

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

In the Matter of:

Debt Management Partners, LLC

**PETITION TO SET ASIDE OR MODIFY THE CIVIL INVESTIGATIVE
DEMAND TO DEBT MANAGEMENT PARTNERS, LLC**

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INTRODUCTION

Pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), Debt Management Partners, LLC (“Petitioner” or “DMP”) respectfully files this petition 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 May 6, 2021. The CID was improperly issued and cannot be enforced against DMP because (1) the CID fails to adequately state the nature of the conduct under investigation, and (2) 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 only be enforced if they demand information that is (a) “within the authority of the agency”; (b) “not too indefinite”; and (c) “reasonably relevant” to the inquiry).

DMP further objects to the Bureau’s overbroad and burdensome requests to the extent that they seek information not reasonably related to any inquiry within the Bureau’s jurisdiction.

CIVIL INVESTIGATIVE DEMAND

On May 6, 2021, the CFPB mailed the CID at issue to DMP and also emailed it to DMP’s counsel. The CID was received by DMP on or about May 10, 2021. The CID’s Notification of Purpose identified in the CID pursuant to 12 C.F.R. § 1080.5 provides as follows:

The purpose of this investigation is 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 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 DMP

DMP is a Delaware limited liability company with its offices and principal place of business in the Town of Amherst, Erie County, New York.

DMP is in the business of buying and selling non-performing accounts receivable. DMP typically purchases portfolios of loan accounts that are charged-off by the original lenders as uncollectable after the debtor fails to pay the loan.

DMP typically purchases charged off accounts for a few cents on the dollar in relation to the face value of the debts. DMP then most often resells portfolios or accounts at a negotiated purchase prices to other companies that, in turn, resell or try to collect on them.

DMP does not engage in any debt collection activity itself. DMP does not initiate contact with individual account debtors in writing or by telephone. The only circumstance under which DMP would call an account debtor is when the debtor contacts DMP and requests a return call.

LEGAL STANDARD

Pursuant to 12 C.F.R. § 1080.6(e), a CID recipient 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); *Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colleges & Sch. (ACICS)*, 183 F.Supp. 3d 79, 82 (D.D.C. 2016),

aff'd, 854 F.3d 683 (D.C. Cir. 2017) (“[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.”), *citing*, *Morton Salt, 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.”). This is because an administrative subpoena must “satisfy[y] a Fourth Amendment reasonableness inquiry.” *United States v. Golden Valley Elec. Ass’n*, 689 F.3d 1108, 1113 (9th Cir. 2012) (internal quotation omitted).

DISCUSSION OF LAW

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

The CFPB’s CID is improper in its entirety because it fails to identify the nature of the conduct under investigation and is therefore too indefinite to be enforced.

An administrative agency’s authority to issue subpoenas is a creature of statute. *See, Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456, 458 (5th Cir. 2018), *citing*, *Consumer Fin. Prot. Bureau v. Accrediting Counsel for Independent Colleges, and Schools, (ACICS)*, 854 F.3d 683, 690 (D.C. Cir. 2017)). 12 U.S.C.A. § 5562(c)(2) explicitly states that “[e]ach civil investigative demand shall 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.A. § 5562(c)(2); *see also*, 12 C.F.R § 1080.5 (same). The CID fails to satisfy this notice requirement. *See, Morton Salt Co.*, 338 U.S. at 652 (subpoena must be quashed if it is “too indefinite”). This clear statutory 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 Bureau’s CID fails to state either the nature of the conduct at issue or the specific provision of law applicable to such conduct.

The CFPB's notification of purpose in its CID is vague, ambiguous and "too indefinite" under the *Morton Salt Co.* standard. It fails to provide DMP with even a hint of the true purpose or nature of the CID and related investigation. In vague and general terms, the Notification of Purpose claims that the CFPB is investigating unnamed "debt buyers, debt collectors or associated persons, in connection with selling or collecting debt", who have made "false or misleading" representations to consumers or third parties" in violation of the CFPA. The notification repeatedly references the same two provisions of the CFPA, which state the general purpose of the statute and list all "prohibited acts." 12 U.S.C. §§ 5531 and 5536. This lack of specificity regarding the target(s) of the investigation and the conduct being investigated leaves DMP guessing as to the purpose of the CID, the basis for any investigation, and the direction of any inquiries by the CFPB. These generalities amount to no notice whatsoever.

The CID also refers to "associated persons" (which term is not defined) who remain unidentified, but who may have engaged or are engaging in unlawful acts according to the CFPB. It indirectly implicates other unidentified third parties who allegedly provided "substantial assistance" in unspecified violations of the CFPA. 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 notice sufficient for DMP to defend against any improper investigation or fishing expedition conducted by the CFPB.

The Bureau has not specified its purpose as it relates to DMP, has included a laundry list of consumer financial laws, has asked DMP to account for third party persons and entities, and has demanded that DMP produce documents and information that are unrelated to the jurisdictional limits of the CFPB. The Bureau cannot show that this CID is no broader than necessary. *See, In re*

Sealed Case, 42 F.3d 1412, 1418-19 (D.C. Cir. 1994) (an agency cannot employ “broad language to describe [a subpoena’s] purpose” in order to exercise “unfettered authority to cast about for potential wrongdoing.”)

The Bureau’s general demand is so sweeping that DMP cannot advise its staff and representatives (who may be called for a deposition pursuant to the CID) as to what the topic of the inquiry is with any certainty. For example, the CID defines “Company” to include entities and persons in businesses unrelated to “debt selling or collecting debt” and unduly burdens DMP to produce “all” records in the listed categories rather than documents sufficient to show a particular fact or practice. The CFPB’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.

In a telephone conference, the CFPB’s counsel refused to narrow the scope of the Bureau’s inquiry. The CFPB’s counsel also refused to identify DMP’s alleged conduct or the statutory basis that triggered the CID. During the meet and confer process, DMP inquired as to how it was involved in any violations and why it was being investigated, but the CFPB’s counsel refused to answer these questions and took the position that the Bureau was not required to disclose this information to DMP. Although the Bureau’s counsel stated that she was familiar with the D.C. Circuit’s decision in *ACICS*, she apparently takes the position that the Bureau does not need to comply with it.

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 element is stated in the CID, the CID is violative of 12 U.S.C. § 5562 and must be quashed.

B. The CID Is Grossly Overbroad

The CID is overbroad and seeks information which is not reasonably relevant to any legitimate inquiry the CFPB has jurisdiction to investigate. *Morton Salt Co., supra*, 338 U.S. at 652 (subpoena must be quashed if it is not “reasonably relevant to the inquiry.”)

Interrogatory 2 and Document Requests 1 and 2 of the CID are overbroad and unduly burdensome in their scope, seeking detailed information about each and every “parent, wholly or partially owned subsidiaries, affiliates, unincorporated divisions, joint ventures and the names and percentages of ownership of all persons holding 5 percent or more ownership in the foregoing,” including all formation documents and financial statements for each entity. Such demands assume that each of the described entities or individuals is a “debt buyer,” or “debt collector,” or “associated person” (to the extent the meaning of those undefined terms can be ascertained). To the extent that they are not, those inquiries are improper.

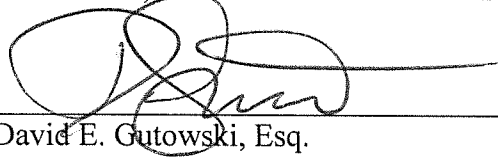
In addition, certain interrogatories contained in the CID ask DMP to identify, *inter alia*, its policies and procedures for collecting debts, compliance with those policies, and DMP’s training protocols for debt collectors. Such inquiries necessarily assume that DMP is a debt collector that calls consumers. Several interrogatories are similarly defective and erroneously presume that DMP is a debt collector including, but not limited to, Interrogatories 4-6, 8, and 11. The Bureau’s document demands ask for DMP’s form letters and scripts, though DMP does not make any outgoing collection calls to consumers under any circumstances.

CONCLUSION

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

DATED: May 26, 2021

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MEET AND CONFER STATEMENT

Pursuant to 12 C.F.R. § 1080.6(c), counsel for Debt Management Partners, LLC (“DMP”) conferred with counsel for the Consumer Financial Protection Bureau (“CFPB”) in good faith effort to resolve the issues raised by this Petition but was unable to reach an agreement thereon.

On May 12, 2021, beginning at approximately 3:00 p.m. Eastern Standard Time, counsel for DMP, Gerald T. Walsh and David E. Gutowski, conferred by telephone with counsel for the CFPB, Alanna B. Carbis and CFPB staff, concerning the civil investigative demand (“CID”) dated May 6, 2021.

Because no agreement was reached at the meet and confer conference with respect to the CID, DMP now submits the instant Petition.

Dated: May 26, 2021

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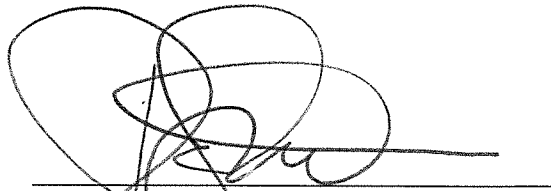
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Petition To Set Aside Or Modify The Civil Investigative Demand To Debt Management Partners, LLC*, was filed and served via electronic mail this 26th day of May, 2021, which provides notice to the following:

Bureau's Executive Secretary
ExecSec@cfpb.gov

Enforcement Director
Enforcement@cfpb.gov

By:

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right. The signature is written over a solid horizontal line.

David E. Gutowski, Esq.
Attorneys for Petitioner