

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

MAUREEN MCOWEN

JONATHAN REISCHL

TRACY L. HILMER

Enforcement Attorneys

Bureau of Consumer Financial Protection

1700 G Street, NW

Washington, DC 20552

Telephone: (202) 435-9202

maureen.mcowen@cfpb.gov

jonathan.reischl@cfpb.gov

tracy.hilmer@cfpb.gov

*Attorneys for Plaintiff Bureau of Consumer
Financial Protection*

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
Jonathan Reischl
*Counsel for the Bureau of Consumer
Financial Protection*