

IN RE UNIRUSH LLC
2015-MISC-UNIRUSH-0001

**DECISION AND ORDER ON PETITION BY UNIRUSH LLC TO MODIFY OR SET
ASIDE CIVIL INVESTIGATIVE DEMAND**

UniRush LLC (UniRush or Petitioner), the recipient of a civil investigative demand (CID) from the Consumer Financial Protection Bureau’s Office of Enforcement, has petitioned for an order to set aside or modify the CID. For the reasons that are set forth below, the petition is denied.

FACTUAL BACKGROUND

On October 27, 2015, the Bureau’s Office of Enforcement issued a CID to UniRush, the program manager for RushCard, a prepaid debit card. The CID seeks documents, written reports, and answers to interrogatories in connection with its “investigation [into] . . . whether prepaid debit card issuers, processors, card networks, service providers to prepaid debit card issuers, or other unnamed persons have engaged in or are engaging in unlawful acts and practices in connection with the offering, operating, or servicing of prepaid debit cards in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (12 U.S.C. §§ 5531, 5536), or any other Federal consumer financial law.” CID at 1. The CID had a return date of November 10, 2015.

Following the issuance of the CID, the Bureau and UniRush scheduled a meeting for November 2, 2015. Prior to that meeting, Bureau enforcement counsel informed UniRush that they were “willing to be reasonable with regards to both the scope and the schedule of UniRush’s response to the CID.” Counsel for UniRush represented via email that at the November 2 meeting, UniRush would “provide the Bureau . . . its plan to collect documents, answer interrogatories, and create reports in response to the Bureau’s CID.”

At the November 2 meeting, however, this pledged cooperation did not materialize. On the contrary, counsel for UniRush was prepared neither to discuss a schedule for responding to the CID nor to request that the Bureau narrow the scope of any particular request contained in the CID. Instead, UniRush informed the Bureau that its counsel would be traveling to the client the following week to begin the process of collecting information responsive to the CID and to interview potential custodians. Nonetheless, enforcement counsel identified to UniRush a subset of the CID requests that it considered to be of the highest priority and indicated that it would be amenable to a rolling production schedule. At the conclusion of the meeting, enforcement counsel advised UniRush to submit a proposal for modifying the CID if the timeline or specific requests presented a hardship.

Three days after this meeting, on November 5, UniRush submitted a letter requesting a blanket extension of time to respond to the CID. The request did not contain a timeline for responding to specific requests or seek to narrow the scope of the CID, but simply informed the Bureau that UniRush “anticipate[d] starting a rolling production the week of November 16” and sought an extension of time to comply with the CID until January 15, 2016. The following day, enforcement counsel explained in an email that any request to extend the deadline for compliance with the CID would need to include a “specific timetable for responding to each interrogatory, document request, and request for written reports as well as a justification for the extension.” The parties then exchanged a series of emails whereby Bureau counsel reiterated its willingness to entertain a specific proposal to modify both the timing and scope of the CID and UniRush asserted that it could not make such a proposal. On November 9, 2015, counsel for UniRush conceded that it “d[id] not have a full request-by-request proposal for the Bureau . . . [and] w[ould] not be in a position to offer request-by-request suggestions until we complete the interviews which are scheduled to begin [on November 10].”

In short, throughout this brief saga, UniRush has been unable to deliver on its pledges of cooperation with the Bureau and on its legal obligation to respond to the CID in a timely manner. On November 10, 2015, UniRush filed a Petition to Quash the CID. On November 19, 2015, UniRush made an initial production of documents to the Bureau.

LEGAL DETERMINATION

UniRush raises a number of objections to the CID, none of which provides a basis for setting aside or modifying the CID.

First, UniRush alleges that the CID is unduly burdensome because it required a prompt production by November 10. But this allegation is belied by Petitioner’s correspondence with the enforcement team. As the team has indicated, it is amenable to considering requests for extensions of time as to specific requests for information, but it has never received any such specific proposals from UniRush in response to this offer.

In any event, UniRush has failed to engage adequately in the meet-and-confer process on the issue of timing, as required by 12 C.F.R. § 1080.6(c)(1). Although UniRush attended a meeting with the Bureau and has engaged in correspondence with the Bureau, it has failed to provide any specific proposal either to modify the timeframe for responding to any specific request or to modify the scope of any specific request. Instead, UniRush broadly objected to the CID and sought only a blanket extension of time. Notably, UniRush failed to begin interviewing personnel knowledgeable about the information requested by the CID until one week after it met with the Bureau, despite representing that it would be prepared to discuss its plan to respond to the CID at the November 2 meeting. Those facts present a sufficient basis to reject Petitioner’s arguments on timing. *See In re Selling Source, LLC*, 2015-MISC-Selling Source, LLC-0001 (citing 12 C.F.R. § 1080.6(c)(3)).¹

¹ Available at http://files.consumerfinance.gov/f/201508_cfpb_decision-on-petition-by-selling-source-llc-to-set-aside-civil-investigative-demand.pdf.

Second, UniRush contends that the CID is overly broad. “Given the early stage of the investigation at which a CID is issued, the enforcement team typically presents a thorough and comprehensive request for documents, items, and information.” *In re PHH Corp.*, 2012-MISC-PHH Corp-001, at 6 (Sept. 20, 2012) (collecting cases).² To satisfy its burden of showing that the CID is overly broad, UniRush “must undertake a good-faith effort to show the exact nature and extent of the hardship imposed, and state specifically how compliance will harm its business.” *Id.*

Although UniRush repeatedly asserts that the CID is overly broad or burdensome, it has failed to make the kind of showing necessary to substantiate these claims. Rather, UniRush argues that it needs more time to compile the information because of the complexity of the processor conversion process. This argument is simply one of timing and should be resolved in negotiations with the enforcement team in the context of specific responses to specific requests. UniRush also argues that it should not be required to produce customer-level data for an eleven-month period because its processor conversion error only affected consumer accounts for a short period of time during October 2015. But this ignores the scope of the Bureau’s investigation, which is not limited to the October 2015 timeframe, and UniRush has not argued that the Bureau’s statement of purpose is overbroad. The enforcement team may agree, in the context of negotiations with UniRush, to narrow the scope of specific requests, but the requests for such information are not overbroad on their face. The most detailed hardship that UniRush asserts here stems from the requests for written reports. UniRush claims they are overbroad because they will require UniRush to “extract and calculate [] data to respond.” Pet. at 11, 13. But the need to analyze data or create reports does not by itself present an adequate articulation of hardship and it provides no tangible showing of meaningful harm to UniRush’s business. *See NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513 (4th Cir. 1996) (“A subpoena is not unduly burdensome merely because it requires the production of a large number of documents.”). Again, to the extent that this objection is merely one of timing, it should be resolved through discussions with the enforcement team.

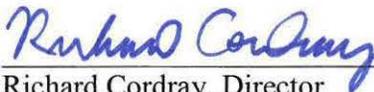
Third, UniRush asserts that the Bureau is requiring it to “waive its legal rights to receive the benefit of the Bureau’s ‘Responsible Conduct’ guidelines.” Pet. at 16. But this claim ignores enforcement counsel’s repeated invitations to propose a specific schedule for rolling productions, which should provide a means of accommodating UniRush’s concern about waiving privileges. This claim also misrepresents the nature of the Bureau’s Responsible Conduct Bulletin,³ which outlines several activities an entity could undertake that might favorably affect the ultimate resolution of an enforcement investigation. *Id.* at 1. The Bulletin plainly states, however, that its guidance creates no legal right for any financial institution to have the Bureau account for its cooperation in exercising its enforcement discretion. *Id.* at 2. Accordingly, UniRush’s claim that the Bureau is requiring it to waive a “legal right” fails.

² Available at http://files.consumerfinance.gov/f/201209_cfpb_setaside_phhcorp_0001.pdf.

³ Responsible Conduct Bulletin, available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

CONCLUSION

UniRush has failed to engage with the Bureau in any meaningful way to work out a specific timeline for a rolling production of the information requested by the November 10 return date. And its other arguments plainly fail for the reasons discussed above. Accordingly, the petition by UniRush to modify or set aside the CID is denied. UniRush is directed to meet and confer with Bureau enforcement counsel within 10 days of service of this order. At the meet and confer, if not before, UniRush is directed to provide a specific timetable for responding to each interrogatory, document request, and request for written reports, with an explanation of the reason why such additional time is needed. After the production timetable is agreed to by enforcement counsel, UniRush is directed to comply with all agreed-upon deadlines.


Richard Cordray, Director

December 2, 2015