



Richard W. Epstein, Partner
 PNC Building
 200 East Broward Boulevard, Suite 1800
 Fort Lauderdale, Florida 33301
 Phone: 954.491.1120
 Fax: 954.771.9264
 Email: richard.epstein@gmlaw.com

May 18, 2020

Via Email (Amanda.Krause@cfpb.gov and Joyce.Chen@cfpb.gov)

Amanda J. Krause, Esq.
 Joyce Chen, Esq.
 Bureau of Consumer Financial Protection
 1700 G Street, NW
 ATTN: Office of Enforcement
 Washington, DC 20552

Re: *Civil Investigative Demand to Daniel A. Rosen, Inc. d/b/a
 Credit Repair Cloud dated April 13, 2020 (the "CID")*
 Our File No.: 64181.0002

PETITION TO SET ASIDE CIVIL INVESTIGATIVE DEMAND

Greenspoon Marder LLP represents Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud ("CRC"). Pursuant to 12 U.S.C. §5562(f) and 12 C.F.R. §1080.6(d), CRC petitions the Director of the Bureau of Consumer Financial Protection (the "Director" and the "Bureau") to set aside the Civil Investigative Demand the Bureau served on CRC on or about April 13, 2020 (the "CRC CID" a copy of which is attached hereto as **Exhibit A**). As grounds for this Petition, and as discussed in detail below, the CRC CID is fatally defective because, as the Notification of Purpose confirms, the stated subject matter of the CRC CID is outside of the Bureau's jurisdiction as Congress denied the Bureau investigative and enforcement authority over credit repair services and CRC's CRM software.

Factual Background

CRC's Business

CRC creates and markets customer relationship management (CRM) software designed for businesses that provide credit repair services. CRM is a technology solution that allows a business to more easily manage its relationships with its customers. It allows a business to record and keep track of its past dealings with customers, and streamlines mundane tasks allowing a business to be more profitable. Essentially, CRM allows a business to focus its human resources on building relationships and focusing on the important tasks of their business while handling routine matters automatically.

Consumers do not need and do not buy CRM software. CRC does not sell its CRM software to consumers.

CRC's CRM product – as with all comparable CRM software - is designed for use by, and is sold to, businesses; CRC's target market is credit repair businesses. CRC's CRM software lets a credit repair business store current and prospective customer information, notes from prior customer interactions, identify new sales opportunities, provide word processing functions, and facilities keeping current customers on board with the business. CRC's CRM also makes information about current or prospective customers available to anyone in the business. CRC's CRM acts as a centralized database of information, so that any employee of a credit repair business using a CRC's CRM can keep up to date on what a customer's needs are, how they may have changed, how they have been serviced, and what the next steps with the customer are.

CRC markets and develops a CRM specifically designed to address the needs of a small credit repair business. CRC created its CRM to empower as many people as possible to start their own home businesses, either as a supplement to an existing business or as a brand new career opportunity. As CRC describes it, CRM is “a software that makes it incredibly easy to launch, run and grow your very own credit repair business. CRC's CRM tracks a businesses' clients contact information, centralizes executed or important documents between the business and the client, and creates a task list of completed matters, and upcoming next steps to be completed/conducted. The software further allows a business to keep track of a client's credit score as listed by major credit reporting agencies. CRC's CRM also keeps track of the dispute status of certain credit reporting that a business has challenged on behalf of a client. The CRM software also expedites and facilitates the means by which a business can review and challenge credit reports, by allowing a business to import an individual's credit report and highlight those matters that are most damaging to a credit score.

What CRC's CRM does not do is equally important: it does not provide a dialer platform and it does not facilitate telemarketing. CRC's CRM does not process payments or offer assistance in requesting or collecting payments.

CRC's CRM software is a cloud based “software as a service” (“SaaS”) product, and allows a business to access it on a computer or mobile device. This allows the business to have quick, secure, and easy access to their clients' files no matter where they are in the world. CRC's CRM thus allows a small business to feel truly full service, with employees of a business able to address a client's needs in an efficient and professional manner no matter where they are located.

CRC does not conduct business with consumers or interact with consumers. Importantly to this matter, CRC ***does not provide credit repair services***. CRC does not contact, market to, interact with or conduct business with individuals looking to repair or improve their credit. CRC markets and sells its products only to other businesses, and only engages in business-to-business transactions. CRC's CRM allows a business that is providing credit repair services to run its business in a more organized and efficient manner. CRC's CRM is valuable to that business specifically because it streamlines routine processes and allows a business to focus on those areas of their clients' positions that require more attention. CRC's CRM does not and cannot in

and of itself provide “credit repair services.” A business purchasing CRC’s CRM does not “use” it to repair a client’s credit, or to challenge credit reporting agencies’ reports on a client’s credit. In those examples, the CRM only keeps track of the business’s efforts for its client.

CRC sells software—nothing more. In that respect, it is no different from other major creators and providers of CRM software, such as Salesforce or Oracle, or software providers generally.

The CRC CID

On April 13, 2020, the Bureau issued the CRC CID. Every CID must include a Notification of Purpose. 12 U.S.C. § 5562. The Notification of Purpose serves the purpose of “stat[ing] the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” 12 U.S.C. § 5562. Essentially, it provides the subject of the CID with the scope of the investigation, and creates the boundaries of the CID. See Id. The Notification of Purpose here is:

The purpose of this investigation is to determine whether providers of credit repair business software, companies offering credit repair that use this software, or associated persons, in connection with the marketing or sale of credit repair services, have: (1) requested or received prohibited payments from consumers in a manner that violates the Telemarketing Sales Rule, 16 C.F.R. Part 310; or (2) provided substantial assistance in such violations in a manner that violates Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, or the Telemarketing Sales Rule, 16 C.F.R. Part 310. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

Ex. A. at p.1. The Notification of Purpose makes clear the CRC CID’s stated focus is “the marketing or sale of credit repair services,” something over which the Bureau has no regulatory authority. Then, coupling “providers of credit repair business software” and “companies offering credit repair that use this software,” the Notification of Purpose veers back to the safe haven of the Telemarketing Sales Rule and the CFPA to characterize potentially violative conduct to be investigated. The dysfunction in the Notification of Purpose, and why it fails its obligation to describe an investigative function authorized by law, is that the Bureau cannot declare violations of regulatory schemes under which it may have *some* authority if the subject matter of the investigation is one over which the Bureau has *no* authority.

The CRC CID seems a by-product of the Bureau’s newfound hostility toward the credit repair industry generally. This effort can only be interpreted as a direct repudiation of Congress, which validated, and regulated, the credit repair industry by enacting the Credit Repair Organization Act (“CROA”). Importantly, Congress denied the Bureau authority to regulate credit repair companies, leaving regulatory authority with the FTC. In apparently retaliation against the credit repair industry, the Bureau publicly circumvents clear, unequivocal Congressional intent, and overtly interferes with the credit repair industry, by recommending that

businesses who necessarily deal with credit repair businesses ignore them.¹ Now, with the CRC CID, the Bureau takes the next step, targeting a lawful business, outside of the Bureau's regulatory sphere, because it does business with the credit repair industry.

Argument

The Supreme Court's admonitions in United States v. Morton Salt Co., 338 U.S. 632, 652 (1950) remain apropos today: "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power."

The CRC CID has a number of deficiencies, any one of which is fatal and warrants the CRC CID be set aside. First, the Bureau's investigation into credit repair services exceeds their jurisdiction and scope of authority. Second, even where the Bureau may have some regulatory authority over a specific limited range of conduct by credit repair companies, that limited authority does not encompass CRC. CRC not only does not offer or perform credit repair services, it does no telemarketing, and does not market or sell to consumers. Telemarketing cannot justify the "sweeping nature" of the CRC CID, and so it "exceed[s] the investigatory power" of the Bureau. Morton Salt Co., 338 U.S. at 652 Third, the Bureau cannot justify the CID through its authority to prohibit unfair, deceptive, or abusive acts or practices through the CFPB because the scope of that authority is limited to the sale or provision of a consumer financial product or service, which CRC does not do. Finally, CRC software products facially cannot and do not provide or offer substantial assistance to any of the very limited credit repair business operations over which the Bureau has very limited authority, as CRC software simply does not do any of those things.

I. The CFPB has no authority to regulate credit repair.

"[T]here is no doubt that a court asked to enforce a subpoena will refuse to do so if the subpoena exceeds an express statutory limitation on the agency's investigative powers." Gen. Fin. Corp. v. FTC, 700 F.2d 366, 369 (7th Cir. 1983). Thus, it is a prerequisite that "the subject matter of the investigation is within the statutory jurisdiction of the subpoena issuing agency." See FTC v. Ken Roberts Co., 276 F.3d 583, 386 (D.C. Cir. 2001). The Bureau's jurisdiction is narrow: the matters delegated and the matters Congress has authorized. Credit repair is neither.

¹. See Bureau of Consumer Protection Financial, "*Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act*," dated April 1, 2020, available at www.consumerfinance.org and https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjn0-fO05rpAhUBMawKHVGRDJAQFjAAegQIBBAB&url=https%3A%2F%2Ffiles.consumerfinance.gov%2F%2Fdocuments%2Fcfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf&usq=AOvVaw0JGQiKGwh_Ww1Oj39_YVi7 ("The Bureau reminds furnishers and consumer reporting agencies that they may take advantage of statutory and regulatory provisions that eliminate the obligation to investigate disputes submitted by credit repair organizations and disputes they reasonably determine to be frivolous or irrelevant.")

The CRC CID transparently bootstraps off of the Bureau's *extremely limited authority* to regulate telemarketing to launch its investigation of the credit repair industry. But the Bureau does not have authority to regulate the credit repair industry. The Bureau's authority is limited. See 12 U.S.C. § 5491 *et seq.* The CFPA authorizes the Bureau to enforce consumer financial laws. 12 U.S.C. § 5511. The CFPA defines "consumer financial law" as one of eighteen enumerated financial laws, an exhaustive list which includes the TSR. See 12 U.S.C. § 5481(12). Beyond this, the Bureau has no authority to regulate or enforce any laws unless Congress has expressly empowered it. See *id.* For instance, the Bureau can investigate companies that offer consumer products or services - credit repair services among them - **that are consumer facing and which conduct telemarketing operations** governed by the TSR. But the Bureau does not have carte blanche to investigate any other aspect of credit repair services about which it is curious. See *e.g.*, Consumer Financial Protection Bureau v. Prime Marketing Holdings, LLC, No. cv-1607111 (C.D. Cal. 2016). In fact, Congress *has* regulated credit repair and intentionally excluded the Bureau when it designated CROA's enforcing authority leaving enforcement to the FTC. See 12 U.S.C. § 5481(12). Congress could certainly have included the Bureau, but it chose not to do so.

The CID's stated purpose is the investigation of **three distinct types** of businesses: 1) providers of credit repair business software, 2) companies offering credit repair that use this software, and 3) associated persons. CRC is in the first group, so the threshold question is: from where does the Bureau derive the authority to investigate a "provider[] of credit repair business software?" The answer, likely generally, but certainly as to CRC is "nowhere".

The CFPA's specific and limited grant of authority cannot legitimize this investigation. The TSR's threshold requirement of a telemarketing activity precludes this investigation. And CROA excludes the Bureau. The Bureau's hostility toward credit repair—an industry for which Congress has created a legitimate role—does not synthetically create regulatory authority where by design none exists.

II. The Bureau's investigative authority is limited to consumer facing telemarketing activities in which CRC does not engage.

The Bureau's own mission statement emphasizes that this investigation is untethered from any grant of authority. The Bureau may

take any action authorized under part E to prevent a *covered person* or *service provider* from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law *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 (emphasis added.)

CRC is neither a covered person nor provides a covered service. It does not have a consumer financial product or service, so, of course, it does not offer one and does not engage in transactions involving one. CRC does not engage in any transactions with consumers. Its business to business operational model is, by the design of the CFPA, beyond the Bureau's reach.

The Bureau may try to shoehorn this investigation into the TSR's limited grant of authority over telemarketing. CRC does no telemarketing. It does not telemarket its own products. It does not telemarket for others, credit repair businesses or anyone else. It does not provide a platform for telemarketing.

Congress authorized the rulemaking that became the TSR through the Telemarketing and Consumer Fraud Abuse and Prevention Act ("TCFAP"), the purpose of which was to "offer consumers necessary protection from telemarketing deception and abuse." See 16 C.F.R. Part 310 citing 15 U.S.C. § 6101. A necessary pre-requisite to fall within the TSR is that **the subject actually telemarkets**. See generally, 15 U.S.C. § 6101 *et seq.* Indeed, the entire purpose of the TCFAP was to allow the FTC to "prescribe rules prohibiting deceptive *telemarketing* acts or practices and other abusive *telemarketing* acts or practices." 15 U.S.C. § 6102.

First, CRC does not conduct telemarketing. "Telemarketing" is "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. See 16 C.F.R. Part 310.2(dd); see also 15 U.S.C. § 6106 (similar definition). CRC does not do that.

Second, the TSR provision to which the Bureau refers is 16 C.F.R. Part 310.4(a)(2):

"[i]t is an abusive telemarketing act of practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:...(2) Requesting or receiving 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:

- (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
- (ii) The seller has provided the person with documentation...demonstrating that the promised results have been achieved....

This section mentions both "telemarketers" and "sellers," who are "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges to provide goods or services to the customer in exchange for consideration." See 16 C.F.R. Part 310.2(aa). "Customer," in this context, is "any person who is or may be required to pay for goods or services offered through telemarketing." See 16 C.F.R. Part 310.2(l).

Setting aside that CRC's software business is telemarketing free and does not sell to consumers, 16 C.F.R. Part 310.4(a)(2) cannot apply to CRC. CRC is not a "seller" as defined by the TSR as it does not offer goods or services in connection with telemarketing transactions. The CRC CRM is not a dialer or otherwise offer the ability to initiate calls. It does not incorporate automated dialing software. It does not generate leads by which a business can perform

telemarketing. Nor does CRC sell its goods or services to “customers” as defined by the TSR because, if necessary to belabor the point, it does not have a product offered through telemarketing. See 16 C.F.R. Part 310.2(l).

Finally, and perhaps most obviously, CRC does not request or receive “payments of any fee...**to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating.** Neither CRC nor its CRM platform removes derogatory information from or improves a person’s credit history, record, or rating in and form or manner. The CRM allows the business that does those things to keep track of its efforts for its clients.

The Bureau’s history with businesses that provide credit repair services substantiates CRC’s jurisdictional challenge. Consumer Financial Protection Bureau v. Prime Marketing Holdings, LLC was an enforcement action under the TSR “in connection with the offer and sale of credit repair services” against a business that provided “marketing services” for a registered credit service organization. No. cv-1607111 (C.D. Cal. 2016) (D.E. 1, ¶¶ 7, 11-12) (hereafter “Prime Holdings”). Notably, the defendant allegedly “offered, sold and provided credit repair services to consumers” and procured consumers’ business through telemarketing. *Id.* (D.E. 1, ¶¶ 7, 11-12.) Thus, the defendant in Prime Holdings was considered subject to the TSR, and the enforcement authority of the Bureau, *precisely because it was a telemarketer selling credit repair services to consumers.* See Consumer Fin. Prot. Bureau v. Prime Mktg. Holdings, LLC, 2016 WL 10516097, at *9 (C.D. Cal. Nov. 15, 2016). *Prime Holdings* illustrates the intersection of credit repair and telemarketing that triggers the TSR, and Bureau jurisdiction, precisely because of the telemarketing activities.

But CRC’s CRM software is devoid of telemarketing activity. And CRC itself does nothing subjecting itself to the TSR: it does not telemarket, it does not market for others, it does not market to consumers, and it does not sell consumer goods and services.

III. The Bureau cannot investigate CRC under its general authority to prevent unfair, deceptive, or abusive acts or practices.

Generally, the Bureau can investigate “a *covered person* or *service provider* . . . *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.

Here, the CFPA’s definitions derail the Bureau’s efforts. A “covered person” is “(a) any person that engages in offering or providing a consumer financial product or service and (b) any affiliate of a person described in subparagraph (a) if such affiliate acts as a service provider to such person.” 12 U.S.C. § 5481(6). An affiliate “means any person that controls, is controlled by, or is under common control with another person.” 12 U.S.C. § 5481(1). “The term ‘consumer financial product or service’ means any financial product...that is *offered or provided for use by consumers primarily for personal, family, or household purposes.*” 12 U.S.C. § 5481(5) (emphasis added). A “financial product or service” is defined to include an array of products or services that are set out in the CFPA, which include loans, extending credit, engaging in deposit taking activity, providing financial advisory services, debt management, debt settlement, or collection of debt, all things that CRS does not do. See 12 U.S.C. § 5481(15).

CRC is not a “covered person.” Business CRM software – CRC’s only product – is not a “consumer financial product or service.” So the Bureau’s oblique reference to its general authority is misplaced. CRM is software, sold to and used by a business to manage that businesses’ relationships with its own customers. The CRM software does not provide financial advice, or engage in deposit taking activities, or collect, manage, or settle debt. In fact, the consumer that engages a company that purchased CRC’s CRM does not have access to the software. CRC’s CRM is specifically designed for use by credit repair businesses. But the CRM software is not itself a consumer financial product or service, or analogous to those examples provided by Congress. See 12 U.S.C. § 5481(15). It follows that CRC does not fall within the investigative scope of the CFPA because it does not offer the only type of consumer financial product or service the Bureau is authorized to regulate.

Beyond that, CRC does not sell a product to *consumers*, and thereby does not sell a *consumer* financial product or service. 12 U.S.C. § 5481. CRC sells its CRM software only to businesses. CRC conducts no business with a consumer. So even were CRC’ CRM software deemed a “financial product or service,” it is not a “*consumer* financial product or service.” 12 U.S.C. § 5481(5).

And although credit repair business would also not be “covered” businesses, CRC is not an “affiliate.” It engages in arms-length transactions with credit repair businesses. There is no corporate legal connection between CRC and any credit repair service company, let alone any common control. Consequently, CRC is not an affiliate of a “covered person” and does not sell “consumer financial products or services.” See 12 U.S.C. § 5531.

Nor is CRC a “service provider” within the meaning of the CFPA. A “service provider” is “any person that provides a material service to a *covered* person in connection with the offering or provision by such covered person of *a consumer financial product or service.*” See 12 U.S.C. § 5481(26). The operator of a credit repair business is not, without more, a covered person, and its business does not provide a consumer financial product or service, as credit repair is outside of the Bureau’s remit.

Moreover, CFPA provides two examples of “material services”: (1) participates in the designing, operating, or maintaining the consumer financial product or service, or (2) processes transactions relating to the consumer financial product or service.” CRC does neither. The Bureau defines the consumer financial product or service here as the “marketing or sale” of credit repair services.” Neither CRC nor CRC’s CRM “markets” or “sells” credit repair services. CRC’s CRM does what CRMs sold by IBM, Oracle, Salesforce and other like companies do: provides a business – in this instance a credit repair business - with the ability to more fluidly operate their business, and organize and develop customer relationships. Nor does the CRM “process” any sort of credit repair transaction. Congress appears to have considered this with the exemption from “service provider,” for persons offering or providing to a covered person—(i) *a support service of a type provided to businesses generally or a similar ministerial service....*” See 12 U.S.C. § 5481(26)(B)(i). This is precisely the type of service CRC provides—software that supports a credit repair business in conducting their affairs.

Businesses across a wide variety of industries use CRM software. Those businesses might be “covered persons” under the CFPA, or might have nothing to do with financial services or consumers. CRM is support software. CRC’s CRM is no more a credit repair service than Microsoft Office 365[®] is itself publisher or author; CRC’s CRM is a **tool** used by a particular industry for *that industry’s use with its own customers*. Nor does CRC’s CRM software facilitate 1) lead generation, 2) telemarketing or direct dialing software, or 3) marketing efforts.

IV. CRC has not offered substantial assistance to any credit repair service provider.

The Bureau next justifies the CID to investigate if CRC has “provided substantial assistance in [TSR] violations in a manner that violates...12 U.S.C. § 5536.” Ex. A. However, this position is nonsensical.

The CFPA prohibits

any person to knowingly or recklessly ***provide substantial assistance*** to a covered person or service provider in violation of the provisions of section 5531 of this title, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

12 U.S.C. § 5536 (emphasis added). The CFPA does not provide a definition for what constitutes “substantial assistance.” However, it is clear that CRC does not provide **any** assistance, let alone substantial assistance, to any covered person in violation of the CFPA.

“To plead adequately the ‘**substantial assistance**’ element, the Government must “establish that the aider and abettor ‘in some sort associated himself with the venture, that he participated in it as something he wished to bring about, and that he sought by his action to make it succeed.’ See Consumer Financial Protection Bureau v. RD Legal Funding, LLC, 332 F.Supp.3d 729, 772 (S.D. N.Y., 2018) (emphasis in the original); see also Consumer Fin. Prot. Bureau v. Universal Debt & Payment Sols., LLC, No. 1:15-CV-0859-RWS, 2019 WL 1295004, at *6 (N.D. Ga. Mar. 21, 2019) (same); CFPB v. D & D Mktg., No. CV 15-9692 (PSG) (EX), 2016 WL 8849698, at *12 (C.D. Cal. Nov. 17, 2016) (same); S.E.C. v. Grendys, 840 F. Supp. 2d 36, 46 (D.D.C. 2012) (same). “In other words, the primary violation must be a direct or reasonably foreseeable result” of CRC’s conduct. Grendys, 840 F. Supp. 2d at 46.

Here, there is no plausible “substantial assistance” theory on which the Bureau can justify its investigation. First, CRC is in no way “associated” with credit repair services or products. The Bureau alleges that CRC “provided substantial assistance” to businesses in “request[ing] or receiv[ing] prohibited payments from consumers in a manner that violates the Telemarketing Sales Rule.” See Ex. A. However, CRC’s CRM does not provide payment processing and so has no role in facilitating or assisting a credit repair company requesting or receiving any payment, or in particular a payment proscribed by the TSR. CRC is not a bank. CRC is not a payment processor. CRC has no involvement in the financial aspect of a credit repair service’s

arrangement between itself and its customer. In fact, a credit repair business using CRC's CRM is obliged to contract with a third party payment processor for such functions. CRC does not offer any assistance in the area of requesting payments from individuals seeking to repair their credit, let alone substantial assistance.

Further, CRC would not stand to benefit economically if a credit repair service requested such an advance fee such that it would wish to bring about that outcome. See RD Legal Funding, LLC, 332 F.Supp.3d at 772. Nor does CRC selling CRM software to a credit repair company lead to a direct or reasonably foreseeable result of such a potential advance fee violation, since the software does not facilitate or process payments. If the Bureau's theory in the CRC CID is validated, it would literally justify any investigation into any upstream service provider of a business over which the Bureau has authority, no matter how far removed. Such a result would not only violate the purpose of the CFPA—which is to regulate *consumer financial transactions and services*, not business to business transactions—but would permit the Bureau to infringe on the authority of the FTC to regulate the credit repair industry generally.

Moreover, even if the Bureau could demonstrate that somehow, by selling CRM to a credit repair business, CRC “substantially assisted” that business in requesting and receiving premature payments, the Bureau would be required to demonstrate that CRC *knew* or *recklessly* allowed that to happen. Neither result is possible. To demonstrate “recklessness” within the statute, the Bureau must show “severe recklessness,” which

is limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.

Consumer Fin. Prot. Bureau v. Universal Debt & Payment Sols., LLC, No. 1:15-CV-0859-RWS, 2019 WL 1295004, at *6 (N.D. Ga. Mar. 21, 2019) citing Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004, 1010 (11th Cir. 1985). “Knowledge” means “actual knowledge” that the conduct is taking place. See id. Here, CRC sells a software product with the same functionalities as software products sold by household named multi-national software companies. CRC's product does not process payments and does not enable telemarketing. It is inconceivable that CRC could know whether any given credit repair business to whom it provides CRM software violates the TSR. CRC *hosts* the CRM and the data stored in it. But CRC cannot read or analyze that data as that implicates more privacy, credit and other protections than is worthwhile to list here. CRC does not and cannot do that, and so cannot know about customer transactions.

CRC's CRM software does not determine whether an individual can repair their credit, challenge a credit report, or improve their credit rating. To the extent that CRC's CRM software helps a credit repair business successfully meet its client's needs, it does so in a supporting role, by providing organizational tools to improve the efficiency of the business. What is clear is that CRC's CRM software does not aid or assist a credit repair company in violating the TSR by

May 18, 2020

Page No. 11

taking an advance fee.

The Bureau's CRC CID exceeds its investigative authority, and its effort to extrapolate its ability to investigate a very particular, single aspect of the business of some credit repair businesses into an industry wide fishing expedition is unwarranted.

CONCLUSION

The Bureau has no authority to investigate CRC. The CRC CID must be set aside.

Respectfully submitted,

/s/ *Richard W. Epstein*

For the Firm