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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Consumer Financial Protection Bureau, Plaintiff, v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud *et al*., Defendants.	Case No.: 2:21-cv-07492-JFW (JDEx) **JOINT STATUS REPORT** Court: Hon. John F. Walter Courtroom 7A

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Plaintiff Consumer Financial Protection Bureau (the "Bureau") and Defendants Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud ("CRC"), and Daniel Rosen submit the following joint status report regarding this case and request that the Court lift the stay and set a status or scheduling conference for a date ***after*** **July 8, 2024**, to discuss issuing a new scheduling order to govern discovery and pre-trial proceedings in this case. The Parties request a date after July 8, 2024 because the Parties are currently engaged in good faith negotiations to explore whether settlement of the litigation is possible at this juncture. The request is not for purposes of delay, but rather to allow the Parties to complete ongoing negotiations while conserving the Parties' and judicial resources.[1]

1. Current Posture

The Court stayed this case on January 2, 2023, pending the Supreme Court's decision in *CFPB v. Community Financial Services Ass'n of Am., Ltd.*("*CFSA*"). Doc. Nos. 123, 127, and 131. As stated in the Notice of Supreme Court's Decision in *CFPB v. CFSA* (Doc. No. 138), the Supreme Court recently ruled in *CFSA*, finding that the CFPB's funding mechanism is constitutional and resolving the issue that led to the issuance of the stay in the instant litigation. While the case was stayed, the deadlines set out in the Court's scheduling order expired. *See* Doc. No. 95.[2] Accordingly, when the Court lifts the stay, the parties will need a new scheduling order.

2. Brief Statements of the Case

a. Bureau's Statement

The Bureau has alleged that Defendants violated the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(b), and the Consumer Financial Protection Act ("CFPA"), 12

[1] In connection with these discussions, Defendants have been investigating underlying factual issues tied to negotiations and informally providing the Bureau with related information to facilitate discussions.

[2] In addition, while the case was stayed, it was reassigned because the previously assigned District Judge, Judge Virginia A. Phillips, was no longer available. *See* Doc. No. 134.

U.S.C. § 5536(a)(1)(A), by providing substantial assistance to credit-repair businesses (hereinafter referred to as "CRC Users" or "Users") who were telemarketing and charging illegal advance fees. Defendants provide *thousands* of CRC Users with a variety of tools and services, including, among other things, software that offers a customer-relationship management system, as well as training on how to start and run a "successful" credit-repair business. Indeed, Defendants advertised that they give CRC Users "EVERYTHING you need to start a . . . credit repair business!" First Amend. Compl., Doc. No. 32, at ¶ 11; First Amend. Answer, Doc. No. 49, at ¶ 11. The Bureau maintains that, in providing these tools and services, Defendants encouraged CRC Users to telemarket their credit-repair services to consumers and to charge consumers fees well before the waiting period required by the TSR. The Bureau filed this action to stop Defendants from substantially assisting CRC Users in violating the law.

b. Defendants' Statement

Defendants operate a law-abiding business that provides word processing and customer management software along with educational resources to CRC Users. Notably, CRC Users *cannot* use the software to call prospective customers because CRC's software does not have a built in phone dialer. Defendants deny engaging in any unlawful actions, including violations of the TSR. Defendants specifically deny providing substantial assistance or support to CRC Users allegedly violating the TSR. Defendants also deny that they encouraged CRC Users to telemarket their services to consumers and to charge advance fees in violation of the TSR.

3. Status of Discovery Before the Stay

When the Court ordered the January 3, 2023 stay, the Parties were in the midst of discovery. Both Parties had served and responded to Requests for Production and Interrogatories. The Bureau had issued third-party subpoenas and had taken three third-party depositions.

Immediately before the stay, there were two discovery disputes pending, which this Court denied as moot without prejudice due to the stay. *See* Doc No. 124:

- The Bureau had filed a Motion to Compel Production of User Data (Doc. No. 99) seeking evidence on the number of CRC Users that were telemarketing and charging advance fees as well as the amount of consumer harm caused by the violations; and
- Defendants had filed a Motion for Entry of a Protective Order (Doc. No. 103) seeking to limit the Bureau's ability to serve additional third-party discovery.

Additionally, one of the CRC Users whom the Bureau had served with document and deposition subpoenas had moved to challenge the subpoenas in the U.S. District Court for the District of New Jersey (the "Apex Credit Fix Litigation"). Because of the stay, the United States District Court for the District of New Jersey administratively terminated the Apex Credit Fix Litigation (but allowed that any party may seek to reinstate the matter after this Court lifts the stay).

4. Anticipated Discovery After Stay is Lifted

a. Bureau's Position

Once the stay is lifted, the Bureau expects that it will take the following discovery actions:

- Follow the procedures in Local Rule 37-1 and determine whether it needs to file another Motion to Compel to have Defendants produce the CRC User data;
- Notify the United States District Court for the District of New Jersey that the stay is lifted and ask it to reinstate the Apex Credit Fix Litigation;
- Issue additional subpoenas to CRC Users for documents and depositions;
- Take the depositions of at least four more CRC Users;
- Serve remaining written discovery requests on Defendants;

- Take the deposition of Daniel Rosen and one other CRC employee; and
- Engage in expert discovery with potentially two expert reports and the attending rebuttal/reply reports and expert depositions.

The Bureau expects this remaining discovery to take **9** months.

b. Defendants' Position

Once the stay is lifted, Defendants expect that they will take the following discovery actions:

- Follow the procedures in Local Rule 37-1 and determine whether they need to file another Motion for Entry of a Protective Order seeking to limit the Bureau's ability to serve additional third-party discovery;
- Issue supplemental written discovery requests on the Bureau;
- Issue 30(b)(6) deposition notices to the Bureau; and
- Engage in expert discovery including rebuttal/reply reports and expert depositions.

Defendants expect this remaining discovery to take **9** months.

5. **Request for Status or Scheduling Conference**

Given the length of the stay and the expiration of the deadlines in the scheduling order, and in light of the expected additional discovery, the Parties request a status or scheduling conference ***after*** **July 8, 2024** to discuss these matters further. Prior to the conference, and pending further instruction from the Court, the Parties are prepared to file proposed scheduling orders for the Court's consideration.

Dated: June 14, 2024

CONSUMER FINANCIAL PROTECTION BUREAU

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SIGNATURE CERTIFICATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

/s/ Carl L. Moore
Carl L. Moore (*pro hac vice*)