

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

In the Matter of:

The Source for Public Data, L.P.

**PETITION TO SET ASIDE OR MODIFY THE
CIVIL INVESTIGATIVE DEMAND TO THE SOURCE FOR PUBLIC DATA, L.P.**

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INTRODUCTION

Pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(d), The Source for Public Data, L.P. (“Petitioner” or “Public Data”) respectfully petitions to set aside or, in the alternative, to modify the Civil Investigative Demand (“CID”) issued to it by the Consumer Financial Protection Bureau (“Bureau” or “CFPB”) on January 5, 2017. The CID was improperly issued and cannot be enforced against Public Data because (1) the CFPB lacks jurisdiction over Petitioner, (2) the CID fails to adequately state the nature of the investigation, and (3) the CID’s requests are overbroad and irrelevant. *See, e.g., U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (CIDs should not be enforced if they demand information that is (a) not “within the authority of the agency,” (b) “too indefinite,” or (c) not “reasonably relevant to the inquiry.”).

According to the stated purpose of the CID, the CFPB purports to exercise jurisdiction over Public Data under the Fair Credit and Reporting Act (“FCRA”) or under “any other federal consumer financial law.” However, because Public Data is not a consumer reporting agency and does not create, use, or maintain consumer reports or files, the FCRA is not applicable. Further, because Public Data does not provide or participate in the provision of a financial product or service, there is no basis for jurisdiction under any other “federal consumer financial law.”

Notwithstanding the CFPB’s lack of jurisdiction, the CID must also be withdrawn because it fails to identify the nature of the conduct under investigation and is therefore too indefinite. The CID’s requests are also grossly overbroad and demonstrate a misunderstanding of the nature of Public Data’s business. Because Public Data is not a consumer reporting agency, the requests are fundamentally flawed and are not reasonably relevant to any authorized inquiry.

For these reasons, the CID was improperly issued, cannot be enforced against Public Data, and must therefore be quashed in its entirety.

CIVIL INVESTIGATIVE DEMAND

On January 5, 2017, the CFPB mailed the CID at issue to Public Data. The CID was received by Public Data on January 9, 2017. The CID's Notification of Purpose Pursuant to 12 C.F.R. § 1080.5 provided as follows:

The purpose of this investigation is to determine whether consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and practices in connection with the provision or use of public records information in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., Regulation V, 12 C.F.R. Part 1022, or any other federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

BACKGROUND ON PUBLIC DATA

Public Data operates an internet website, www.publicdata.com, which allows users to conduct a "Google-like" search for public records which, in most cases, are available at a much lower cost than obtaining them directly from a government agency. In other words, Public Data provides the public the ability to conduct internet searches of data that government agencies might otherwise only make available by going to a physical location, such as a court clerk's office, or by paying a higher fee. From its inception in 1993 to the present, Public Data's sole goal has simply been to provide the public with online access to this type of already publicly available information.

Public Data contracts with ShadowSoft, Inc. ("ShadowSoft"), a public record data retrieval vendor, to obtain public records that are mandated by law to be made available to all citizens by various governmental agencies. ShadowSoft retrieves these public records from various governmental record custodians across the United States and stores the records in their raw form. ShadowSoft does not manipulate, modify, or otherwise change any of these records.

Further, these records are never collected into a file about a specific person or otherwise ever represented as relating to a specific person.

Public Data allows citizens to search these public records using search criteria selected by the individual. All available public records that have previously been retrieved by ShadowSoft and which match the search criteria submitted by the user are then returned in response to the search query. Public Data does not alter, assemble or merge any records, nor does it make any determination as to whether a public record is accurate or relates to a specific person. Instead, Public Data's search results simply contain public record information for all public records that match the customer's search terms similar to what a search on Google or on a court's system might produce. Just like a Google search, Public Data's users must review the search results to determine if the results include the information desired or whether the search terms need to be adjusted or refined.

In sum, Public Data does nothing more than make the same public information, which is otherwise accessible via a Freedom of Information Act request, available through an internet search, thereby eliminating barriers to the free flow of government records imposed by requiring citizens to travel to a courthouse or other government agency office.

LEGAL STANDARD

Pursuant to 12 C.F.R § 1080.6(d), the recipient of a CID may file with the CFPB a petition for an order modifying or setting aside the demand within twenty days of service of the CID.

The Supreme Court has instructed that agency subpoenas or CIDs should not be enforced if they demand information that is (a) not "within the authority of the agency," (b) "too indefinite," or (c) not "reasonably relevant to the inquiry." *Morton Salt Co., supra*, 338 U.S. at

652; see also *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977); *CFPB v. Accrediting Council for Independent Colleges and Schools (ACICS)*, 2016 U.S. Dist. LEXIS 53644 (D.D.C. April 21, 2016). “[W]here it is clear that an agency either lacks the authority to investigate or is seeking information irrelevant to a lawful investigatory purpose, a court must set such inquiry aside.” *ACICS, supra*, 2016 U.S. Dist. LEXIS 53644, at *5 (internal citations omitted); see also *Morton Salt Co., supra*, 338 U.S. at 652 (“[A] governmental investigation . . . may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.”).

In this case, the CID at issue cannot be enforced because (1) the CFPB lacks jurisdiction over Petitioner, (2) the CID is too indefinite, and (3) the CID’s requests are not reasonably relevant to any inquiry. For these reasons, Petitioner Public Data requests that the CID be quashed, or alternatively, modified as provided for below.

A. The CFPB Lacks Jurisdiction

According to the CID’s Notification of Purpose, the CFPB is purporting to exercise jurisdiction over Public Data under the FCRA or “any other federal consumer financial law.” However, because Public Data is not a consumer reporting agency (“CRA”) and does not create consumer reports or files, (1) the FCRA is not applicable and (2) Public Data is not a “covered person” or “service provider” under “federal consumer financial law.” The CFPB therefore lacks any jurisdiction to issue or enforce the CID and the CID must be quashed in its entirety.

1. The CFPB Does Not Have Jurisdiction under the FCRA

Section 621(b) of the FCRA provides that the CFPB shall be responsible for enforcing compliance with the FCRA. 15 U.S.C. § 1681s(b)(1)(H). For purposes of the CID, the CFPB claims jurisdiction under this section as it pertains to “consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and

practices in connection with” the FCRA. *See* CID at p.1.

Section 603(f) of the FCRA defines “consumer reporting agency” as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly *engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties*, and which uses any means or facility of interstate commerce *for the purpose of preparing or furnishing consumer reports.*” 15 U.S.C. § 1681a. (Emphasis added).

A “consumer report” means “any written, oral, or other communication of any information *by a consumer reporting agency* bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604.” 15 U.S.C. § 1681a. (Emphasis added.)

It is well-established that an entity which does not “assemble” or “evaluate” consumer credit information or other consumer information, but only “passes” information along to other parties does not constitute a CRA. *See, e.g., Carlton v Choicepoint, Inc.*, 2009 U.S. Dist. LEXIS 109522 at *10-*17 (D.N.J. 2009) (holding “Defendants are a mere purveyor of unadulterated information, which is insufficient to state a claim under the FCRA”); *Knechtel v. Choicepoint, Inc.*, 2009 U.S. Dist. LEXIS 109521, at *12-*17 (D.N.J. 2009) (granting motion to dismiss FCRA claim finding that “Defendants are merely a conduit of information.”).

In addition, public records retrieval vendors who simply offer users access to public records via a website are not subject to FCRA claims. For instance, in *Fiscella v. Intelius, Inc.*,

2010 U.S. Dist. LEXIS 57918 (E.D. Va. June 10, 2010), the defendant, “an information commerce company,” offered access to criminal data through a website. *Id.* at *2-3. Customers could retrieve data by entering a first name, last name, and state as search criteria, thereby “allowing the website to return any public records that contain[ed] the search terms.” *Id.* at *1. At the time results were returned, Intelius reminded its customers to “closely review each record as subjects with a common name may return multiple criminal results.” *Id.* at *3. The court dismissed the FCRA claims in that action finding that the “Report” at issue was “*not* a report solely about [one person], but rather provides a list of all individuals that match the search term [] entered.” *Id.* at *2. Therefore, the result of the search conducted on Intelius’s website could not, as a matter of law, constitute an actionable consumer “file” under the FCRA. *Id.* at *8-*11.

The CFPB has itself indicated that public record retrieval vendors are not consumer reporting agencies. *See* Consumer Financial Protection Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus manage consumer data* at p.17 (2012). In particular, the CFPB noted that LexisNexis Risk Data Retrieval Services LLC (“LNRDRS”) retrieves public record events and sends the records to nationwide consumer reporting agencies (“NCRAs”). *Id.* It is the NCRAs that then take on the task of assigning a record to a particular consumer’s file. *Id.* Thus, the CFPB has already drawn an important distinction between an entity that assigns a record to a consumer’s file (*i.e.* a consumer reporting agency) versus an entity that simply provides access to raw public records (*i.e.* a public data retrieval vendor).

Such is the circumstance with Public Data. Public Data does not assemble or evaluate any information on consumers, but rather simply returns search results according to user-defined search terms. In particular, Public Data’s website interface returns all public records that match

the customer's search terms just as with a Google search or a search on a court's file system. Also, just as in the *Intelius* case, Public Data advises users that the result of a search of their website is likely to include information concerning multiple individuals with the same name. Thus, the user must review the search results to determine if the results include the desired information about a certain person or whether the search terms need to be adjusted or refined.

Just as with LNRDRS, there is no individualized "consumer report" generated as to any specific consumer. Instead, users are merely given access to a listing of public records that they can read on their own through their web browser and are responsible for making their own determination of whether a record relates to a particular consumer. Additionally, Public Data does not:

- a) assemble or evaluate credit reports, credit files or financial information for its subscribers;
- b) sell access to any databases containing any credit information, credit reports or credit scores;
- c) collect information from creditors or financial institutions; or
- d) perform any custom searches of particular government databases for its subscribers.

Public Data only provides access to the public records that were previously obtained by ShadowSoft in bulk from governmental records custodians around the country. Thus, Public Data, and likewise ShadowSoft, are not "consumer reporting agencies," and the online search results provided to users are not "consumer reports" under the FCRA.

Indeed, a U.S. District Court has already confirmed that the FCRA is not applicable to Public Data. In *Wilson v. The Source for Public Data, L.P.*, the District Court dismissed FCRA claims against Public Data holding that a prospective employer of the plaintiff "did not purchase

a [consumer] report, but instead purchased access to [Public Data's] website in order to conduct its own search.” *See Wilson v. The Source for Public Data, L.P.*, 4:12-cv-00185 (S.D. TX. 2013), Memorandum and Order (Dkt. No. 36) at p. 8. The Court further reasoned that the search results returned by Public Data “did not constitute ‘information concerning’ Plaintiff” and that, therefore, there was no consumer “file” to support any claim under the FCRA.

Ultimately, not only is Public Data not a CRA for purposes of the FCRA, but the search results that it populates for its users are also not consumer reports. Moreover, Public Data obtains its records through ShadowSoft which is simply a retrieval vendor of records from governmental records custodians. So, Public Data does not use consumer reports in the operation of its website. Rather, the information at issue is raw information in the public record, no different from the information that a citizen could obtain by going directly to a court and using the search functionality on the court’s public access terminal.

Thus, there is no basis to support jurisdiction under the FCRA for any claim or investigation into Public Data as either a consumer reporting agency, a person who uses consumer reports or on any other basis noted in the CID. 15 U.S.C. § 1681s(b)(1)(H). Accordingly, the CID must be quashed.

2. The CFPB Does Not Have Jurisdiction under Federal Consumer Financial Law

Apart from the FCRA, the CFPB also seeks to exercise jurisdiction under the general umbrella of Regulation V, 12 C.F.R. Part 1022 and “federal consumer financial law.” In this regard, and pursuant to 12 U.S.C. §§ 5531 and 5536, the CFPB is restricted to taking enforcement action only against “covered persons,” “service providers,” and “any person who knowingly or recklessly provides substantial assistance to a covered person or service provider.”

A covered person is defined as (a) any person that engages in offering or providing a consumer financial product or service; and (b) any affiliate of a person described in subparagraph

(a) if such affiliate acts as a service provider to such person. 12 U.S.C. § 5481(6). The term “affiliate” means any person that controls, is controlled by, or is under common control with another person. 12 U.S.C. § 5481(1).

A service provider is defined as any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, and includes any person who “participates in designing, operating, or maintaining the consumer financial product or service,” or who “processes transactions relating to the consumer financial product or service.” 12 U.S.C. § 5481(6).

Thus, jurisdiction over either a “covered person” or “service provider” requires involvement with and the offering of a “financial product or service.” The eleven activities that may constitute a “financial product or service” for purposes of establishing CFPB jurisdiction are set forth at 12 U.S.C. § 5481(15). However, there is only one “financial product or service” listed therein that is potentially pertinent to the CID at issue, which is as follows:

- (ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—
 - (I) a person
[§][§]
 - (cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer.

12 U.S.C. § 5481(15)(ix)(I)(cc).

In light of this definition, Public Data does not offer or provide a financial product or service. As discussed above, Public Data does not collect, analyze, maintain, or provide

consumer report information or other account information that is used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service. It simply allows access to public government records for users to perform their own searches and review of such public records. There is no compilation of any data or information into any consumer report or file. Further, as previously noted, Public Data does not (i) assemble or evaluate credit reports, credit files or financial information for its subscribers; (ii) sell access to any databases containing any credit information, credit reports or credit scores; (iii) collect information from creditors or financial institutions; or (iv) perform any custom searches of particular government databases for its subscribers. Thus, Public Data cannot be considered a covered person because it is not in the business of providing a consumer financial product or service. Further, Public Data is also not an “affiliate” of any “covered person.” It does not control, nor is it controlled by or under common control with another person in the business of providing a consumer financial product or service.

Similarly, Public Data cannot constitute a “service provider.” As stated, Public Data does not participate in designing, operating, or maintaining any consumer financial product or service for a “covered person,” nor does it process transactions relating to any consumer financial product or service. It is simply a search engine of public governmental records.

Finally, Public Data does not knowingly or recklessly provide substantial assistance to a covered person or service provider and no allegation or charge to the contrary has been stated in the CID.

Accordingly, because Public Data is neither a “covered person” nor a “service provider,” and because it does not knowingly or recklessly provide substantial assistance to a covered person or service provider, the CFPB lacks any jurisdiction under either the FCRA or any other

“federal consumer financial law” to issue or enforce the CID against Public Data. The CID must therefore be quashed in its entirety.

B. The CID Fails to Identify the Nature of the Conduct Under Investigation

Notwithstanding the CFPB’s lack of jurisdiction over Public Data, the CID is also improper because it fails to identify the nature of the conduct under investigation and is therefore too indefinite.

A CID must “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” *Id.* § 5562(c)(2); *see also Morton Salt Co., supra*, 338 U.S. at 652 (subpoena must be quashed if it is “too indefinite”) This clear statutory and common law requirement is vital to the respondent’s ability to understand and respond to the CID, as well as to formulate objections to the same.

Despite this well-established and undisputed directive, the CID in the instant matter fails to state either the nature of the conduct at issue or the specific provision of law applicable to such conduct. The CID only states that the purpose of the investigation is:

“to determine whether consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and practices in connection with the provision or use of public records information in violation of the [FCRA], Regulation V [], **or** any other federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.”

This statement is vague, ambiguous and far “too indefinite” under the *Morton Salt Co.* standard because it fails to provide Public Data with even a hint of the true purpose or nature of the CID and related investigation. Indeed, the stated purpose references the entirety of the FCRA, Regulation V, and “other federal consumer financial laws” generally. There are no specific sections or provisions of these large statutory schemes that are cited, which leaves Public Data guessing as to the purpose of the CID, the basis for any investigation, or the

direction of any inquiries by the CFPB.

The CID also refers to “other persons” who remain unidentified, but who may “have engaged or are engaging in unlawful acts.” Thus, Public Data is not given any notice whatsoever of any potential witnesses or participants who may be necessary to respond to the CID, or to defend against any improper investigation or fishing expedition.

The implications of the stated purpose are so sweeping that Public Data is completely unable to advise its staff and representatives (who may be called for deposition pursuant to the CID) as to what the topic of the inquiry is with any certainty. This creates and imposes on Public Data a significant and undue burden with respect to responding to any inquiry, to preserving any potentially relevant or sought after information, and to adequately representing itself before the CFPB. Therefore, the CFPB must narrow the scope of its inquiry to identify the particular concern and statutory bases underlying the CID and/or the impetus or catalyst for the instant investigation. Even during the meet and confer process, Public Data inquired as to why the investigation was being brought, but the CFPB provided no substantive response.

In the end, the CID is required to clearly state (1) “the nature of the conduct constituting the alleged violation which is under investigation” and (2) “the provision of law applicable to such violation.” Because neither of these elements is adequately stated in the CID, the CID is ineffective under 12 U.S.C. § 5562 and must be quashed.

C. The CID Is Grossly Overbroad

The CID is also improper because it is far too overbroad and therefore seeks information which is not relevant to any inquiry. *Morton Salt Co., supra*, 338 U.S. at 652 (subpoena must be quashed if it is not “reasonably relevant to the inquiry.”) The CID itself demonstrates a basic misunderstanding of Public Data’s business and website. Several of the demands in the CID (which were discussed and raised during the meet and confer conference), presuppose that Public

Data is a CRA.

For example, certain of the interrogatories inquire about databases used to “track, record, categorize, or analyze consumer disputes or complaints relating to any Public Data sold by the Company to any of its clients.” *See, e.g.*, Interrogatory No. 5. Such inquiries necessarily assume that Public Data is a CRA that sold data to clients about specific consumers resulting in consumer disputes and complaints. Several of the interrogatories are similarly defective including, but not limited to, interrogatory nos. 4-6, 8, and 11.

The document requests share the same deficiency. For instance, document request number 3 seeks “All policies and procedures relating to the Company's matching of records containing Public Data with the correct consumer (*e.g.*, how the company matches the consumer information provided by the client with the Public Data related to that consumer).” Such a request necessarily assumes that there is a matching process intended to associate public records with a specific consumer. To the contrary, and as noted by the Court in *Wilson*, Public Data’s website does not furnish records or a report on any one person. Rather, it populates a list of all records that match the user-inputted search terms. These results generally pertain to several individuals and users have to search through the records themselves to find what they are looking for. There is no “matching” as contemplated under the FCRA. Many of the document requests are similarly improper including, but not limited to, document request nos. 2-6, 8-10, and 13-14.

As demonstrated above, and as the U.S. District Court has already held, Public Data is not a CRA, it’s search results do not constitute consumer reports, and it is not subject to enforcement under the FCRA. For these reasons, the CID is impermissibly overbroad and seeks information which cannot possibly be related to or reasonably relevant to the inquiry at hand (which itself remains unclear and undefined).

CONCLUSION

Accordingly, Public Data respectfully submits that the Director of the Consumer Financial Protection Bureau should set aside the CID issued to Public Data.

Dated: January 25, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Petition To Set Aside Or Modify The Civil Investigative Demand To The Source For Public Data, L.P.* was filed and served via electronic mail this 25th day of January, 2017, which provides notice to the following:

Bureau's Executive Secretary
ExecSec@cfpb.gov

Enforcement Director
Enforcement@cfpb.gov

By: /s/ Ronald Raether
Ronald I. Raether, Jr. (Cal. SBN 303118)
Attorneys for Petitioner
The Source For Public Data, L.P.

DECLARATION OF DALE BRUCE STRINGFELLOW

I, Dale Bruce Stringfellow, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that:

1. I am the President of Harlington-Straker Studio, Inc. which is the General Partner for The Source for Public Data, L.P. d/b/a PublicData.com (“Public Data”), a limited partner of the Public Data partnership, and President of Shadowsoft, Inc.

2. The facts set forth herein are based on my personal knowledge and review of the business records of Public Data, and if I were called upon to testify to them, I could and would competently do so.

3. I make this declaration in support of Public Data’s concurrently filed Petition to Set Aside or Modify the Consumer Investigative Demand (“CID”) issued to Public Data and dated January 5, 2017.

4. More than 20 years ago, I found myself waiting for hours to get access to public records at a courthouse. Understanding the importance of citizen access to government records, I started ShadowSoft, Inc. (“ShadowSoft”), which received all public records as made available by government entities and made those records available on CD-ROMs. With the rise of the internet, I decided to start making public records accessible via the World Wide Web and founded Public Data.

5. Public Data now operates an internet website, www.publicdata.com, which allows the public to conduct a “Google-like” search for public records which, in most cases, are available at a much lower cost than obtaining them directly from a government agency. In other words, Public Data provides the public the ability to obtain via the internet publicly available data that a citizen otherwise might only access by going to a physical location, such as a court

clerk's office, or by paying a higher fee. From its inception in 1993 to the present, Public Data's sole goal has simply been to provide the public with online access to this type of already publicly available information, helping to fulfill the purpose and goals of state sunshine laws.

6. Public Data contracts with ShadowSoft, a public record data retrieval vendor, to obtain public records that are mandated by law to be made available to all citizens by various governmental agencies. ShadowSoft retrieves these public records from various governmental record custodians across the United States and stores the records in their raw form. ShadowSoft does not manipulate, modify, or otherwise change any of these records. Further, these records are never collected into a file about a specific person or otherwise ever represented as relating to a specific person.

7. Public Data allows citizens to search these public records using search criteria selected by the customer. All available public records that have previously been retrieved by ShadowSoft and which match the search criteria submitted by the user are then returned in response to the search query.

8. Public Data does not alter, assemble or merge any records, nor does it make any determination as to whether a public record is accurate or relates to a specific person. Instead, Public Data's search results simply contain public record information for all public records that match the customer's search terms similar to what a search on Google or on a court's system might produce. Just like a Google search, Public Data's users must review the search results to determine if the results include the information desired or whether the search terms need to be adjusted or refined.

9. In sum, Public Data does nothing more than make the same public information, which is otherwise accessible via a Freedom of Information Act request, available through an

internet search, thereby eliminating barriers to the free flow of government records imposed by requiring citizens to travel to a courthouse or other government agency office.

10. There is no individualized “consumer report” generated as to any specific consumer. Instead, users are merely given access to a listing of public records that they can read on their own through their web browser and are responsible for making their own determination of whether a record relates to a particular consumer. Additionally, Public Data does not:

- a) assemble or evaluate credit reports, credit files or financial information for its subscribers;
- b) sell access to any databases containing any credit information, credit reports or credit scores;
- c) collect information from creditors or financial institutions; or
- d) perform any custom searches of particular government databases for its subscribers.

11. Public Data only provides access to the public records that were previously obtained by ShadowSoft in bulk from governmental records custodians around the country. Thus, Public Data, and likewise ShadowSoft, are not “consumer reporting agencies,” and the online search results provided to users are not “consumer reports” under the FCRA.

12. Indeed, a U.S. District Court has already confirmed that Public Data is not a consumer reporting agency. A true and correct copy of the Memorandum and Order granting Public Data’s Motion for Summary Judgment in *Wilson v. The Source for Public Data, L.P.*, 4:12-cv-00185 (S.D. TX. 2013) is attached hereto, and incorporated herein by reference, as Exhibit A.

13. I am voluntarily making this declaration out of my own free will. No one has promised me anything in exchange for this testimony.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Executed on January 25, 2017

Dale Bruce Stringfellow

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

YOLANDA NELLUMS WILSON,
Plaintiff,

v.

THE SOURCE FOR PUBLIC DATA,
L.P. d/b/a PUBLICDATA.COM,
Defendant.

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CIVIL ACTION NO. H-12-0185

MEMORANDUM AND ORDER

This case is before the Court on the Motion for Summary Judgment (“Motion”) [Doc. # 27] filed by Defendant The Source for PublicData L.P. d/b/a PublicData.com (“PublicData”), to which Plaintiff Yolanda Nellums Wilson filed a Response [Doc. # 30], and Defendant filed a Reply [Doc. # 34]. Having reviewed the full record and applied governing legal authorities, the Court **grants** the Motion.

I. BACKGROUND

Defendant provides an Internet website through which customers can conduct searches of a variety of public records. In early June 2011, Plaintiff submitted an application with Dean’s Professional Services (“Dean’s”), an employment agency, for placement in an administrative assistant position with MD Anderson Cancer Center (“MD Anderson”).

On June 6, 2011, Dean's conducted a search through Defendant's website using various configurations of Plaintiff's name as the search criteria. One search produced four references for "Wilson, Yolanda Renee," two with birth dates in 1977 and two with birth dates in 1979. A search using the name "Yolanda Renee Wilson" with a birth date in 1977 yielded a search result for an individual with that name who resided in Missouri. The "Yolanda Renee Wilson" in Missouri had been convicted in 1997 with one charge of felony abandonment of a child in the first degree and one charge of felony endangering the welfare of a child. The "Yolanda Renee Wilson" in Missouri was sentenced on those convictions to a probated sentence in October 1998 which was later revoked. Plaintiff was born in 1977, but she never resided in Missouri. Plaintiff's name in 1997 and 1998 was not "Yolanda Renee Wilson" but was, instead, her maiden name – Yolanda Renee Nellums.

Mrs. Dean, the owner of Dean's, asked Plaintiff if she had ever lived in Missouri, and Plaintiff said she had not. Mrs. Dean advised Plaintiff of the "Yolanda Renee Wilson" with felony convictions in Missouri, and Plaintiff said, "that is not me."

Dean's submitted Plaintiff's application for the position with MD Anderson. Dean's did not forward the results of its search on the PublicData website. MD

Anderson did not select Plaintiff for the administrative assistant position. The position closed or was otherwise filled on June 27, 2011.

Plaintiff filed this lawsuit on January 19, 2012, alleging that Defendant violated the Fair Credit Reporting Act (“FCRA”), specifically 15 U.S.C. § 1681e. Plaintiff alleges that she suffered lost employment opportunities, harm to her reputation, and emotional distress. After an adequate time to complete discovery, Defendant moved for summary judgment. The Motion has been fully briefed and is now ripe for decision.

II. SUMMARY JUDGMENT STANDARD

Rule 56 of the Federal Rules of Civil Procedure mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing of the existence of an element essential to the party’s case, and on which that party will bear the burden at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (*en banc*); *see also Baton Rouge Oil and Chem. Workers Union v. ExxonMobil Corp.*, 289 F.3d 373, 375 (5th Cir. 2002). Summary judgment “should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the

movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a); *Celotex*, 477 U.S. at 322-23; *Weaver v. CCA Indus., Inc.*, 529 F.3d 335, 339 (5th Cir. 2008).

For summary judgment, the initial burden falls on the movant to identify areas essential to the non-movant’s claim in which there is an “absence of a genuine issue of material fact.” *Lincoln Gen. Ins. Co. v. Reyna*, 401 F.3d 347, 349 (5th Cir. 2005). The moving party, however, need not negate the elements of the non-movant’s case. *See Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005). The moving party may meet its burden by pointing out “the absence of evidence supporting the nonmoving party’s case.” *Duffy v. Leading Edge Prods., Inc.*, 44 F.3d 308, 312 (5th Cir. 1995) (quoting *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 913 (5th Cir. 1992)).

If the moving party meets its initial burden, the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue of material fact for trial. *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (internal citation omitted). “An issue is material if its resolution could affect the outcome of the action. A dispute as to a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *DIRECT TV Inc. v. Robson*, 420 F.3d 532, 536 (5th Cir. 2006) (internal citations omitted).

In deciding whether a genuine and material fact issue has been created, the court reviews the facts and inferences to be drawn from them in the light most favorable to the nonmoving party. *Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 412 (5th Cir. 2003). A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant. *Tamez v. Manthey*, 589 F.3d 764, 769 (5th Cir. 2009) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The non-movant's burden is not met by mere reliance on the allegations or denials in the non-movant's pleadings. *See Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531, 545 n.13 (5th Cir. 2002). Likewise, "conclusory allegations" or "unsubstantiated assertions" do not meet the non-movant's burden. *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008). Instead, the nonmoving party must present specific facts which show "the existence of a genuine issue concerning every essential component of its case." *Am. Eagle Airlines, Inc. v. Air Line Pilots Ass'n, Int'l*, 343 F.3d 401, 405 (5th Cir. 2003) (citation and internal quotation marks omitted). In the absence of any proof, the court will not assume that the non-movant could or would prove the necessary facts. *Little*, 37 F.3d at 1075 (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)).

The Court may make no credibility determinations or weigh any evidence. *See Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2010) (citing *Reaves Brokerage Co.*, 336 F.3d at 412-413). The Court is not required to accept the nonmovant's conclusory allegations, speculation, and unsubstantiated assertions which are either entirely unsupported, or supported by a mere scintilla of evidence. *Id.* (citing *Reaves Brokerage*, 336 F.3d at 413).

III. ANALYSIS

Plaintiff asserts a violation of the FCRA, 15 U.S.C. § 1681e(b). This section of the FCRA requires a consumer reporting agency preparing a consumer report to “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” 15 U.S.C. § 1681e(b) (emphasis added); *see also Cousin v. Trans Union Corp.*, 246 F.3d 359, 366-67 (5th Cir. 2001); *Norman v. Experian Info. Solutions, Inc.*, 2013 WL 1774625, *3 (N.D. Tex. Apr. 25, 2013). For reasons explained below, Defendant is entitled to summary judgment because there is no evidence that the information obtained through Dean's search was “information concerning” Plaintiff.

It is undisputed that one result of the various searches conducted by Dean's through Defendant's website identified a “Yolanda Renee Wilson” in Missouri who had two felony convictions. Defendant has presented evidence, and Plaintiff agrees,

that she is not the “Yolanda Renee Wilson” who was in Missouri. Defendant’s website contains information advising those conducting searches that there may be multiple search results matching the search criteria. Specifically, customers are informed that “the first 100 search results matching the criteria are shown” and, if there are more than 100 search results, the additional results can be accessed by clicking on the “Click here for more” link. *See* PublicData Frequently Asked Questions, Appendix to Motion, p. 154. It is clear and undisputed that customers such as Dean’s are advised that the result of a search of Defendant’s website is likely to include information concerning multiple individuals with the same name.

Plaintiff has failed to present evidence that she understood the search result for “Yolanda Renee Wilson” in Missouri to be “information concerning” Plaintiff. Plaintiff admits that she never lived in Missouri and has never been convicted of a felony. The result of Dean’s search of Defendant’s website contained information regarding felony convictions for “Yolanda Renee Wilson” in Missouri in 1997, well before Plaintiff married in 2002 and began using that name. Plaintiff testified in her deposition that she understood and told Mrs. Dean that she was not the “Yolanda Renee Wilson” in Missouri.

It is also undisputed that Dean’s did not believe or assert to anyone that the result of its search of Defendant’s website contained information concerning Plaintiff.

Mrs. Dean advised Plaintiff that there was something “showing up under your name,” then verified with Plaintiff that she had never lived in Missouri. *See* Plaintiff’s Depo., Exh. 4 to Motion, pp. 61-62. Defendant presented uncontradicted evidence that, had Dean’s believed the reported felonies were “information concerning” Plaintiff, Dean’s would not have forwarded Plaintiff’s application to MD Anderson. *See* Deposition of Shannon Divers, Exh. 2 to Motion, p. 76. The undisputed evidence accordingly shows that neither Plaintiff nor Mrs. Dean understood the search result to contain “information concerning” Plaintiff. Further, there is no evidence that anyone else saw or had knowledge of the search result.

Plaintiff argues that “Dean’s purchased a report for Plaintiff Wilson” and therefore the information regarding other persons with the same name was on *her* report. *See* Response, p. 16. Plaintiff’s argument is refuted by the uncontroverted evidence in the record that Dean’s did not purchase a report, but instead purchased access to Defendant’s website in order to conduct its own search. Dean’s conducted a search for several variations of Plaintiff’s name and located a “Yolanda Renee Wilson” in Missouri. Although the name matched the search criteria used by Dean’s, there is no evidence that Dean’s understood it to be information concerning Plaintiff. As a result, Plaintiff has failed to present evidence that raises a genuine issue of material fact in support of her FCRA claim under § 1681e(b).

The Court finds persuasive the decision of the federal district court in the Eastern District of Virginia in *Fiscella v. Intelius, Inc.*, 2010 WL 2405650 (E.D. Va. June 10, 2010), although that case involved a different section of the FCRA. In *Fiscella*, the plaintiff conducted a search through the defendant's website using the search terms "Edward Fiscella" and "Virginia." *Id.* at *1. The search result listed several different individuals with the name "Edward Fiscella" in Virginia. *Id.* The search result was not a report solely about the plaintiff, but included all individuals that matched the search terms used to conduct the search. *Id.* The plaintiff contacted the defendant and requested that it "correct" information regarding a black male born in 1964 with a conviction for driving while intoxicated ("DWI"). *Id.* The plaintiff was a white male born in 1963 with no DWI conviction. *Id.* When the defendant failed to make the requested change, the plaintiff filed a lawsuit under § 1681i of the FCRA. *Id.* at 2. The district court rejected the plaintiff's claim, noting that the result of the search conducted on the defendant's website was not a "file" on the plaintiff. *Id.* at 4. Similarly, the result of Dean's search through Defendant's website did not

constitute “information concerning” Plaintiff.¹ As a result, Defendant is entitled to summary judgment.

IV. CONCLUSION AND ORDER

Based on the foregoing, Plaintiff has failed to present evidence that raises a genuine issue of material fact regarding whether the result of Dean’s search of Defendant’s website contained “information concerning” Plaintiff for purposes of her FCRA claim. As a result, it is hereby

ORDERED that Defendant’s Motion for Summary Judgment [Doc. # 27] is **GRANTED** and this lawsuit is **DISMISSED WITH PREJUDICE**. The Court will issue a separate Final Judgment.

SIGNED at Houston, Texas, this 30th day of **April, 2013**.

¹ The Court notes that this is not a case in which a client purchases a credit report from the defendant about the plaintiff that is compiled by the defendant and contains inaccurate information that the plaintiff has a felony conviction. Additionally, the Court notes that there is no evidence that the information that “Yolanda Renee Wilson” in Missouri had two felony convictions in 1997 was incorrect as to that person, *i.e.*, “Yolanda Renee Wilson” in Missouri.