UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONSUMER FINANCIAL PROTECTION BUREAU, *Plaintiff*, v. **DANIEL A. ROSEN, INC., D/B/A CREDIT REPAIR CLOUD, AND DANIEL ROSEN,** *Defendants*.	**UNITED STATES DISTRICT COURT DISTRICT OF CALIFORNIA** **CENTRAL DISTRICT OF CALIFORNIA CIVIL ACTION NO. 2:21-cv-07492**

NON-PARTIES CHRISTOPHER GONZALEZ AND APEX ADVISING, LLC'S MOTION TO QUASH AND FOR PROTECTIVE ORDER FROM PLAINTIFF CONSUMER FINANCIAL PROTECTION BUREAU'S SUBPOENA TO TESTIFY AT A DEPOSITION AND SUBPOENA TO PRODUCE DOCUMENTS

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Pursuant to Federal Rule of Civil Procedure 45, non-parties Christopher Gonzalez ("Mr. Gonzalez") and Apex Advising, LLC ("Apex")(collectively, the "Non Party Respondents") move to quash Mr. Gonzalez's Subpoena to Testify at a Deposition ("Deposition Subpoena") and Apex's Subpoena to Produce Documents ("Document Subpoena"), in part, served on them by Plaintiff Consumer Financial Protection Bureau ("Plaintiff" or the "CFPB") in its case against Daniel A. Rosen, Inc., D/B/A Credit Repair Cloud, and Daniel Rosen ("Defendants"), and respectfully shows the Court as follows:

I. PRELIMINARY STATEMENT

The subpoenas served on the Non Party Respondents are unenforceable. On October 19, 2022, the Fifth Circuit Court of Appeals held that the CFPB's funding derives from an unconstitutional scheme and therefore, the Payday Lending Rule—a rule promulgated by the agency—is unenforceable. *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, No. 21-50 ("*Community Financial*"). The holding in *Community Financial* is not limited to the Bureau's rule-making power, it extends to any action taken by the agency, including its enforcement and adjudicative powers. In short, the CFPB is barred from using tax payer dollars to carry out *any* action until its funding apparatus can pass constitutional scrutiny. Therefore, the CFPB cannot depose Mr. Gonzalez nor can it compel Apex to produce documents.

Additionally, even if the CFPB was permitted to enforce the laws of the United States, Mr. Gonzalez's deposition cannot take place because it would create an undue burden for him. Under the Apex doctrine, a rebuttable presumption exists that a high-level official's deposition represents a significant burden upon the deponent and that this burden is undue. Mr. Gonzalez is the CEO of Apex, and is therefore entitled to a presumption under the Apex Doctrine that the CFPB's questioning, will cause an undue burden. Indeed, preparing for and sitting in a deposition would cause an undue burden for Mr. Gonzalez, who is a non-party in this action.

Moreover, as Apex has been compiling documents pursuant to the Document Subpoena for the past several weeks, it has determined that the categories of information requested are overly broad and create an undue burden for Apex. For example, Document Request 2 seeks all call recordings, which involves over 100,000 recordings collectively spanning 828,220 hours. It would take counsel approximately 34,509 days and 4,930 weeks to review all of these recordings before they were produced, which would amount to approximately $434,000 in attorneys' fees. Responding to the Document Subpoena would impose an undue burden on Apex, a non-party protected by Rule 45(d)(3). Accordingly, this Court must quash the Document Subpoena served on Apex. *See* Rule 45(d)(3)(iv).

In sum, the Non Party Respondents should not be required to comply with unduly burdensome subpoena requests from a government agency that is unconstitutionally funded and unable to enforce the laws of the United States.

II. PROCEDURAL HISTORY

On or about October 10, 2022, Plaintiff served Mr. Gonzalez with a deposition subpoena causing him to appear at the United States Attorney's Office in Newark Jersey for a deposition on November 4, 2022. Declaration of Ryanne Hankla ("Hankla Decl.") at ¶ 2, Ex. A. That same day, Plaintiff served a document subpoena on Mr. Gonzalez's entity, Apex, seeking, essentially, all documents and communications between Apex and its clients. *Id*. at Ex. B. On October 17, 2022, counsel accepted service of the Subpoena on Mr. Gonzalez and Apex. *Id*. On October 19, and described more fully below, the Fifth Circuit issued its decision in *Community Financial*. The decision held that the CFPB's rule-making is unenforceable because its funding derives from an unconstitutional scheme. For the same reason, the CFPB does not have the authority to do *anything*, including subpoena third parties, or in this case non-parties, in enforcement actions. On October 26, 2022, within a week of the Fifth Circuit's landmark decision, counsel for Mr. Gonzalez met and conferred with the CFPB concerning the grounds for this motion. On November 1, 2022, Mr. Gonzalez filed this motion in the District of New Jersey.

III. FIFTH CIRCUIT OPINION IN *CMTY. FIN. SERVS. ASS'N OF AM. V. CONSUMER FIN. PROT. BUREAU*, NO. 21-50826, 2022 U.S. APP. LEXIS 29060 (5TH CIR. OCT. 19 2022)

Community Financial prevents the CFPB from taking any action, including enforcing non-party subpoenas, until its funding apparatus passes constitutional muster. A summary of the case, its procedural history, and the remedy issued by the Fifth Circuit, is provided below for the Court's convenience:

A. District Court Opinion *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 558 F. Supp. 3d 350 (W.D. Tex. 2021)

In 2018, the Plaintiffs (two trade associations) brought an action on behalf of certain payday lenders and credit access businesses affected by the 2017 Payday Lending Rule issued by the CFPB. *CFSAA v. CFPB*, 558 F.Supp.3d 350 (W.D. Tex. 2021). In their challenge, Plaintiffs argued "the Bureau's structure continues to violate Separation of Powers principles" because "the Bureau's Director can establish its budget, up to a set percentage of the Federal Reserve's operating expenses, and that this budget is exempt from review by the congressional Appropriations Committees. According to the [Plaintiff's], this violates the constitutional proscription against taking money from the Treasury except 'in Consequences of Appropriations made by Law.'" *Id*., at 364.

The Court quickly dismissed Plaintiffs' argument, stating "[t]he Appropriations Clause 'means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.' [citations]. Therefore, if a statute authorizes an agency to receive funds up to a certain cap, as the CFPA authorizes the Bureau to do, there is no Appropriations Clause issue." *Id.* In so holding, the District Court judge denied Plaintiff's motion for summary judgment.

B. Fifth Circuit Decision in *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 2022 U.S. App. LEXIS 29060 (5th Cir. Oct. 19, 2022)

Plaintiffs appealed the District Court's ruling to the Fifth Circuit asking it to resolve the issue of whether "the Bureau's funding mechanism violates the Appropriations Clause of the Constitution." *Community Financial*, 2022 U.S. App. LEXIS 29060, at *10. In overruling the District Court, the Fifth Circuit first observed that the CFPB's funding apparatus derives from a unique structure:

> The [CFPB]'s funding scheme is unique across the myriad independent executive agencies across the federal government. It is not funded with periodic congressional appropriations. "Instead, the [Bureau] receives funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments." *Seila Law*, 140 S. Ct. at 2194. Each year, the Bureau simply requests an amount "determined by the Director to be reasonably necessary to carry out the" agency's functions. Id. § 5497(a)(1). The Federal Reserve must then transfer that amount so long as it does not exceed 12% of the Federal Reserve's "total operating expenses." *Id*. § 5497(a)(1)-(2). For the first five years of its existence (i.e., 2010-2014), the Bureau was permitted to exceed the 12% cap by $ 200 million annually so long as it reported the anticipated excess to the President and congressional appropriations committees. *Id*. § 5497(e)(1)-(2).

Community Finance, 2022 U.S. App. LEXIS 29060, at *5. Importantly, the Constitution guarantees "[n]o money shall be drawn from the Treasury, but in

Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. This Appropriations Clause "embodies the Framers' objectives of maintaining 'the necessary partition among the several departments,' The Federalist No. 51 (J. Madison), and ensuring transparency and accountability between the people and their government." *Id*. at *36.

"The Appropriations Clause's 'straightforward and explicit command' ensures Congress's *exclusive* power over the federal purse. [citation]. Critically, it makes clear that [a]ny exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury." *Id*. (emphasis in the original). With these principles in mind, the court also noted:

> Congress did not merely cede direct control over the Bureau's budget by insulating it from annual or other time limited appropriations. **It also ceded indirect control by providing that the Bureau's self-determined funding be drawn from a source that is itself outside the appropriations process—a double insulation from Congress's purse strings that is "unprecedented" across the government.** *All Am. Check Cashing*, 33 F.4th at 225 (Jones, J., concurring). And where the Federal Reserve at least remains tethered to the Treasury by the requirement that it remit funds above a statutory limit, Congress cut that tether for the Bureau, such that the Treasury will never regain one red cent of the funds unilaterally drawn by the Bureau.
>
> **This novel cession by Congress of its appropriations power—its very obligation "to maintain the boundaries between the branches," *id*. at 231—is in itself enough to give grave pause**.

Id. at*39-*40 (emphasis added). For these reasons, the Court held that the "Bureau's funding mechanism violates the Constitution's separation of powers." *Id*. at *32. In issuing a remedy, the Court held that Plaintiffs were entitled to a "rewinding" of the CFPB's actions:

> Because the funding employed by the Bureau to promulgate the Payday Lending Rule was wholly drawn through the agency's unconstitutional funding scheme, there is a linear nexus between the infirm provision (the Bureau's funding mechanism) and the challenged action (promulgation of the rule). **In other words, without its unconstitutional funding, the Bureau lacked any other means to promulgate the rule. Plaintiffs were thus harmed by the Bureau's improper use of unappropriated funds to engage in the rulemaking at issue. Indeed, the Bureau's unconstitutional funding structure not only "affected the complained-of decision,"** ***id*****. at 1801 (Kagan, J., concurring in part), it literally effected the promulgation of the rule. Plaintiffs are therefore entitled to "a rewinding of [the Bureau's] action."** ***Id***.
>
> In considering other violations of the Constitution's separation of powers, the Supreme Court has rewound the unlawful action by granting a new hearing, *see Lucia v. SEC*, 138 S. Ct. 2044, 2055, 201 L. Ed. 2d 464 (2018), or invalidating an order, *see NLRB v. Noel Canning*, 573 U.S. 513, 521, 557, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014); see also 5 U.S.C. § 706(2)(A) (providing that, under the APA, a "reviewing court shall . . . **hold unlawful and set aside agency action . . . found to be . . . not in accordance with law**"). In like manner, we conclude that the district court erred in granting summary judgment to the Bureau and in denying the Plaintiffs a summary judgment "holding unlawful, enjoining and setting aside" the challenged rule. Accordingly, we render judgment in favor of the Plaintiffs on this claim and vacate the Payday Lending Rule as the product of the Bureau's unconstitutional funding scheme.

Id. at *51.

IV. LEGAL STANDARD FOR MOTION TO QUASH

Rule 45(d)(3)(A)(iv) of the Federal Rules of Civil Procedure provides that the Court must quash or modify a subpoena that "subjects a person to undue burden." *Harapeti v. CBS TV Stations Inc.*, 2021 U.S. Dist. LEXIS 258600, at *5 - *6 (D.N.J Dec. 1, 201). "Relatedly, Rule 26(c)(1) provides that the Court in the district in which a deposition is to be taken may 'issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* An undue burden exists when the subpoena is "unreasonable or oppressive." *In re Lazaridis*, 865 F. Supp. 2d 521, 524 (D.N.J. 2011 (quoting *Schmulovich* v. 1161 Rt. 9 LLC, No. CIV.A. 07-597, 2007 U.S. Dist. LEXIS 59705, 2007 WL 2362598, at *4 (D.N.J. Aug. 15, 2007). Additionally, a non-party to litigation is afforded greater protection from discovery than a party. *Korotki v. Cooper Levenson, April, Niedelman & Wagenheim, P.A.*, 2022 U.S. Dist. LEXIS 108271, at *7 (D.N.J. June 17, 2022). The standards for nonparty discovery require a stronger showing of relevance than for simple party discovery. *Id.* Finally, a motion to quash is to be decided in the district where compliance is required, unless exceptional circumstances are present. FRCP 45.

V. ARGUMENT

A. The CFPB Does Not Have the Authority To Issue the Subpoenas and Therefore the Subpoenas are Invalid.

An unconstitutional agency that is barred from enforcing the laws of the United States does not have the authority to take a non-party deposition in support of an enforcement action. *Community Finance*, 2022 U.S. App. LEXIS 29060 (finding that the CFPB, an agency with adjudicative, enforcement, and rule making powers, is unconstitutionally funded and therefore its actions are invalid). Allowing the deposition to take place would essentially divert taxpayer money into the pockets of an agency that is structured in violation of the Constitution. For this reason alone, the deposition cannot take place and the subpoena must quashed.

The Third Circuit Court of Appeals is yet to opine on the constitutionality of this funding issue. Only one district court within this Circuit has taken a contrary position to the Fifth Circuit. *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 U.S. Dist. LEXIS 123825 (M.D. Penn. Aug 4, 2017). In *Navient*, the Court held that there is nothing "constitutionally concerning" about the CFPB's funding because several independent agencies have funding outside the normal appropriations process. The Fifth Circuit expressly rejected *Navient*'s reasoning, finding that:

> Such a comparison, focused only on whether other agencies possess a degree of budgetary autonomy, mixes apples with oranges. Or, more accurately, with a grapefruit. **Even among self-funded agencies, the Bureau is unique. The Bureau's perpetual self-directed, double-insulated funding structure goes a significant step further than that enjoyed by the other agencies on offer. And none of the agencies cited above "wields enforcement or regulatory authority remotely comparable to the authority the [Bureau] may exercise throughout the economy."** [citation]. Taken together, the

> Bureau's express insulation from congressional budgetary review, single Director answerable to the President, and plenary regulatory authority combine to render the Bureau "an innovation with no foothold in history or tradition." Seila Law, 140 S. Ct. at 2202. It is thus no surprise that the Bureau "brought to the forefront the subject of agency self-funding, a topic previously relegated to passing scholarly references rather than frontpage news." Charles Kruly, Self-Funding and Agency Independence, 81 Geo. Wash. L. Rev. 1733, 1735 (2013).

Id. at *45 (emphasis added), citing *Navient* in fn. 15. In sum, *Navient*'s rationale misses the mark because it fails to analyze idiosyncratic traits unique to the CFPB. Rather than engage in careful reasoning, the court in *Navient* hastily likened the CFPB to other agencies. This Court should reject *Navient's* flawed reasoning.

Further underscoring that the *Navient* decision is not based on sound reasoning—and should be rejected by this Court—is the fact that its other holding (based on the same logic) was expressly rejected by the Supreme Court in *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2200, 207 L. Ed. 2d 494 (2020). The *Navient* decision held "nor can the Court say that [the CFPB's] single director structure by itself violates the Constitution. Indeed, many executive agencies are headed by a single individual." *Navient*, 2017 U.S. Dist. LEXIS 123825, at *49. Again, the district court failed to carefully analyze the issue, and simply concluded because others do it, it must be fine. The Supreme Court was not as hasty in its analysis. In *Seila*, Justice Roberts, writing for the majority, held that "the structure of the CFPB violates the separation of powers. We go on to hold that the CFPB Director's removal protection is severable from the other statutory provisions bearing on the CFPB's authority." *Seila Law*, 140 S. Ct. at 2192. The funding issue was not decided in *Seila Law* because that challenge was not made to the Supreme Court. In sum, the Supreme Court has already rejected *Navient* on issues concerning the constitutionality of the CFPB. This Court should reject *Naveint*'s cursory logic and instead apply the Fifth Circuit's reasoning, which the Supreme Court is likely to adopt when this case is up on appeal.

Here, as in *Community Finance*, the CFPB is using unconstitutional funding to issue and enforce these non-party subpoenas. Without its unconstitutional funding, the Bureau lacks any other means to issue the Subpoenas. Allowing the Subpoenas to proceed will harm the Non Party Respondents by allowing the Bureau to improperly use unappropriated funds to enforce the Subpoenas. As in Community Finance, the Non Party Respondents are entitled to "a rewinding of [the Bureau's] action" as a remedy for the CFPB's unconstitutional wielding of its enforcement power. This remedy would be quashing both Subpoenas.

B. The Apex Doctrine Bars the Deposition From Taking Place Because it Imposes an Undue Burden on Mr. Gonzalez

This Court may quash the subpoena pursuant to FRCP 45(d)(3)(A)(iv) when it subjects a person to undue person. When that person from whom discovery is sought is a corporate executive, the Court's analysis is guided by the apex doctrine, which applies "a rebuttable presumption that a high-level official's deposition represents a significant burden upon the deponent and that this burden is undue." *Harapeti v. CBS TV Stations Inc.*, 2021 U.S. Dist. LEXIS 258600, at *5 (D.N.J Dec. 1, 2021). In assessing whether the deposition of a corporate executive is appropriate, the Court considers "(1) whether the executive or top-level employee has personal or unique knowledge on relevant subject matters; and (2) whether the information sought can be obtained from lower-level employees or through less burdensome means, such as interrogatories." *Ford Motor Co. v. Edgewood Props.,* 2011 U.S. Dist. LEXIS 67227, at *3 (D.N.J. June 23, 2011) (quotation and alteration omitted).

Mr. Gonzalez is the CEO of Apex Financial and therefore he is entitled to a presumption that appearing as a non-party for this deposition would create an undue burden for him. *Harapeti*, 2021 U.S. Dist. LEXIS 258600, at *5 ("Courts have overwhelmingly recognized that 'depositions of high-level officers severely burden[] those officers and the entities they represent, and that adversaries might use this severe burden to their unfair advantage.'"). Mr. Gonzalez should not be required to miss a full day of running his business to sit for a deposition where is unlikely to have many of the answers the CFPB seeks. Moreover, considering that the CFPB is an unconstitutionally funded agency, Mr. Gonzalez would be further prejudiced if he is required to comply with a subpoena the CFPB has no power to issue.

Finally, Plaintiff has failed to provide a reason for why Mr. Gonzalez—a non-party—needs to be deposed beyond the fact that he was one of thousands of customers who purchased the software at issue in Plaintiff's case against Credit Repair Cloud and Daniel Rosen. *Korotki*, 2022 U.S. Dist. LEXIS 108271, at *7 ("However, a non-party to litigation is afforded greater protection from discovery than a party. . . The standards for nonparty discovery require a stronger showing of relevance than for simple party discovery."). If every person who purchased Credit Repair Cloud's software was then susceptible to deposition, it would allow the CFPB free reign to issue thousands of non-party deposition subpoenas.

C. The Document Subpoena Creates an Undue Burden for Apex and it Should be Quashed.

"[A] non-party to litigation is afforded greater protection from discovery than a party." *Korotki*, 2022 U.S. Dist. LEXIS 108271, at *7. As a non-party, Apex should not be required to produce 100,000 pages, including 828,220 hours of phone recordings, in response to a Rule 45 subpoena by an agency that receives unconstitutional funding. The amount of time it will take Apex's attorneys to review these documents will take several weeks and cost Apex over $434,000 in fees. Courts in this district routinely hold that third parties should not bear such a burden. *Korotki*, 2022 U.S. Dist. LEXIS 108271, at *7 (granting motion to quash because subpoena imposed undue burden on third party). Of particular concern are the countless hours of phone recordings with Apex costumers. The cost of reviewing and producing these recordings is not proportional to the needs of this case. *In re: Riddell Concussion Reduction Litig.*, No. 13-7585, 2016 U.S. Dist. LEXIS 89120, 2016 WL 4119807, at *4 (D.N.J. July 7, 2016) ("the required Rule 26(b)(1) proportionality analysis may be different when the interests of a third-party are weighed as opposed to a party."); *Spring Pharms., LLC v. Retrophin, Inc.*, No. 18-CV-04553, 2019 U.S. Dist. LEXIS 133316, 2019 WL 3731725, at *3 (E.D. Pa. Aug. 8, 2019) ("The unwanted burden thrust upon non-parties" is afforded "special weight in evaluating the balance of competing needs in a Rule 45 inquiry."). Therefore, Apex moves to quash the subpoena in its entirety.

VI. CONCLUSION

This Court should quash Plaintiff's Subpoenas because both were issued by a federal agency that the Fifth Circuit Court of Appeals found to be unconstitutional based on its funding structure. Additionally, forcing Mr. Gonzalez to sit for the deposition would greatly prejudice Mr. Gonzalez—a non-party executive. Finally, requiring Apex to review and produce countless hours of recordings is unduly burdensome and outside the scope of the discovery permitted under Rule 45.

Accordingly, the Non Party Respondents respectfully request that the Court grant this Motion to Quash Plaintiff's Subpoenas; issue a protective order in that regard; and grant such further relief, at law or in equity, to which Mr. Gonzalez and Apex may be justly entitled.

DATED: November 2, 2022

Respectfully submitted,

By: */s/ Ryanne Hankla*

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EXHIBIT A

October 4, 2022

Via Process Server

Christopher Gonzalez
111 Town Square Pl.
Ste. 1203
Jersey City, NJ 07310

Re: Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud, et al., Case No. 2:21-cv-07492, pending in the United States District Court for the Central District of California

Dear Mr. Gonzalez:

Please find enclosed a subpoena issued by the Consumer Financial Protection Bureau (Bureau) pursuant to Rule 45 of the Federal Rules of Civil Procedure in the matter of Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., 2:21-cv-07492 (C. D. Cal.).

The subpoena package includes the relevant provisions of Fed. R. Civ. P. 45. Please contact me as soon as possible so we can confirm the date and location for the deposition. My telephone number is (202) 853-6751.

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Carl Moore
Carl Moore
Senior Litigation Counsel
Consumer Financial Protection Bureau

Attachments: Subpoena to Christopher Gonzalez

Consumer Financial Protection Bureau *Plaintiff* v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud and Daniel Rosen *Defendant*	))))))	Civil Action No. 2:21-cv-07492

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Christopher Gonzalez

(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: United States Attorney's Office, District of New Jersey 970 Broad St #806 Newark, NJ 07102	Date and Time: 11/04/2022 9:30 am

The deposition will be recorded by this method: Stenographic & video

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

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: 10/04/2022

CLERK OF COURT

OR

/s/ Carl Moore

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)* Consumer Financial Protection Bureau, who issues or requests this subpoena, are:

Carl Moore, 1700 G St. NW, Washington, DC 20552, Carl.Moore@cfpb.gov, 202-853-6751

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things 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).

(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 individual 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 $ 0.00 .

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.:

(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:

(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.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

October 4, 2022

Via Process Server

Apex Advising, LLC
d/b/a Apex Credit Fix
111 Town Square Pl.
Ste. 1203
Jersey City, NJ 07310

Re: Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud, et al., Case No. 2:21-cv-07492, pending in the United States District Court for the Central District of California

To Whom It May Concern:

Please find enclosed a subpoena issued to Apex Advising, LLC (the Company) by the Consumer Financial Protection Bureau (Bureau) pursuant to Rule 45 of the Federal Rules of Civil Procedure in the matter Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., 2:21-cv-07492 (C. D. Cal.).

The subpoena package includes a copy of instructions, definitions, and document requests from the Bureau; document submission standards; information regarding how to upload documents and information to the Bureau's extranet; a protective order; 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 October 21, 2022. Please contact me as soon as possible if you have any questions. My telephone number is (202) 853-6751.

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Carl Moore
Carl Moore
Senior Litigation Counsel
Consumer Financial Protection Bureau

Attachments: Subpoena to Apex Advising, LLC

Central District of California

Consumer Financial Protection Bureau *Plaintiff* v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud and Daniel Rosen *Defendant*	))))))	Civil Action No. 2:21-cv-07492

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

To: Apex Advising, LLC
d/b/a Apex Credit Fix

(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 A.

Place: Consumer Financial Protection Bureau Extranet (See Exhibit C)	Date and Time: 10/21/2022 5:00 pm

❒ *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: 10/04/2022

CLERK OF COURT

____
Signature of Clerk or Deputy Clerk

OR

/s/ Carl Moore
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Consumer Financial Protection Bureau, who issues or requests this subpoena, are:

Carl Moore, 1700 G St. NW, Washington, DC 20552, Carl.Moore@cfpb.gov, 202-853-6751

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).

(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 $ 0.00 .

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.:

(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

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.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

Exhibit A

A. If, in responding to this subpoena, you encounter any ambiguities when construing a request or definition, the response should set forth the matter deemed ambiguous and the construction used in responding.

B. If you withhold a document under a claim of privilege (including, but not limited to, the work-product doctrine), please provide the information set forth in Fed. R. Civ. P. 45(e)(2).

C. If a document contains both privileged and non-privileged material, the non-privileged material should be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege (or other basis for withholding the information) is asserted with regard to part of the material contained in a document, you should clearly identify the portions as to which the privilege or other basis is claimed. When a document has been redacted or altered in any fashion, please provide as to each document the information set forth in Paragraph B above with respect to the redaction or alteration. Any redaction must be clearly visible on the redacted document.

D. If you object to the production of any requested document(s) on grounds other than privilege, please state with specificity the grounds for objecting to the requested document(s), including the reasons. If responsive materials are being withheld on the basis of any objection, please include that information in your response. If, with respect to any document request, there are no responsive documents, please state so in writing.

E. Please produce responsive documents in the form requested in the attached "Document Submission Standards" (Exhibit B).

F. Please produce responsive documents by uploading them to the Bureau's Extranet consistent with the instructions in the attached guide "What is the CFPB Extranet?" (Exhibit C).

from January 1, 2013 to the present.

H. The present tense should be construed to include the past and future tenses, and the past tense should 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.

I. The singular should 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) should 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.

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

K. If any material called for by this Subpoena contains sensitive personally identifiable information or sensitive health information of any individual, please contact Bureau counsel before sending this material to discuss ways to protect such information during productions.

L. The Protective Order that currently governs this action is attached as Exhibit D.

M. Attached as Exhibit E 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.

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.

A. "Advertisement" means any statement, illustration, depiction, or promotional material, whether in English or another language, that is designed to effect a sale or create interest in goods or services, regardless of where it appears.

B. "Bureau" means the Consumer Financial Protection Bureau.

C. "Communication" means the disclosure, transfer, or exchange of information or opinion, however made, including by electronic means such as email or through computer programs such as Slack or Microsoft Teams; by verbal means; by writing; and within shared documents, such as Googledocs.

D. "Company" means Apex Credit Fix, and its owners, limited partners, officers, employees, agents, and independent contractors.

E. "Consumer" means any individual, or an agent, trustee, or representative acting on behalf of an individual who sought, received, or inquired about Credit-Repair Services from the Company, or who was otherwise contacted by the Company for the purpose of selling or marketing Credit-Repair Services.

F. "Credit Repair Cloud" refers to Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud and any successor in interest, and includes, but is not limited to any Credit Repair Cloud owner, limited partner, officer, employee, agent, and independent contractor.

management software offered or provided by the Credit Repair Cloud to the Company.

H. "Credit-Repair Service" means any program or service represented, directly or by implication, to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating.

I. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "items" in Fed. R. Civ. P. 34(a)(1) and includes, but is not limited to, any written matter of every type and description, including electronically stored information.

REQUESTS FOR PRODUCTION

1. All call scripts, guidelines, training materials, or talking points used in Communications with Consumers.

2. All audio recordings of any telephone calls between the Company and prospective Consumers.

3. All Documents notating, documenting, summarizing, or reflecting any telephone calls between the Company and prospective Consumers (e.g., call notes), including, records documenting or evidencing the date, time, and telephone numbers involved in such telephone calls.

4. Each unique version of any Advertisements or marketing materials the Company uses or has used to market or sell its Credit-Repair Services to Consumers, including but not limited to any Documents concerning any representations the Company makes to Consumers regarding its Credit-Repair Services.

5. All Communications between the Company and Credit Repair Cloud, including Communications sent or received via social media or email.

/s/ *Daniel Cheriyan*
Daniel Cheriyan (*pro hac vice*)
Amanda Krause (*pro hac vice*)
Jeffrey Blumberg (*pro hac vice*)
Joyce Chen (*pro hac vice*)
Carl Moore (*pro hac vice*)
Leanne E. Hartmann
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Attorneys for Plaintiff Consumer Financial Protection Bureau

Exhibit B

Discovery Requests Document Submission Standards

CFPB Office of Enforcement

This document describes the technical requirements for producing electronic document collections to the Bureau of Consumer Financial Protection ("the Bureau")'s Office of Enforcement. All documents shall be produced in complete form, in color when necessary to interpret the document, unredacted unless privileged, and shall not be edited, cut, or expunged. These standards must be followed for all documents you submit in response to all discovery requests. Any proposed file formats other than those described below must be discussed with the legal and technical staff of the Bureau's Office of Enforcement prior to submission.

1) 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 ¶ 4)
   c) The Bates Range (and any gaps therein)
   d) The specification(s) or portions thereof of the discovery request to which the submission is responsive.
2) Documents created or stored electronically MUST be produced in their original electronic format, not converted to another format such as PDF.
3) Transmittal Methods
   a) Extranet
      The Extranet is the Bureau's secure file transfer solution that is used to receive productions from third parties via a web-based FTPS protocol utility. Instructions on how to access the Extranet and corresponding credentials are provided upon request. When utilizing the Extranet, the following policies must be adhered to:
      i) Directories: The system does not support uploading directories (folders). To upload a directory, please compress (or zip) and upload the zipped container.
      ii) Size: Maximum 2 GB per file or container. Larger productions should be split across multiple 2 GB zipped containers.
      iii) Quantity: There is no limit to how many files or containers can be uploaded simultaneously.
      iv) File types: A list of prohibited file types is available in Appendix B.
   b) Physical Media
      The Bureau recognizes that some conditions of environment or data format may restrict production eligibility for transmittal via the Extranet. Such productions may be produced on CD, DVD, USB thumb drive, or hard drive; use the media requiring the least number of deliverables.
      i) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:
         (1) "MAGNETIC MEDIA – DO NOT USE METAL DETECTOR"
         (2) "MAY BE OPENED FOR POSTAL INSPECTION"
      ii) CD-R CD-ROMs should be formatted to ISO 9660 specifications;
      iii) DVD-ROMs for Windows-compatible personal computers are acceptable;

acceptable;

v) USB 3.0 or USB 3.0/eSATA external hard disk drives, formatted in a Microsoft Windows-compatible file system (FAT32 or NTFS), uncompressed data are acceptable.

vi) Physical media should be delivered via overnight delivery service or courier.

vii) Label all media with the following:

(1) Production date

(2) Bates range

(3) Disk number (1 of X), if applicable

(4) Name of producing party

(5) A unique production number identifying each production

4) All productions must be produced free of computer viruses.

5) All physical produced media must be encrypted. Encryption format must be agreed upon prior to production.

a) Data deliveries should be encrypted at the disc level.

b) Decryption keys should be provided separately from the data delivery via email or phone.

6) Passwords for documents, files, and compressed archives 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:

<u>De-duplication</u>

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.

<u>Bates Numbering Documents</u>

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. The number of

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.

Email Threading

The use of email threading for review is encouraged, but production of relevant email threads must include both inclusive and non-inclusive individual emails and attachments unless otherwise agreed to in advance.

2) Native and Image Production

In general, and subject to the specific instructions below: (1) produce electronic documents in their complete native/original format along with corresponding bates-labeled single page TIFF images (with the exception of large spreadsheets and/or text files, those files should be processed and a placeholder TIFF image indicating that they were produced natively provided); (2) scan and process all paper documents into single page TIFF images, OCR the images, and apply bates numbers to each page of the image; (3) produce fully searchable document level text for every produced document; and (4) produce metadata for every produced document in a data file that conforms to the specific instructions below.

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 default delimiters (see **Table 1**)
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 in both their native/original form and as a corresponding bates-labeled single page TIFF image; provide the link to the original/native document in the NATIVELINK field.
vi) Produce extracted metadata for each document in the form of a .DAT file, and include the fields in **Table 2** (fields should be listed but left blank if not applicable):

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 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 original email and native file documents/attachments 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, at 300 dpi.
ii) File names should be titled per endorsed bates number.
iii) Color should be preserved 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

i) 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.
ii) See **Table 3** and **Table 4** for Image Cross Reference File fields and an example file.

3) PDF File Production

When approved, Adobe PDF files may be produced in lieu of TIFF images for scanned paper productions (metadata must also be produced in accordance with the instructions above):

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

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) The metadata load file listed in 2.a. should be included.

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 (with prior approval)

5) Audio/Video/Electronic Phone Records

These instructions refer to the production of stand alone audio files such as those from call recording systems. Audio files that are attached to emails should be processed normally.

Audio files must be produced in a format that is playable using Microsoft Windows Media Player. Types of audio files that will be accepted include:

•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

Produced audio files must be in a separate folder compared to other data in the production. Additionally, the call information (metadata) related to each audio recording must be produced if it exists. The metadata file must be produced in must be included in the first row of the metadata file. Please note that the field names are case sensitive and should be created as listed below. The metadata must include, if available, the fields listed in **Table 5**.

The filename is used to link the metadata to the produced audio file. The file name in the metadata and the file name used to identify the corresponding audio file must match exactly.

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 material called for by a discovery request is withheld based on a claim of privilege, those portions may be redacted from the responsive 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 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) 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 privileged, would have been located.

TABLE 1: DAT FILE DELIMITERS

Comma	¶	ASCII character (020)
Quote	þ	ASCII character (254)
Newline	®	ASCII character (174)

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
ROG_NUM	Indicate Interrogatory number(s) document is responsive to. (ROG ##) **semi-colon should be used to separate multiple entries
DR_NUM	Indicate Document Request (DR ##) or Written Report number (WR ##) document is responsive to. **semi-colon should be used to separate multiple entries
RECORDTYPE	Email: Populate field as "E-Mail" Email Attachment: Populate field as "Attachment (E-mail)" Loose Native: Populate field as "E-Document" Other Attachment: Populate field as "Attachment" Scanned Paper: Populate field as "Paper"
CUSTODIAN	Individual(s) or department(s) from which the record originated **semi-colon should be used to separate multiple entries
FILENAME	Email: Filename of loose email or subject of non-loose

PGCOUNT	Number of pages in document/email
MD5HASH	The 32 digit value representing each unique document
SOURCE	Email: Path to email container and email container name Non-email: Original path to source archive folder or files
FOLDERPATH	Email: Folder path within email container Non-email: Folder path to file
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)
TITLE	Title metadata from electronic files (non-email)
COMPANY	Company (organization) metadata from electronic files
NATIVELINK	Hyperlink to the email or 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
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

record's parent.

TABLE 3: IMAGE CROSS REFERENCE FILE FIELDS

Field Title	Description
ImageID	The unique designation use to identify an image.
	***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.*
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
	**This file should not contain a header row.*

TABLE 4: IMAGE CROSS REFERENCE FILE 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
```

Field Name	Description
AgentName	Name of agent/employee
AgentId	Unique identifier of agent/employee
Group	Name for a collection of agents
Supervisor	Name of the Agent's supervisor
Site	Location of call facility
DNIS	Dialed Number Identification Service, identifies the number that was originally called
Extension	Extension where call was routed
CallDirection	Identifies whether the call was inbound, outbound, or internal
CallType	Purpose of the call
DURATION	Duration of call
CustomerId	Customer's identification number
CustomerCity	Customer's city of residence
CustomerState	Customer's state of residence
CallDateTime	Date and start time of call (MM/DD/YYYY HH:MM:SS)
CUSTOMERNAME	Name of person called
FileName	Filename of audio file
BATES_BEGIN	Unique number of the audio file
CALLEDPARTYNUMBER	The call center or phone number called
CALLSIZE	File size of audio file
CALLSERVICE	Call service code
MD5HASH	The 32 digit value representing each unique document
DOC_REQ	Document request number to which the file is responsive
CUSTODIAN	Individual(s) or department(s) from which the recording originated
FOLDERPATH	Folder path of the audio file in the original source
SOURCE	Original path to where the source file resided
TIMEZONE	The time zone of the original call
GROUPID	A unique group identifier for grouping multiple calls
CODEC	Encoding/decoding of the audio digital stream
BITRATE	The number of bits that are conveyed

Supported Date Format	Example
mm/dd/yyyy hh:mm:ss am/pm	01/25/1996 10:45:15 am

APPENDIX B: PROHIBITED FILE TYPES FOR EXTRANET

.ade
.adp
.app
.asp
.bas
.bat
.cer
.chm
.cmd
.com
.cpl
.crt
.csh
.dll
.exe
.fxp
.gadget
.hlp
.hta
.inf
.ins
.isp
.its
.js
.jse
.ksh
.lnk
.mad

.mag
.maq
.mar
.mas
.mat
.mau
.mav
.maw
.mda
.mdb
.mde
.mdt
.mdw
.mdz
.msc
.msi
.msp
.mst
.ops
.pcd
.pif
.prf
.prg
.pst
.rar
.reg
.scf
.scr
.sct
.shb
.shs
.tmp
.url
.vb

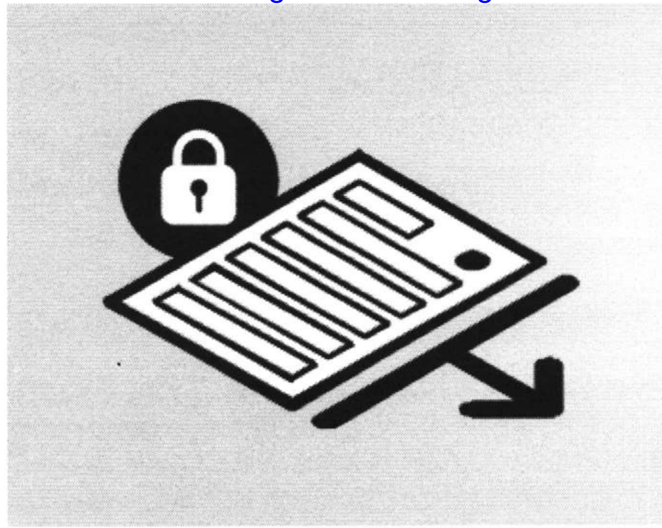
.vbs
.vsmacros
.vss
.vst
.vsw
.ws
.wsc
.wsf
.wsh

Exhibit C

The Consumer Financial Protection Bureau (CFPB) Extranet enables organizations to securely upload files and receive a file transfer receipt.

How does it work?

1. If you would like to send your productions to the Bureau via the Extranet, you will need to notify the paralegal or other deputy custodian assigned to your matter in advance. The paralegal will request contact information for any individuals in your organization that require access to the Extranet. This information is needed in order to set up your Extranet accounts.
2. Once the Extranet Support team sets up the account, they will send an e-mail with instructions to activate the account.
3. Once activated, files may be uploaded at https://extranet.cfpb.gov.
4. Choose the folder relevant to your Matter. Files cannot be uploaded to the root folder.
5. Be sure to choose the correct files to upload. Once you upload files, you won't be able to view, modify, or remove them.
6. Choose files to upload by selecting the "Upload" button or by using drag-and-drop functionality.
7. Uploaded files are transferred to another CFPB server every 20 minutes. After this happens, you will receive a file transmission receipt e-mail and the files will be removed from the Extranet.
8. If there is a problem receiving a file, it will be noted in the file transmission receipt.



What else do I need to know?

Account expiration

Accounts expire 6 months after the creation date per CFPB's cybersecurity regulations. Accounts can be re-created quickly by the CFPB's Paralegal or other point of contact.

Multi-factor authentication

Extranet access requires the use of a one-time passcode for each login. Passcodes can be sent via e-mail, voice message, or text.

Upload policies

Size: Maximum 2 GB per file

Quantity: There is no limit to how many files can be uploaded simultaneously

File types: A list of prohibited file types is available on the 'CFPB Help' page (find the link at the top right of the page)

Automatic log-out

Your account will be logged out after 10 minutes of inactivity.

Password policies

Length: 12 or more characters

Complexity: must contain a digit, a symbol, an uppercase letter and a lowercase letter

Supported browsers

Microsoft Internet Explorer 8 through 11 (Compatibility View is not supported)

Google Chrome 33.x and above

Apple Safari 5.x and 6.x running on OS X only

Mozilla Firefox 24.x and above

Having trouble?

Please contact your Deputy Custodian or point of contact if you have any problems accessing the system. If necessary, he or she will coordinate assistance with the CFPB's technical support team.

Helpful links

Add, edit or remove delivery methods for receiving one-time passcodes:

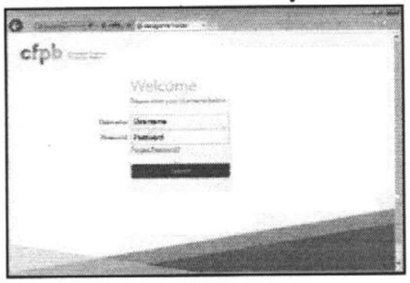
https://login.extranet.cfpb.gov/updateprofile

Change your password:

https://login.extranet.cfpb.gov/changepassword

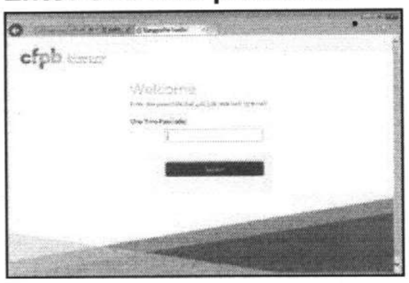
1 Login screen

Enter username and password



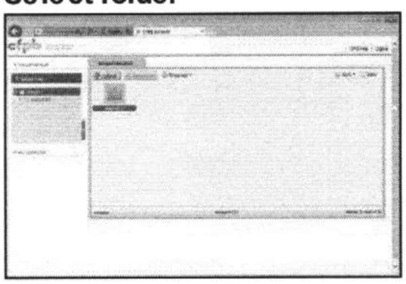
2 Login screen

Enter one-time passcode



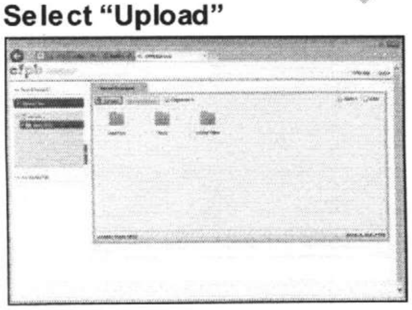
3 Root folder

Select folder



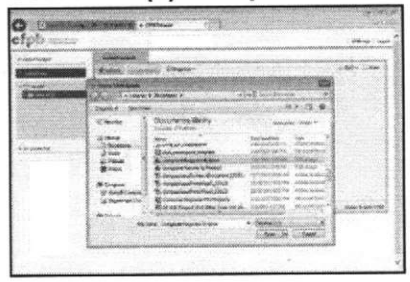
4 Selected folder

Select "Upload"



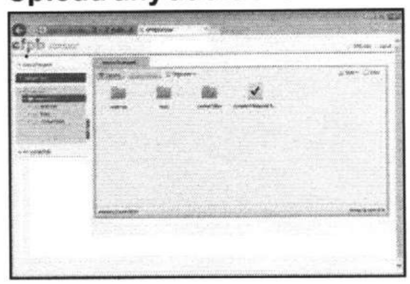
5 File browser

Select file(s) for upload

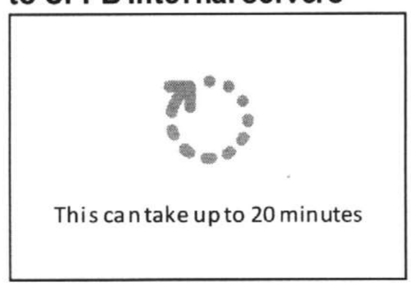


6 Selected folder

Upload any additional files

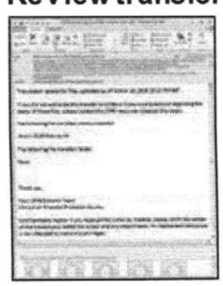


7 **Wait for files to transfer to CFPB internal servers**



8 Transfer receipt

Review transfer receipt



Note: After your files have been transferred to the CFPB's internal servers, they are no longer viewable on the Extranet website.

Exhibit D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Consumer Financial Protection Bureau, Plaintiff, v. Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud & Daniel Rosen, Defendants.	Case No. 2:21-cv-07492-VAP-JDE STIPULATION AND PROPOSED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties acknowledge the statutory

Protection Bureau ("Bureau") to share confidential information under this Order with other federal and state agencies.

2. GOOD CAUSE STATEMENT

This action is likely to involve the exchange of non-publicly-available documents and other information of a sensitive and confidential or proprietary nature including consumer report information, consumer contracts, and business software that may contain confidential and personally identifiable information[1] ("PII"), including personal telephone numbers, personal addresses, and personal email addresses, and credit score or credit report information. Special protection from public disclosure is warranted for these documents and other information.

Such sensitive and confidential and proprietary documents and other information consist of, among other things, confidential business or financial information, information regarding consumers (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or information that may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, facilitate the prompt resolution of disputes over confidentiality of discovery materials, protect

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[1] Office of Management and Budget (OMB) Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017(OMB M-17-12), defines PII as "information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. Because there are many different types of information that can be used to distinguish or trace an individual's identity, the term PII is necessarily broad. To determine whether information is PII, the [entity or individual] . . . shall perform an assessment of the specific risk that an individual can be identified using the information with other information that is linked or linkable to the individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information becomes available—in any medium or from any source—that would make it possible to identify an individual."

permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the Parties that a confidential designation will not be made for tactical reasons and that nothing will be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and that there is good cause why it should not be part of the public record of this case.

3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

The parties further acknowledge, as set forth in Section 14.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a specific showing of good cause or compelling reasons with proper evidentiary support and legal justification, must be made with respect to Protected Material that a party seeks to file under seal. The parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL does not— without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

4. DEFINITIONS

4.1 Action: This case, *Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud, et al.*, No. 2:21-cv-07492-VAP-JDE, pending in the United States District Court for the Central District of California.

4.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

4.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

4.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery.

4.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

4.8 Final Disposition: the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

4.9 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

4.10 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

4.11 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party, and includes support staff.

4.12 Party: any party to this Action, including all of its officers, directors, employees, consultants, contractors, retained experts, and Outside Counsel of Record (and their support staffs).

Discovery Material in this Action.

4.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

4.15 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

4.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

5. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge and other applicable authorities. This Order does not govern the use of Protected Material at trial.

6. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing "good cause" showing for sealing documents produced in part of court record). However the confidentiality obligations imposed by this Order shall remain in effect for the information that was designated as CONFIDENTIAL or maintained pursuant to this protective order and was not used or introduced as an exhibit at trial, until a Designating Party agrees otherwise in writing or a court order otherwise directs.

7. <u>DESIGNATING PROTECTED MATERIAL</u>

7.1 <u>Exercise of Restraint and Care in Designating Material for Protection</u>. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

7.2 <u>Manner and Timing of Designations</u>. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). For information in non-static documentary form (e.g., spreadsheets) for which the application of the CONFIDENTIAL legend is impracticable, a slip or cover sheet with the CONFIDENTIAL legend shall be provided. If only a portion or portions of the material in such a document qualify for protection, the slip or cover sheet shall clearly identify the protected portion(s) (e.g., by specifying the row and column numbers in a spreadsheet).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

8.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2.

8.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall entitled under the Producing Party's designation until the Court rules on the challenge.

9. ACCESS TO AND USE OF PROTECTED MATERIAL

9.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action unless another use is authorized by this Order or required by federal statute or permitted by regulation applicable to the Bureau. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order and as required by federal statute or permitted by regulation applicable to the Bureau. When the Action has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, employees and contractors (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

10. <u>PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION</u>

If a Party is served with a subpoena or a court order or other legal process, including discovery requests, issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party must:

shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order or other legal process to issue in the other litigation that some or all of the material covered by the subpoena or order or other legal process is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order or other legal process shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment an Agreement to Be Bound" attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The production of privileged or work product protected documents, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

Protected Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

15. FINAL DISPOSITION

The confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

After the final disposition of this Action, as defined in paragraph 6, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material, or retain such material as required by federal recordkeeping requirements in a manner that ensures the confidentiality of the material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material except as required to comply with federal recordkeeping requirements. Whether the Protected Material is returned or destroyed, or retained pursuant to federal recordkeeping requirements, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned, destroyed, or retained pursuant to federal recordkeeping requirements, and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material except as required pursuant to federal recordkeeping requirements. Notwithstanding this provision, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 6 (DURATION).

16. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

17. JURISDICTION

The Court shall retain jurisdiction after the resolution of this action to enforce or modify the terms of this order.

Pursuant to the Parties' Stipulation, and for good cause shown,

IT IS SO ORDERED.

DATED: May 31, 2022.

John D. Early

JOHN D. EARLY
United States Magistrate Judge

I, __________________________ [print or type full name], of ____________________ [print or type full address], declare that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on May 31, 2022, the case of *Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud, et al.*, Case No. 2:21-cv-07492-VAP-JDE. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment for contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint ________ [print or type full name] of ____________________ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: __________

City and State where sworn and signed: ________________________

Printed name: ________________________

Signature: _________________________

Exhibit E

I, Christopher Gonzalez (Name), attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by Apex Advising, LLC d/b/a Apex Credit Fix (Entity) (hereinafter "the entity"), and my title is Founder (Title). I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of the provider. The attached records consist of as per the attached cover letter dated October 28, 2022 (Generally describe records (pages/CDs or DVDs/megabytes)). I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of the entity, and they were made by the entity as a regular practice; and

b. such records were generated by the entity's electronic process or system that produces an accurate result, to wit:

1. the records were copied from electronic device(s), storage medium(s), or file(s) in the custody of the entity in a manner to ensure that they are true duplicates of the original records; and

2. the process or system is regularly verified by the entity, and at all times pertinent to the records certified here the process and system functioned properly and normally.

the Federal Rules of Evidence.

October 28, 2022

Date

Signature

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONSUMER FINANCIAL PROTECTION BUREAU, ***Plaintiff,*** **v.** **DANIEL A. ROSEN, INC., D/B/A CREDIT REPAIR CLOUD, AND DANIEL ROSEN,** ***Defendants.***	**UNITED STATES DISTRICT COURT DISTRICT OF CALIFORNIA** **CENTRAL DISTRICT OF CALIFORNIA CIVIL ACTION NO. 2:21-cv-07492**

DECLARATION OF RYANNE HANKLA IN SUPPORT OF MOTION TO QUASH AND FOR A PROTECTIVE ORDER

I, **RYANNE HANKLA**, of full age, hereby declare as follows:

1. I am an attorney at law of the State of New Jersey and a member in good standing of the bar of this Court. I am an associate of the firm of Manning & Kass Ellrod, Ramirez, Trester, LLP., counsel for non-party Christopher Gonzalez ("Mr. Gonzalez") and Apex Advising, LLC ("Apex")(collectively, the "Non Party Respondents") in the above-captioned matter.

2. I submit this Declaration on behalf of the Non Party Respondents in support of Non Party Respondents Motion to Quash for a Protective Order.

3. I have personal knowledge of the facts set forth herein or believe such facts to be true based upon information provided by knowledgeable persons.

4. On or about October 10, 2022 plaintiff, Consumer Financial Protection Bureau ("CFPB"), served Mr. Gonzalez with a deposition subpoena causing him to appear at the United States Attorney's Office in Newark, New Jersey for a deposition on November 4, 2022.

5. Non Party Respondents' counsel has conferred with CFPB in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court. Specifically, the parties telephonically met and conferred on these issues on October 26, 2022.

6. Despite these efforts, the Non Party Respondents and CFPB have been unable to reach an agreement.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 2nd day of November, 2022, in New York, New York.

/s/ *Ryanne Hankla*
Ryanne Hankla

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONSUMER FINANCIAL PROTECTION BUREAU, ***Plaintiff*,** **v.** **DANIEL A. ROSEN, INC., D/B/A CREDIT REPAIR CLOUD, AND DANIEL ROSEN,** ***Defendants*.**	**UNITED STATES DISTRICT COURT DISTRICT OF CALIFORNIA** **CENTRAL DISTRICT OF CALIFORNIA CIVIL ACTION NO. 2:21-cv-07492** **[PROPOSED] ORDER**

This matter having been brought before the Court by non-parties Christopher Gonzalez ("Mr. Gonzalez"), and Apex Advising, LLC ("Apex)(collectively, the "Non Party Respondents") move by and through their counsel Manning & Kass Ellrod Ramirez Trester, LLP., for an Order granting Non Party Respondents' Motion to Quash for a Protective Order, and the Court having considered all arguments and submissions proffered by the parties with respect to this Motion; and having heard the arguments of counsel, if any; and for good cause shown,

IT IS on this __________ day of ____________________2022, hereby

ORDERED that Non Party Respondents' Motion to Quash and for a Protective Order is **GRANTED;** and it is further

ORDERED that defendant Daniel A. Rosen, Inc., D/B/A Credit Repair Cloud need not respond to the subpoenas absent further Order from this Court;

At Newark, New Jersey

____

The Honorable __________________

____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONSUMER FINANCIAL PROTECTION BUREAU, ***Plaintiff,*** **v.** **DANIEL A. ROSEN, INC., D/B/A CREDIT REPAIR CLOUD, AND DANIEL ROSEN,** ***Defendants*.**	**UNITED STATES DISTRICT COURT DISTRICT OF CALIFORNIA** **CENTRAL DISTRICT OF CALIFORNIA CIVIL ACTION NO. 2:21-cv-07492** **CERTIFICATE OF SERVICE**

The within **Notice of Motion to Quash and for A Protective Order** has been electronically filed with the Clerk of the Court, United States District Court for the District of New Jersey.

Respectfully Submitted,

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: */s/ Ryanne Hankla*
Ryanne Hankla, Esq.

DATED: November 2, 2022

PROOF OF SERVICE

On November 2, 2022, the undersigned served via electronic filing and electronic mail to:

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The following: **Notice Of Motion To Quash And For A Protective Order**

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

By: *_/s/ Ryanne Hankla_*
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
Ryanne Hankla, Esq.
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(212) 858-7769
Facsimile: (212) 858-7543
Email: rah@manningllp.com

Dated: November 2, 2022

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2022, I cause the foregoing to be filed on the Court's CM/ECF system for electronic service on all counsel of record in this action.

/s/ Ryanne Hankla
Ryanne Hankla, Esq.