Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

IN RE DEBT MANAGEMENT
PARTNERS, LLC

2021-MISC-Debt Management Partners, LLC-0001

DECISION AND ORDER ON PETITION BY DEBT MANAGEMENT PARTNERS, LLC TO SET ASIDE CIVIL INVESTIGATIVE DEMAND

Debt Management Partners, LLC (DMP) petitioned the Consumer Financial Protection Bureau for an order modifying or setting aside a civil investigative demand (CID). For the reasons set forth below, I deny DMP's petition.

FACTUAL BACKGROUND

DMP is a limited liability company based out of New York that describes its business as "buying and selling non-performing accounts receivable." Petition to Set Aside or Modify the CID (Pet.) at 2. On May 6, 2021, the Bureau issued a CID to DMP. As explained in the CID's Notification of Purpose, the Bureau seeks:

> to determine whether debt buyers, debt collectors or associated persons, in connection with selling or collecting debt, have: (1) made false or misleading representations to consumers or third parties in a manner that is unfair, deceptive, or abusive in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536; (2) knowingly or recklessly provided substantial assistance in such violations, also in violation of §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536; or (3) made prohibited communications or false or misleading representations to consumers or third parties in a manner that violates the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692b, 1692c, 1692e.

The investigation will also determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The CID seeks responses to interrogatories as well as documents. The Bureau's rules require that DMP meet with a Bureau investigator and confer regarding compliance. 12 C.F.R. § 1080.6(c). DMP did so on May 12, 2021. Pet. at 8. DMP timely filed its Petition on May 26.

LEGAL DETERMINATION

DMP makes three primary arguments for setting aside the CID. First, DMP claims that the CID is improper in its entirety because it fails to identify sufficiently the nature of the conduct under investigation. Second, DMP argues that the CID is overbroad and seeks information that is not reasonably relevant to the Bureau's investigation. Finally, DMP contends that compliance with the CID would be unduly burdensome. I reject all three arguments. The CID adequately identifies the nature of the conduct under investigation—namely, whether persons subject to the Bureau's enforcement authority, in connection with selling or collecting debt, have violated specific provisions of the Consumer Financial Protection Act (CFPA) or the Fair Debt Collection Practices Act (FDCPA) in their communications with consumers or third parties. Further, DMP has not shown that the information the Bureau seeks is overly broad or not relevant to the Bureau's investigation. Nor has DMP carried its burden of showing that complying with the CID would be unduly burdensome. Accordingly, I deny DMP's petition and direct that it comply with the CID.

A. The Bureau's CID is proper.

The CFPA requires that Bureau CIDs state "the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation." 12 U.S.C. § 5562(c)(2). This is accomplished through the CID's "notification of purpose." 12 C.F.R. § 1080.5. Here, the notification of purpose did both: the Bureau informed DMP that it is investigating "whether debt buyers, debt collectors or associated persons, in connection with selling or collecting debt," have made "false or misleading representations to consumers or third parties" that could potentially violate two specific provisions of the CFPA, 12 U.S.C. §§ 5531, 5536, and three specific provisions of the FDCPA, 15 U.S.C. §§ 1692b, 1692c, 1692e.

DMP nevertheless argues that the CID is improper because (1) the CID's notification of purpose is too indefinite and (2) the information sought is not reasonably relevant to the Bureau's inquiry. Pet. at 2, 3, 6 (citing *United States v. Morton Salt Co*., 338 U.S. 632, 652 (1950)). Both arguments fail.

1. The notification of purpose identifies the nature of the conduct under investigation.

Contrary to DMP's assertion (at 3), the Bureau's notification of purpose identifies the nature of the conduct under investigation and is therefore not "too indefinite." Specifically, the notification of purpose states that the Bureau is investigating "whether debt buyers, debt collectors or associated persons, in connection with selling or collecting debt," have made "false or misleading representations to consumers or third parties." As the Third Circuit recognized in *CFPB v. Heartland Campus Solutions, ECSI*, 747 Fed. App'x 44, 48 (3d Cir. 2018), since "the precise character of possible violations cannot be known during the investigative phase … the

CFPB is not required to be any more specific." 747 Fed. App'x at 48. Moreover, the notification here is comparable to, if not more detailed and specific than those upheld by the courts of appeal. *See CFPB v. Seila Law LLC*, 923 F.3d 680, 685 (9th Cir. 2019) (approving notification of purpose that was worded similarly to the one here), *vacated on other grounds*, 140 S. Ct. 2183 (2020), *readopted on remand in relevant part*, 984 F.3d 715, 720 (9th Cir. 2020); *Heartland*, 747 F. App'x 44 (same); *see also Fed. Trade Comm'n v. Invention Submission Corp.,* 965 F.2d 1086, 1088 (D.C. Cir. 1992) (enforcing FTC CID that described an investigation into "unfair or deceptive acts or practices … including but not limited to false or misleading representations made in connection with" seemingly all aspects of the CID recipient's business).

DMP argues that the Bureau's notification of purpose is not sufficient largely by attempting to create additional requirements that are not found in the Dodd-Frank Act or relevant caselaw. First, DMP argues that the CID's notification of purpose is "vague, ambiguous, and too indefinite" because of a "lack of specificity regarding the target(s) of the investigation." Pet. at 4 (internal quotations omitted). However, the Dodd-Frank Act does not require that the Bureau identify the subjects of its ongoing and confidential law enforcement investigations. Nor does DMP point to any authority suggesting such a requirement.

Second, DMP claims that the Bureau is required to inform DMP specifically "as to how it was involved in any violations and why it was being investigated." Pet. at 5. But, again, there is no such statutory requirement. In fact, "CIDs can be served on both the target of the Bureau's inquiry and nonparties who may have relevant information." *Heartland*, 747 Fed. App'x at 48 n.3 (3d Cir. 2018). DMP's only support for this assertion is a vague reference to the D.C. Circuit's opinion in *CFPB v. Accrediting Council for Indep. Colls. & Schs.,* 854 F.3d 683 (D.C. Cir. 2017) (ACICS). But ACICS does not support DMP's assertion. Rather, ACICS held only that the specific CID at issue was insufficient because the phrase "unlawful acts and practices in connection with accrediting for-profit colleges" did not provide sufficient notice to the recipient about what "'unlawful acts and practices' [were] under investigation." *Id*. at 690-91. As discussed above, the CID here is more specific, identifying the precise conduct under investigation—namely, potentially false and misleading communications to consumers made in connection with selling and collecting debt.

DMP also argues that the CID lacks specificity regarding the "conduct being investigated" as it "repeatedly reference[s] the same two provisions of the CFPA, which state the general purpose of the statute and list all 'prohibited acts.'" Pet. at 4. But the Bureau is required to state the "provision[s] of law applicable" to the "conduct constituting the alleged violation which is under investigation." 12 U.S.C. § 5562. In other words, to the extent that the Bureau is investigating potential unfair, deceptive, or abusive practices in violation of the CFPA, as it is here, the Bureau is required to cite those specific provisions of the CFPA in the notification of purpose. Moreover, the notification of purpose did more than just "repeatedly reference[] the same two provisions of the CFPA," Pet. at 4. It identified the specific type of conduct the Bureau is investigating. Thus, contrary to its assertion, DMP is not left to "guess[] as to the purpose of the CID." *Id*.

Finally, DMP argues that the CID "fails to provide DMP with any notice whatsoever of any potential witnesses or participants who may be necessary to respond to the CID and also fails to provide sufficient notice for DMP to defend against any improper investigation or fishing

expedition conducted by the CFPB." Pet. at 4. Again, there simply is no requirement that the Bureau provide this information in the CID, and DMP does not provide any supporting authority for its contrary contention.

DMP has thus failed to show that the CID's notification of purpose is "too indefinite" to be enforced.

2. The CID seeks information relevant to the Bureau's investigation.

The Bureau's CID seeks information that is reasonably relevant to its investigation into "whether debt buyers, debt collectors or associated persons, in connection with selling or collecting debt," have made "false or misleading representations to consumers or third parties."

The Bureau has broad authority to seek information which may be relevant to its investigations. "The standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). "[W]hen asking whether the documents requested [in an administrative subpoena] are 'relevant' to an investigation, the courts construe broadly the term 'relevant.'" *In re Admin. Subpoena*, 289 F.3d 843, 845 (6th Cir. 2001). "It is well established that a district court must enforce a federal agency's investigative subpoena if[, among other things,] the information sought is reasonably relevant—or, put differently, not plainly incompetent or irrelevant to any lawful purpose of the agency." *Invention Submission*, 965 F.2d at 1089 (cleaned up). "[T]he agency's own appraisal of relevancy must be accepted so long as it is not obviously wrong." *Id*. (internal quotation marks omitted).

DMP fails to show that the information sought by the Bureau's CID is "plainly incompetent or irrelevant" to the Bureau's investigation. DMP argues that certain document requests and interrogatories are "overbroad" and thus not reasonably relevant to the Bureau's investigation. Pet. at 6. First, DMP asserts that Interrogatory 2 and Document Requests 1 and 2, which seek information about DMP's organizational structure, including parent companies, subsidiaries, and affiliates, "assume that each of the described entities or individuals is a 'debt buyer,' or 'debt collector,' or 'associated person.'" *Id*. To the extent they are not, DMP argues, "those inquiries are improper." *Id*. Second, DMP argues that several interrogatories are defective because they "erroneously presume that DMP is a debt collector." *Id*.

Both of DMP's arguments fail because it has long been settled that an administrative subpoena may seek information to determine not only whether an entity is violating the law but also whether an entity is subject to the Bureau's jurisdiction to begin with. *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 210 (1946) (affirming enforcement of administrative subpoenas whose purpose "was to determine two issues, whether petitioners were subject to the Act and, if so, whether they were violating it"). The Bureau may seek information related to DMP's organizational structure to determine for itself (and not rely on DMP's word) whether entities, including DMP, are "debt buyers," "debt collectors," or "associated persons." *See SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052-53 (2d Cir. 1973) ("The [SEC] must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the

Commission's regulatory authority."); *EEOC v. Sidley Austin Brown & Wood*, 315 F.3d 696, 699 (7th Cir. 2002) ("[A]ny agency with subpoena powers . . . is entitled to obtain the facts necessary to determine whether it can proceed to the enforcement stage.").[1] Indeed, rather than presume, Interrogatory 3(a) asks whether DMP collects debt, either on its own or through the use of a third-party.

The CID seeks relevant information, and I will not modify or set aside any of the interrogatories or documents requests on this ground.

B. DMP has failed to show that complying with the CID is unduly burdensome.

While not presented as a separate argument, DMP also claims that the CID should be set aside because compliance would be unduly burdensome. *See* Pet. at 5. DMP, however, fails to make the requisite showing, as it offers little more than conclusory assertions.

The recipient of a CID bears the burden to show that a request is "unduly burdensome." *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (en banc). As the D.C. Circuit recognized in *Texaco*, "[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of [an] agency's legitimate inquiry and the public interest." *Id*. Thus, on review, courts will not "modify investigative subpoenas" on the basis of burden "unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business." *Id*.; *accord*, *e.g.*, *NLRB v. Am. Med. Response, Inc.*, 438 F.3d 188, 193 n.4 (2d Cir. 2006).

Here, DMP claims that the Bureau's "broad demand creates and imposes upon DMP a significant and undue burden with respect to responding to any inquiry or preserving any potentially relevant information." Pet. at 5. DMP further claims that the Bureau's demands are so "sweeping that [it] cannot advise its staff and representatives . . . as to what the topic of the inquiry is with any certainty." *Id*. These claims are insufficient to meet DMP's burden. A CID is not unduly burdensome merely because the target characterizes the requested information as "extensive," or in this case, "sweeping." *See CFPB v. Future Income Payments*, LLC, 252 F. Supp. 3d 961, 970 (C.D. Cal. 2017) ("To show that an administrative subpoena imposes an undue burden, a subpoenaed party cannot merely point to an agency's 'extensive' requests or assert that compliance would be costly."). And, more importantly, DMP has not asserted—much less provided evidence showing—that responding to the CID would "threaten[] to unduly disrupt or seriously hinder normal operations." *Texaco*, 555 F.2d at 882.

DMP has thus failed to show that compliance with the CID would be unduly burdensome.

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[1] DMP appears to also argue that certain interrogatories and document requests are defective because there are no responsive documents. For instance, DMP states that the "Bureau's document demands ask for DMP's form letters and scripts, though DMP does not make any outgoing collections calls to consumers under any circumstances." Pet. at 6. If it is true that there are no responsive documents, then DMP may simply say so. That alone does not mean the document request is defective or should be modified or set aside.

CONCLUSION

For the foregoing reasons, I deny DMP's petition. DMP is directed to comply with the CID dated May 6, 2021, and to provide responses to the interrogatories and documents responsive to the document requests within 10 business days of the date of this Order. This date may be extended as provided by Bureau rule. *See* 12 C.F.R. § 1080.6(d).

David K. Uejio

August 18, 2021

David Uejio, Acting Director