not be so limited. *See* Ex. F, Apr. 16, 2020 Letter from Bureau re: Other Requests. This letter included dozens of consumer complaints that fit the pattern alleged in Counts II–V but appear to be from other hotswap entities (not the agreed SMAs), justifying the Bureau's targeted requests for information about Defendants' hotswap program operations and compliance activities that are not strictly limited to the SMAs.

Despite its extensive evidentiary proffer, which goes far beyond what Rule 26 requires in order to justify discovery of the central issues in a case, the Bureau proposed the compromises set forth in Exhibit A. In particular, the Bureau explained why it needs six categories of documents without a limitation to the SMAs:

1. Documents sufficient to identify the hotswap partners offering rent-to-own housing since 2017 (RFP 1), which are necessary because there are a significant number of consumer complaints about deceptive rent-to-own hotswap marketing, but those consumers do not identify which partner transferred them to Progrexion;
2. Compliance documents concerning hotswap partners since Defendants implemented a new compliance program related to hotswap partners in March 2016 (RFPs 11, 18, 22), which are necessary to show Defendants' knowledge of deceptive marketing and any efforts Defendants took to stop it;
3. Consumer complaints relating to deceptive practices of hotswap partners received by Defendants (RFP 21), which are necessary to show Progrexion's knowledge of deceptive

marketing practices in its hotswap program;³

4. Communications with hotswap partners about Craigslist, Facebook, fake news sites, and real estate advertisements (RFP 23), which are necessary to show the deceptive conduct alleged, Defendants' knowledge of it, and Defendants' right to control the affiliates' marketing in connection with the sale of Defendants' services;
5. Information regarding any software programs, web platforms, and instructions Progexion provided to its hotswap partners (RFP 14), which is necessary to show Defendants' substantial assistance and their participation with the hotswap partners in the deceptive marketing practices alleged; and
6. Documents sufficient to identify Defendants' 20 highest-volume hotswap partners since 2017 (RFP 2), their sales volumes (RFP 3), the products and services they offer (RFP 4), and any Progexion training materials that reference those high-volume partners (RFP 13), which are necessary to understand the scope of the alleged deceptive marketing and the degree of marketing integration between Defendants and their affiliates (*see* Compl. ¶¶ 65–70).

These requests go to the heart of Counts II–V. They seek targeted discovery regarding the Bureau's claim that the improper marketing scheme is ongoing, involves numerous hotswap partners, and continues to harm consumers. *See* Compl. ¶¶ 5, 71–73, 90, 105, 107. They seek evidence pertaining to Defendants' "knowledge and control" over its hotswap partners' marketing practices, which the Court recognized as an essential element of the Bureau's claims. ECF 56. And they are highly relevant to Defendants' pre-suit representations to the Bureau and their Answer, which squarely raise their compliance activities as a defense to the Bureau's claims. Progexion Defs.' Answer (ECF 65), p. 8 (asserting "efforts to discover and reject leads obtained through deceptive or other problematic marketing practices"); Ex. G, p. 21, Progexion's "White Paper," June 12, 2016; Ex. H, Hotswap Affiliate Audit Process as of 2016.

³ Notably, the Bureau agreed to limit its call-recordings request (Request 20) to the SMAs. *See* Ex. A. The remaining request for consumer complaints (Request 22) is not unduly burdensome, particularly for a company that purports to have a sophisticated and centralized compliance management system. *See* Ex. G, pp. 9–24, Progexion White Paper.

Thus, these six categories of document requests plainly seek discovery that is relevant to a “party’s claim or defense and proportional to the needs of the case,” Fed. R. Civ. P. 26(b)(1), and should not be limited to the SMAs.

Yet in a response dated April 27, 2020 and a final meet and confer the next day, Defendants refused to produce any of these documents. Despite conceding at the hearing that “of course some kind of list wouldn’t be unduly burdensome,” Transcript of Mar. 10, 2020 Hr’g at 29:3–7, they refused to produce a list of their rent-to-own hotswap partners on grounds of “undue burden.” They also refused to produce a list of their 20 largest-volume hotswap partners since 2017, and focused information regarding those large-volume partners, without citing a specific reason. They refused to produce software programs or instructions on grounds of relevance. And they refused to produce any compliance document, complaint, or communication with any hotswap partner other than SMAs on grounds that the Bureau had not shown a sufficient basis, wholly disregarding the clear pattern of misconduct that emerges from the consumer complaints the Bureau proffered on March 25 and April 16.

IV. The Bureau Requests a Production Schedule

The Bureau seeks a 30-day production schedule here because Defendants have refused to agree to one. They still have not completed production concerning HSP1, despite the Court’s February 18 and March 13 orders, nor have they provided a date certain by which that production will be substantially complete. The Bureau’s requests were served nine months ago, and Defendants’ relaxed production pace threatens to impede completion of discovery by the January 12, 2021 deadline established in the Scheduling Order. ECF 73.

V. Conclusion

Despite diligent efforts, the Bureau has been unable to resolve these critical discovery disputes through the meet and confer process. The Bureau respectfully asks that the Court consider the consumer complaints and Progrexion records attached to Exhibits B and F, which provide a well-founded basis for the Bureau's requests, and order Holdings, within 30 days of the Court's Order, to produce:

1. Documents responsive to Bureau Requests 5–10, 15–17, and 19 for the following agreed-upon SMAs: The HOPE Program, Easyhomeownership.net, One Loan Place, Ownerwiz, Rent2ownhouse, and Ascent Mortgage and its related company, Lead Virtue; and

2. Documents responsive to Bureau Requests 1–4, 11, 13–14, 18, and 20–24, as modified by Exhibit A.

PGX Defendants' Statement

PGX Defendants have complied with this Court's March 13 Order (ECF No. 70) (the "Order") denying in part Plaintiff's motion to compel. We conferred with Plaintiff on its "reasoned basis" for additional hotswap discovery and, in a compromise it accepted, offered to provide discovery on 6 of 10 additional hotswaps Plaintiff sought.

Since that agreement, Plaintiff has unexpectedly reverted to its pre-Order position that, notwithstanding our negotiations and agreement, it is entitled to discovery targeting dozens or hundreds of hotswaps across 14 different requests. PGX Defendants have properly rejected this demand. It is a thinly-veiled effort to circumvent the Order, which sustained PGX Defendants' relevancy objection to Requests Nos. 1-24 because those requests sought discovery unrelated to the only hotswap identified in the Complaint, HSP1.

This statement sets this status out in greater detail, and asks the Court to (once again) deny Plaintiff's requests for unfettered discovery on hotswaps.

A. The Order, the Meet & Confer Process and the Parties' Agreement on Six Hotswaps.

Following the Court's March 13 Order, Plaintiff and PGX Defendants engaged in a successful meet and confer process. The Order set a 14-day deadline (by March 27) for Plaintiff to "explain the basis to seek discovery of hotswap partners other than HSP1." ECF No. 70 at 8. Plaintiff did that, sending PGX Defendants a March 25 letter (Ex. B) with 200+ pages exhibits of what it alleged were examples of "internal and external complaints mentioned at oral argument as a basis for discovery" with respect to 10 hotswaps other than HSP1. *Id.* That letter set forth no conditions or limitations regarding those hotswaps as related to the disputed document requests (RFP Nos. 1-24). The parties then discussed these 10 over three meetings.

During the last of these meetings on April 8, PGX Defendants proposed a compromise to allow discovery on 6 of the 10 specific hotswaps Plaintiff sought. This compromise represented PGX Defendants' effort to move the case forward, despite our legitimate misgivings about the quality and weight of Plaintiff's evidence. On April 10, Plaintiff accepted that agreement. (Ex. C).

However, Plaintiff then articulated new conditions: that the agreement only applied to 10 of the contested 24 requests subject to the Court's Order. They still sought discovery about the 4 hotswaps that were left aside from the agreement, dozens of additional hotswaps, and often all 300+ hotswaps for those requests it says "concerned hotswaps generally" (RFP Nos. 1-4, 11-14, 18, and 20-24). *Id.* PGX Defendants rejected this demand as inconsistent with the Court's Order and the Parties' lengthy discussions. (Ex. D, April 13 email).

Undeterred, on April 16, Plaintiff produced new alleged “consumer complaints” and asserted that these provided a “reasoned basis” for its pursuit of discovery about all other hotswaps beyond the six subject to the agreement. This letter came three weeks after the Court’s March 27 deadline, and after the Parties had completed the Court-ordered meet and confer process.

PGX Defendants responded by letter on April 27 (Ex. I), calling out the Plaintiff’s apparent hide-the-ball negotiations and its failure to comply with the Court’s Order. Still, PGX Defendants undertook a review of Plaintiff’s late, new materials and, in response, explained why they did not provide a reasoned basis for the broad discovery Plaintiff sought. PGX Defendants also offered compromises on RFP Nos. 1-4, 11-14, 18, and 20-24 to the extent relevant to Plaintiff’s case, and pointed out that we had already produced documents responsive to several of the requests (*id.* at 5).

On an April 28 teleconference, Plaintiff indicated that it would not confer on RFP Nos. 1-4, 11-14, 18, and 20-24 as long PGX Defendants took the position that there was no reasoned basis for discovery on all 300+ hotswaps. PGX Defendants proposed that we provide a status report to the Court.

B. PGX Defendants have complied with the Court’s Order.

When it denied Plaintiff’s Motion to Compel, the Court set forth a second-chance opportunity for Plaintiff to seek discovery about hotswaps other than HSP1. That opportunity required that it provide PGX Defendants an evidentiary “reasoned basis” in the form of complaints about other hotswaps by March 27—Plaintiff accordingly purported to do that in its March 25 letter wherein it identified only 10 hotswaps. The Parties then met and conferred

about those 10 hotswaps. PGX Defendants proposed, and Plaintiff agreed, to a compromise where discovery would cover 6 of the 10 hotswaps identified in the March 25 letter.

Subsequent to this agreement, Plaintiff reverted to its pre-Order demand that discovery extend to every hotswap—over 300 entities. PGX Defendants have correctly rejected Plaintiff’s demand as it is procedurally improper, lacks a “reasoned basis,” and is unmanageably burdensome.

The All-Hotswap Demand Is Procedurally Improper. The Plaintiff’s demand for all-hotswap discovery is one that the Parties already litigated and the Court rejected in the Order. Plaintiff did not appeal the Order, and did not renew its demand until after the Court’s deadline for providing PGX Defendants a “reasoned basis” to support discovery beyond HSP1.

This is not simply a matter of untimeliness, but unfairness. Plaintiff’s renewed demand came after the Parties had finished the Court-ordered meet and confer process, and Plaintiff’s procedural misstep harmed the PGX Defendants. Plaintiff’s strategic staging of its requests sandbagged PGX Defendants. We had engaged in the meet and confer process in good faith. It was a time consuming process of discussion (over 3 hours), reviewing Plaintiff’s purported evidence, and client consultation. There was no statement by Plaintiff that, after securing our agreement, they would return with the same broad requests that had been litigated. And our offer of compromise was based on what Plaintiff had falsely led us to believe would be the entire scope of its proposed hotswap discovery.

The All-Hotswap Demand Lacks A Reasoned Basis. Nor does the April 16 Letter (Ex. F) provide a “reasoned basis” for the breathtaking discovery it demands on 300+ hotswaps. Many of the cited complaints concern the six hotswaps for which PGX Defendants already agreed to

permit discovery (Ex. I, at 4). One complaint Plaintiff cites as an example of an affiliate “disappearing” was in fact found “invalid” by the Better Business Bureau (*id.*). Several complaints are actually tributes to Lexington Law, with one consumer professing “I am very fortunate to have [Lexington Law] working on my credit,” and another that Lexington was “very legit” (*id.*). Plaintiff misleadingly characterizes one as showing a consumer receiving “bogus” real estate listings, when the consumer in fact makes no such complaint at all (*id.*). And, numerous complaints concern allegations against Lexington Law that have no bearing on the issues in dispute in the lawsuit, but appeared to have been cited to inflate the number of examples (*id.* at 5).⁴ Accordingly, the April 16 Letter fails to provide a “reasoned basis” to support such sweeping discovery.

The All-Hotswap Demand Is Disproportionate. Plaintiff’s demand would also make discovery in this case grossly disproportional to any legitimate, demonstrated litigation need. Each additional hotswap requires massive discovery. To date, for even fewer than seven hotswaps, discovery has entailed: (i) five third-party subpoenas by Plaintiff to three of those hotswaps; (ii) nearly 40,000 pages produced by two of those hotswaps pre-litigation; (iii) over 80 separate written answers to discovery by those hotswaps, pre-litigation; (iv) three pre-lawsuit investigational hearings (depositions) for those two hotswaps; and (v) approximately 700 pages produced by one of those hotswaps during the lawsuit. With six defendants, seven third-parties,

⁴ Plaintiff also alleges that Defendants’ practice of voluntarily refunding client payments when requested (also known as a chargeback) is evidence of deceit. Even if that were true (it is not), it has no bearing on Plaintiff’s request for more discovery, and tellingly Plaintiff does not tie these new allegations to seeking discovery on any particular hotswap.

one plaintiff, and eight years of time (supposedly) at issue, completing just that discovery will already fill the time left in discovery and consume a lengthy trial.

Expanding this to dozens or hundreds more third-party hotswap entities is disproportional and overly burdensome. To take one example: Plaintiff's RFP No. 18 asks for certain internal and external correspondence related to any of the 300+ hotswaps—responding to that one request alone would necessitate a minimum of 300 ESI search terms (one or more for each hotswap).

In response, Plaintiff has only offered arbitrary limitations identical or nearly-similar to those it litigated and lost in the Order (*e.g.*, RFP No. 11). For instance, its limitation of RFP Nos. 2-4 and 13 still seeks discovery about the “twenty highest-volume” hotswaps, without any regard to whether any of those twenty hotswaps engaged in bad acts, and with no reason to suspect that a hotswap's volume is a reliable indicator of likely bad behavior. Likewise, in RFP Nos. 3-4, 11, 13, 18, 20, 23, Plaintiff still seeks discovery on each of the ten “sample” hotswap partners, including the four excluded by the Parties' agreement. And, Request Nos. 11, 12, 18 and 22, seek discovery on all 300+ hotswaps, underscoring the inadequacy of Plaintiff's proposed limitations.

Plaintiffs have also alleged the red herring that PGX Defendants will not produce materials that generally concern the hotswap program. This is not true. We have already provided discovery regarding hotswaps generally, both in the pre-litigation investigation and during this lawsuit. And we will produce more. Such materials include documents (not limited to specific entities) about the hotswap program, compliance oversight and audit policies, and lead source data including detailed volume, revenue and other information about many specific

hotswaps for which Plaintiff does not allege any wrongdoing. These documents are responsive to, at least, Requests Nos. 3, 11, 12, 18, and 21 that were the subject of the Motion to Compel.

Such records about the general hotswap program are different than the demands we rejected—ones that target individual hotswaps who number in the dozens or hundreds. There is no need, and Plaintiff has demonstrated none, for the case to go forward with discovery focused on dozens or hundreds of additional hotswaps beyond HSP1 and the six agreed upon hotswaps.

C. Conclusion

PGX Defendants have not had opportunity to review or respond to Plaintiff’s submission to the Court. Accordingly, PGX Defendants request a telephonic conference to address any open issues not addressed in our filing.

Dated: May 7, 2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTHERN FLORIDA
TALLAHASSEE DIVISION

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

OLP.com, Inc.

Defendant.

Case No. 4:20-MC-6

[Proposed] ORDER

On August 24, 2020 plaintiff Bureau of Consumer Financial Protection (“Bureau”) filed a motion to compel production of documents responsive to a subpoena issued pursuant to Fed. R. Civ. P. 45 to defendant OLP.com, Inc. (“OLP”). [ECF No. 1]. Having considered the arguments presented by the parties and the accompanying supporting materials, it is HEREBY ORDERED:

1. OLP’s objections are OVERRULED.
2. The Bureau’s motion to compel with respect to Request for Production (“RFP”) #1 is GRANTED; OLP shall produce all documents responsive to RFP #1.

3. The Bureau's motion to compel with respect to RFPs #2-4, 8-9, 14, and 19 is GRANTED; OLP shall produce all documents responsive to these requests for the for the period July 21, 2011 to January 21, 2020.
4. The Bureau's motion to compel with respect to RFP #11 is GRANTED; OLP shall produce all documents responsive to RFP #11.
5. The Bureau's motion to compel with respect to RFP #20 is GRANTED; OLP shall produce all documents responsive to RFP #20.
6. The Bureau's motion to compel with respect to RFPs #22-31 is GRANTED; OLP shall produce all documents responsive to RFPs #22-31.
7. The Bureau's motion to compel with respect to the format of documents produced by OLP is GRANTED; OLP shall produce all documents in the form specified by the Bureau's subpoena.
8. OLP shall produce all responsive documents within 14 days of this Order.

IT IS SO ORDERED

Dated: this ___ day of _____, 2020.

United States District Judge