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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC., *et al.*,

Case No. 2:19-cv-00298-BSJ

**PLAINTIFF'S MOTION TO AMEND THE COMPLAINT TO CLARIFY
THE SCOPE OF THE DECEPTION COUNTS**

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Plaintiff Bureau of Consumer Financial Protection (“Bureau”) moves to amend the Complaint (ECF No. 2) to clarify that Counts II through V (the “Deception Counts”) include conduct by the five Relevant Hotswap Partners, not just HSP1.¹ In accordance with DUCivR 15-1, the proposed amended complaint is attached as Exhibit 1 and a redlined version is attached as Exhibit 2.

INTRODUCTION

The question presented by this motion is straightforward: Should the Court grant leave for the Bureau to amend its Complaint for the purposes of clarifying the scope of the Deception Counts and conforming the Complaint to the case the parties have litigated for approximately three years?

The answer is equally straightforward: Because the proposed amendment does not inject new theories, new claims, or new parties, nor does it prejudice the Progexion Defendants² in any way, and because Rule 15 liberally permits amendments of this kind, the Court should grant leave to amend.

The Bureau files this motion to address the Court’s comments during the pretrial hearing on June 30, 2022. In discussing the contested issues of law relating

¹ HSP1 is The H.O.P.E. Program (HOPE), one of the five Relevant Hotswap Partners.

² The Progexion Defendants are PGX Holdings, Inc., Progexion Marketing, Inc., Progexion Teleservices, Inc., CreditRepair.com, Inc., and eFolks, LLC.

to Count IV of the Bureau’s Complaint, the Court quoted paragraph 155 of the Complaint, which states that “[a]t least one of the Progrexion Defendants’ affiliates, HSP1, was . . . a ‘covered person’” under the CFPA. *See* 6/30/22 Tr. at 109:10-23 (attached as Exh. 3). The Court observed that paragraph 155 refers by name to only one Hotswap, HSP1. *Id.* at 109:24-25. When counsel for the Defendants pointed out that HSP1 is “one specific Hotswap affiliate of the five Hotswap affiliates that are in the case live for consideration,” the Court responded: “let’s confine it to what the complaint is.” *Id.* at 110:7-111:1.

Later, the Bureau’s counsel attempted to clarify the record by pointing out that paragraph 155 is not limited to HSP1. “The meaning of this allegation,” counsel said, “is to say that *at least one* . . . of the Hotswap partners had been substantially assisted, but our allegation at this time, Your Honor, is that all five of the Relevant Hotswap Partners were substantially assisted[.]” *Id.* at 130:13-18 (emphasis added). The Court replied, “Nobody has filed a motion to change the pleading.” *Id.* at 130:23-24. The Bureau’s counsel made an oral motion, but the Court declined to entertain it. *Id.* at 131:2-4.

The Bureau thus files this motion to address the Court’s comments and to clarify the Bureau’s longstanding intent and the parties’ longstanding understanding that the Deception Counts involve conduct by each of the five

Relevant Hotswap Partners, not just HSP1.³ Not only is this plain from Complaint, but the parties' conduct through fact discovery, expert disclosures and discovery, and dispositive motions demonstrate that both sides have understood it to be the case.

Moreover, although the Court's comments during the pretrial hearing focused on Count IV, out of an abundance of caution, the Bureau's proposed amendment makes similar clarifications to the other Deception Counts, Counts II, III, and V.

BACKGROUND

A. The Bureau's Complaint

The Bureau's Complaint alleges that the Progexion Defendants, through a network of marketing affiliates known as Hotswap Partners, used deceptive, bait advertising to generate referrals for credit-repair services. *See, e.g.*, Compl. ¶ 3. In describing the deception, the Complaint highlighted conduct by one Hotswap Partner, HSP1, to illustrate the ways in which Defendants' Hotswap Partners misrepresented their services. *See, e.g., id.* ¶¶ 74-85. But the Complaint's allegations are not limited to HSP1, and in numerous places, the Complaint

³ The five Relevant Hotswap Partners are HOPE (identified as HSP1 in the Complaint), OLP.com, Ascent Mortgage Resource Group, Easyhomeownership.net, and Rent2Own.House. *See* ECF No. 435 at 3 n.1 (6/22/22 joint proposed pretrial order).

includes allegations about other Hotswap Partners. *See, e.g., id.* ¶¶ 32-70, 72, 90-93, 96, 98, 105-08.

Counts II through V comprise the Deception Counts, none of which are limited to HSP1. For example:

- Counts II and III allege that the Progrexion Defendants, “directly or through at least one affiliate,” engaged in deceptive conduct under the Consumer Financial Protection Act (CFPA) and made false or misleading statements under the Telemarketing Sales Rule (TSR). *See Compl.* ¶¶ 138, 147. Counts II and III do not refer to HSP1 or any other Hotswap Partner by name, but, rather, allege deception “by at least one affiliate.” *Id.* ¶¶ 141, 150.
- Count IV alleges that the Progrexion Defendants “provided substantial assistance to a covered person or service provider” in violation of the CFPA. *Id.* ¶¶ 153-160. The Bureau alleges that “[a]t least one of the Progrexion Defendants’ affiliates, HSP1, was . . . a ‘covered person’” as defined by the CFPA, and that “[a]t least one of the Progrexion Defendants’ affiliates, HSP1, was also . . . a ‘service provider’” as defined by the CFPA. *Id.* ¶¶ 155-56. The Bureau alleges further that “at least one affiliate, HSP1, engaged in deceptive acts or practices” in

violation of the CFPA and that the Progrexion Defendants substantially assisted the alleged deception. *Id.* ¶¶ 157-58.

- Count V alleges that the Progrexion Defendants substantially assisted violations of the TSR. *Id.* ¶¶ 161-67. It alleges that “[a]t least one of the Progrexion Defendants’ affiliates, HSP1, was . . . a ‘telemarketer,’” that “at least one affiliate, HSP1, made false or misleading statements,” and that the “Progrexion Defendants provided substantial assistance or support to at least one affiliate, HSP1” in violation of the TSR. *Id.* ¶¶ 163-66.

B. The Parties’ Conduct Relating to Relevant Hotswap Partners

In the Bureau’s first set of document requests, the Bureau sought a range of documents relating to “any” or “all” or Hotswap Partners. *See* ECF No. 50-2, at Requests 1-24. When the Progrexion Defendants challenged the scope of the requests, the Bureau moved to compel. *See* ECF No. 50. Magistrate Judge Pead heard the dispute and ruled that the Bureau “is not foreclosed from propounding requests related to hotswap partners other than HSP1 in the future, but first must provide some basis to believe the requests are likely to yield discoverable information.” ECF 70, p. 6. When the parties again could not agree over the scope

of discovery, the Court ordered the Progrexion Defendants to produce documents related to seven Hotswap Partners.⁴ ECF No. 92.

Since the Court's discovery order, the parties' fact discovery, expert disclosures and discovery, and motion practice has focused on all the Relevant Hotswap Partners, not just HSP1. For example:

- The Progrexion Defendants produced thousands of documents relating to the Relevant Hotswap Partners, many of which were used as exhibits in depositions and will be used at trial.
- The parties' experts focused on the Relevant Hotswap Partners. For example, Plaintiff's expert Dr. Shane Frederick conducted a survey of consumers hotswapped from the Relevant Hotswap Partners to Progrexion. ECF No. 362-2. And Dr. Stephen Mott, a Progrexion rebuttal expert, examined data from the Relevant Hotswap Partners. ECF No. 368-1 at ¶ 64.
- Regarding motions, the Progrexion Defendants' motion for summary judgment on Counts II through V defined the "Relevant Hotswaps" to

⁴ Discovery revealed that two of the entities, Ascent and Lead Virtue, were actually the same Hotswap Partner, so they are counted here as one Relevant Hotswap Partner. The Bureau decided not to pursue relief related to the final entity, Ownerwiz. *See* ECF No. 438 p. 3 n.1.

include all the Relevant Hotswap Partners (plus one that was subsequently dropped). ECF No. 288 at 3. The Progrexion Defendants argued they were entitled to summary judgment for a variety of reasons, but they did not dispute that the Bureau’s deception claims reached beyond HSP1. For example, the Progrexion Defendants acknowledged that “[t]he Bureau contends that the Relevant Hotswaps engaged in providing a ‘consumer financial product or service’” and thus are “covered persons” under the CFPA. *Id.* at 33 (citing Complaint ¶ 155). Although the Progrexion Defendants argued that Ascent, Easyhomeownership, and Rent2Own.house did not fit the legal definition of a “covered person,” they did not dispute that the remaining two Relevant Hotswaps—HOPE and OLP—were “covered persons.” *Id.* Following a hearing, the Court denied the Progrexion Defendants’ motion for summary judgment. *See* ECF No. 403.

ARGUMENT

A. Fed. R. Civ. P. 15(a) Liberally Permits Amendments to the Complaint

Federal Rule of Civil Procedure 15 addresses amendments to pleadings.⁵ After the 21-day period following service of a pleading, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The Rule further instructs that “[t]he court should freely give leave when justice so requires.” *Id.*

Rule 15 embodies a policy that disputes should be decided on the merits, not technicalities. *See, e.g., Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (noting it is “entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities”). Thus, “[d]enial of leave to amend is disfavored; and a district judge should grant leave absent a substantial reason to deny,” because “[a] liberal, pro-amendment ethos

⁵ The Tenth Circuit has held that “[a] party seeking leave to amend after a scheduling order deadline must satisfy both the Rule 16(b) and Rule 15(a) standards.” *Hamric v. Wilderness Expeditions, Inc.*, 6 F.4th 1108, 1118 (10th Cir. 2021). Here, however, the Bureau’s proposed amendment would not alter a prior scheduling order. The scheduling order’s deadline to amend the pleadings was left blank, noting only that “Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).” ECF No. 73 at 2 & n.1. None of the amended scheduling orders included a deadline to amend the pleadings. *See* ECF Nos. 115, 138, 339. Moreover, even if the proposed amendment was judged against the “good cause” standard in Rule 16(b), the reasons outlined in this motion establish good cause.

dominates the intent and judicial construction of Rule 15(a)(2).” 3 Moore’s Federal Practice - Civil § 15.14 (2022).

B. The Court Should Allow Amendment of the Bureau’s Complaint to Clarify that the Deception Counts Encompass Conduct By All Five Relevant Hotswap Partners

Rule 15 allows pleadings to be amended at any stage of the litigation. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 (10th Cir. 2006) (“Rule 15(a) does not restrict a party’s ability to amend its pleadings to a particular stage in the action.”). In ruling on motions to amend, courts are guided by the considerations articulated in *Foman*, where the Supreme Court stated as follows:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be “freely given.”

Foman, 371 U.S. at 182; *see also Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993) (“Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment.”).

As applied here, the relevant factors strongly weigh in favor of permitting the Bureau to amend its complaint.

1. The Progrexion Defendants are not prejudiced in the slightest

In considering whether to grant leave to amend under Rule 15(a)(2), prejudice to the non-moving party is the “most important” factor. *Minter*, 451 F.3d at 1207. “Rule 15 . . . was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result.” *United States v. Hougham*, 364 U.S. 310, 316 (1960); *see also Sinclair Wyoming Ref. Co. v. A & B Builders, Ltd.*, 989 F.3d 747, 777 (10th Cir. 2021) (“When a district court decides whether to grant leave to amend under Rule 15(a)(2), it focuses principally on prejudice.”).

Courts typically find prejudice only when the amendment unfairly affects the defendants “in terms of preparing their defense to the amendment.” *Patton v. Guyer*, 443 F.2d 79, 86 (10th Cir. 1971). “Most often, this occurs when the amended claims arise out of a subject matter different from what was set forth in the complaint and raise significant new factual issues.” *Minter*, 451 F.3d at 1208 (citations omitted); *see also Wade v. Gaither*, 623 F. Supp. 2d 1277, 1285 (D. Utah 2009) (prejudice rarely occurs “where the defendant already generally has notice of the claims and amendment merely corrects deficiencies rather than adds wholly new claims or factual circumstances”).

Here, the Progrexion Defendants are not prejudiced through the proposed amendments. The Bureau is not seeking to add new parties, inject new factual or

legal theories, or add amendments that would require additional discovery. To the contrary, the proposed amendments merely clarify that the Bureau’s deception claims extend beyond HSP1 to include all the Relevant Hotswap Partners, which is precisely the way this case has been litigated from the beginning.

The Complaint repeatedly refers to multiple Hotswap Partners, and the allegations in the Deception Counts are not limited to HSP1. *See, e.g.*, Compl. ¶ 155 (“[a]t least one of the *Progrexion Defendants’ affiliates*, HSP1, was . . . a ‘covered person’” as defined by the CFPA). During discovery, the parties sought and produced documents relating to all the Relevant Hotswap Partners. Numerous experts analyzed and drafted reports incorporating data about all the Relevant Hotswap Partners. And when it came time for dispositive motions, *Progrexion’s* summary judgment motion encompassed all the Relevant Hotswap Partners. In short, the proposed amendments merely conform the Complaint to the parties’ understanding of the claims. It adds nothing new.

Numerous cases hold that an amendment to the pleadings should be permitted when the non-moving party suffers no prejudice. *See, e.g., Sinclair*, 989 F.3d at 778-79 (10th Cir. 2021) (permitting party to amend answer to include indemnity counterclaim because “circumstantial evidence” showed that the party had always pursued the counterclaim); *Bylin v. Billings*, 568 F.3d 1224, 1229-31

(10th Cir. 2009) (where the defendant sought leave to amend its answer at the final pretrial conference to add a statute of limitations defense, the court concluded that “the defendants’ late amendment did not unduly prejudice the [plaintiff], and therefore the district court did not abuse its discretion in allowing the amendment”); *Wade*, 623 F. Supp. 2d at 1285 (allowing amendment to complaint where the amendment would “serve only to clarify the circumstances surrounding the alleged fraud”). The same result should occur here.

2. The proposed amendment is not the result of undue delay

In *Foman*, the Supreme Court listed “undue delay” as a possible justification for denying a motion to amend. 371 U.S. at 182. Although “undue delay” may foreclose an amendment, “[e]mphasis is on the adjective: Lateness does not of itself justify the denial of the amendment.” *Minter*, 451 F.3d at 1205 (quotation omitted). Rather, the Tenth Circuit “focuses primarily on the *reasons* for the delay.” *Id.* at 1206 (emphasis added). Undue delay occurs where the delayed amendment flows from a party’s gamesmanship or dilatory conduct. As the Tenth Circuit noted in its discussion of the “undue delay” standard:

Courts will properly deny a motion to amend when it appears that the plaintiff is using Rule 15 to make the complaint “a moving target,” *Viernow v. Euripides Dev. Corp.*, 157 F.3d 785, 800 (10th Cir. 1998), to “salvage a lost case by untimely suggestion of new theories of recovery,” *Hayes v. Whitman*, 264 F.3d 1017, 1027 (10th

Cir. 2001), to present “theories seriatim” in an effort to avoid dismissal, *Pallottino v. City of Rio Rancho*, 31 F.3d 1023, 1027 (10th Cir. 1994), or to “knowingly delay[] raising [an] issue until the ‘eve of trial,’” *Walters v. Monarch Life Ins. Co.*, 57 F.3d 899, 903 (10th Cir. 1995).

Minter, 451 F.3d at 1205.

In this case, notwithstanding the late stage of the litigation, nothing in the Bureau’s conduct suggests undue delay. In *Minter*, the plaintiff sought leave to amend its complaint to add a product liability claim just three weeks before trial. 451 F.3d at 1206. The district court struck the amended claim from the pretrial order, but the Tenth Circuit reversed. The plaintiff delayed his filing, the court noted, “because he believed it was already fairly encompassed by his pleadings,” and the plaintiff’s “assumption regarding the scope of his original pleading constitutes an excusable cause for the delay.” *Id.* at 1207. Thus, notwithstanding the late stage of the proceeding, the plaintiff’s amended claim “cannot be considered ‘untimely’ or ‘unduly delayed.’” *Id.*

The same is true here. Just as in *Minter*, the Bureau’s proposed amendment is already fairly encompassed by the pleadings. Counts II and III allege deception “directly or through *at least one affiliate*,” see Compl. ¶¶ 138, 147, and Counts IV and V allege that “[a]t least one of the *Progrexion Defendants’ affiliates*, HSP1,” met the definition of “covered persons,” “service providers,” and engaged in

deceptive acts. *Id.* ¶¶ 155-66. In light of the Complaint’s allegations and the litigation history of this case, the Bureau had no reason to believe an amended complaint was necessary. The proposed amendments merely clarify and make explicit what the parties already understood. Not until the Court’s comments at the June 30, 2022, pretrial hearing did the Bureau realize that a clarifying amendment may be helpful.

3. The remaining factors identified in Foman weigh in favor of allowing the proposed amendment

The other factors in *Foman*—bad faith, repeated failure to cure, or futility—all support the proposed amendment.

As to bad faith, there is no hint of bad faith or dilatory motive on the Bureau’s part; rather, the Bureau has moved expeditiously to propose clarifying amendments, without delay, after receiving the Court’s comments at the June 30 pretrial hearing.

As to repeated failure to cure deficiencies by amendments previously allowed, this factor has no bearing here because this motion is the Bureau’s first attempt to amend the Complaint.

And, finally, as to futility, the proposed amendments would not be futile. The proposed amendments do not add new claims or theories, but merely conform the Complaint to the case the parties have litigated over the course of several years.

CONCLUSION

For these reasons, the Court should grant this motion and permit the Bureau to file the Amended Complaint attached as Exhibit 1.

Dated: July 14, 2022

Respectfully submitted,

/s/ J. Taylor McConkie

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CERTIFICATE OF COMPLIANCE WITH THE WORD-COUNT LIMIT

I certify that the above motion consists of less than 3,100 words (excluding the face sheet, signature block, table of contents, index, and exhibits), according to the word count function of Microsoft Word, in compliance with the word-count limit set by DUCivR 7-1(a)(4)(D).

Dated: July 14, 2022

/s/ J. Taylor McConkie

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Exhibit 1

(Proposed Amended Complaint)

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IN THE UNITED STATES DISTRICT COURT
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BUREAU OF CONSUMER FINANCIAL
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Plaintiff,

v.

PROGREXION MARKETING, INC.; PGX
HOLDINGS, INC.; PROGREXION
TELESERVICES, INC.; EFOLKS, LLC;
CREDITREPAIR.COM, INC.; JOHN C.
HEATH, ATTORNEY AT LAW, PLLC,
D/B/A LEXINGTON LAW

Defendants.

Case No. 2:19-CV-00298-BSJ

AMENDED COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) brings this action against PGX Holdings, Inc. (PGX Holdings), and its subsidiaries Progrexion Marketing, Inc. (Progrexion Marketing), Progrexion Teleservices, Inc. (Progrexion Teleservices), eFolks, LLC (eFolks), and CreditRepair.com, Inc. (CreditRepair.com), and John C. Heath, Attorney at Law, PLLC (Heath PLLC), d/b/a Lexington Law Firm or Lexington Law, and alleges the following:

INTRODUCTION

1. The Bureau brings this action against Defendants alleging deceptive acts and practices in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536, and deceptive and abusive telemarketing acts or practices in violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq., and its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3 and 310.4.
2. Defendants operate two of the largest credit repair companies in the country, Lexington Law and CreditRepair.com. They market their services through various media, including online and over the telephone, offering to help consumers remove negative information from their credit reports and improve their credit scores.

Consumers sign up for Defendants' credit repair services and pay hundreds of dollars in fees seeking to improve their credit scores and get better access to credit products, on better terms.

3. To generate credit repair sales, Defendants rely on a network of marketing affiliates who advertise a variety of products and services, often related to consumer credit products. As alleged below, Progrexion's marketing affiliates have used deceptive, bait advertising to generate referrals to Lexington Law's credit repair service. For example, one of Progrexion's most productive marketing affiliates falsely advertised that it "guarantee[d] ANYONE a 0-3.5% Down Home Loan no matter how bad their Credit is when we start!" In reality, the affiliate did not provide any loans at all. Interested consumers were told that, to participate in the (non-existent) loan program, they had to sign up with Lexington Law. The Progrexion Defendants paid this marketing affiliate for each credit repair sale that resulted from its efforts, despite knowing that it engaged in deceptive practices.

4. Defendants also violated the law in another way. Federal law forbids requesting or receiving payment upfront for certain telemarketed credit repair services; if a company offers services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, fees can only be collected after a certain time period has elapsed and it has

been demonstrated that the promised results have been achieved. As alleged below, Defendants charged consumers when they signed up for the service and on a monthly basis thereafter, without waiting the prescribed period of time and demonstrating that the promised results were achieved, in violation of the federal ban on this type of upfront fee.

5. The Bureau brings this action to stop Defendants from engaging in ongoing, unlawful practices that harm consumers nationwide by charging consumers unlawful advance fees in connection with credit repair services and by marketing and telemarketing those services through deceptive representations, and to obtain relief for consumers who were harmed by these practices.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because it concerns federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

7. Venue is proper in this district because all Defendants reside in or do business in this district. 12 U.S.C. § 5564(f).

PARTIES

8. **The Bureau** is an independent agency of the United States. 12 U.S.C. §

5491. The Bureau is charged with enforcing Federal consumer financial laws. 12 U.S.C. §§ 5563 and 5564. The Bureau has independent litigating authority, 12 U.S.C. § 5564(a) and (b), including the authority to enforce the TSR with respect to the offering or provision of a consumer financial product or service subject to the CFPA, 15 U.S.C. § 6105(d).

9. **PGX Holdings** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It is the holding company that wholly owns and controls Defendants Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com (referred to collectively, with PGX Holdings, as Progrexion or the Progrexion Defendants). A subsidiary of PGX Holdings owns and licenses proprietary software that serves as the platform for most of the credit repair services provided by Heath PLLC and CreditRepair.com, including initiating challenges related to tradelines appearing on consumers' credit reports. Other subsidiaries of PGX Holdings perform telemarketing and telesales for Lexington Law and CreditRepair.com services. Through its subsidiaries and the Progrexion common enterprise, PGX Holdings offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

10. **Progrexion Marketing** is a Delaware corporation with its principal place of

business in Salt Lake City, Utah. It provides advertising and marketing services, including identifying consumer leads through telemarketing, to Heath PLLC and CreditRepair.com. It also provides key parts of the credit repair services marketed and sold to consumers under the brand names Lexington Law and CreditRepair.com. For example, Progrexion Marketing contracted with one or more major consumer reporting agencies to obtain copies of Defendants' customers' credit reports and to allow Progrexion to challenge its customers' credit report information directly through electronic portals between Progrexion and the consumer reporting agency. Directly, through its affiliates, and through the Progrexion common enterprise, Progrexion Marketing offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

11. **Progrexion Teleservices** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It telemarkets and sells Lexington Law credit repair services on behalf of Progrexion and Heath PLLC. Progrexion Teleservices employs approximately 1,200 people, most of whom are "telephone service representatives." Directly and through the Progrexion common enterprise, Progrexion Teleservices offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and

telesales.

12. **eFolks** is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. It generates leads for and telemarkets Lexington Law and CreditRepair.com credit repair services on behalf of Progrexion. eFolks also owns the trademarks for the CreditRepair.com name and logo and licenses them to CreditRepair.com. Directly and through the Progrexion common enterprise, eFolks offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

13. **CreditRepair.com** is a Florida corporation with its principal place of business in Salt Lake City, Utah. PGX Holdings created CreditRepair.com in January 2012 as PGX Holdings' direct-to-consumer brand of credit repair services. CreditRepair.com engages in its own telesales to enroll consumers, handling inbound, outbound, and live-transfer calls. It generates leads directly through its website and through Progrexion Marketing and eFolks. Directly and through the Progrexion common enterprise, CreditRepair.com offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

14. **Heath PLLC** is a law firm based in North Salt Lake, Utah that does business under the trade names Lexington Law Firm and Lexington Law. Heath

PLLC has been associated with Progrexion, or its predecessors, and has licensed the trademark “Lexington Law” since at least 2004. Progrexion conducts most of Lexington Law’s core business operations, but Heath PLLC, operating as Lexington Law Firm, serves as the face of Lexington Law. For example, Heath PLLC is the entity that formally registers as Lexington Law for purposes of the applicable state credit services or credit repair registrations and bonds. Heath PLLC also fields consumers’ complaints about the credit repair services, and consumers’ contracts are with Heath PLLC. Heath PLLC contracts with PGX Holdings’ subsidiaries, including Defendants Progrexion Marketing and Progrexion Teleservices, to: (1) have Progrexion market, telemarket, and sell over the telephone the credit repair services that Heath PLLC provides; (2) use Progrexion’s proprietary credit repair products, the tradename Lexington Law, and the domain name www.LexingtonLaw.com; and (3) obtain other business services, such as payment processing and payroll services. Because Heath PLLC is a law firm, Progrexion markets Lexington Law’s credit repair services as legal services.

15. Heath PLLC offers or provides financial advisory services and services relating to consumer report information that are for use by consumers primarily for personal, family, or household purposes, or that are delivered, offered, or provided in connection with such a consumer financial product or service; Heath PLLC

thereby offers or provides a consumer financial product or service as that term is defined by 12 U.S.C. § 5481(5). *See also* 12 U.S.C. § 5481(15)(A)(viii), (ix).

16. The Progexion Defendants are, and have been at all times relevant to this Complaint, “covered persons,” as that term is defined by 12 U.S.C. § 5481(6)(A), because they offer or provide a financial product or service for use by consumers primarily for personal, family, or household purposes; or that is delivered, offered, or provided in connection with such a product or service. The products or services they offer or provide consist of financial advisory services, including credit counseling, and the service of “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.” 12 U.S.C. § 5481(15)(A)(viii), (ix).

17. Progexion Marketing, Progexion Teleservices, and eFolks are, and have been at all times relevant to this Complaint, “service providers” to a covered person as that term is defined by 12 U.S.C. § 5481(26), because they have provided material services to covered persons, including the persons offering or providing Lexington Law and CreditRepair.com credit repair services.

18. PGX Holdings is, and has been at all times relevant to this Complaint, a

“related person,” as that term is defined by 12 U.S.C. § 5481(25), because it has been, directly or indirectly, the controlling owner of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and because it has been a shareholder, consultant, joint venture partner, or other person who materially participated in the conduct of the affairs of those entities. By virtue of its status as a “related person” under the CFPA, PGX Holdings is also a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

19. The Progrexion Defendants operate as a common enterprise. They have conducted the business practices described below through interconnected companies that operate under common control, have common business functions, officers, employees, and office locations, and share advertising and marketing. Accordingly, an act by one entity constitutes an act by each entity comprising the common enterprise, and PGX Holdings, Progrexion Marketing, Progrexion Teleservices, CreditRepair.com, and eFolks are each jointly and severally liable for the acts and practices of the Progrexion Defendants, or the acts and practices for which the Progrexion Defendants are responsible, as alleged below.

20. The Progrexion Defendants and Heath PLLC are, and have been at all times relevant to this Complaint, “sellers,” as that term is defined by 16 C.F.R. § 310.2(dd), because, in connection with telemarketing transactions, they provide,

offer to provide, or arrange for others to provide goods or services to customers in exchange for consideration.

21. The Progrexion Defendants are, and have been at all times relevant to this Complaint, “telemarketers,” as that term is defined by 16 C.F.R. § 310.2(ff), because, in connection with telemarketing, they initiate or receive telephone calls to or from customers.

22. Progrexion Marketing has directed and controlled the telemarketing and telesales activities of Progrexion Teleservices and eFolks, and authorized Progrexion Teleservices and eFolks to market Lexington Law and CreditRepair.com credit repair services. Progrexion Marketing has knowledge of and controls or has the ability to control the activities of Progrexion Teleservices and eFolks discussed herein.

23. Progrexion Marketing, as the principal of Progrexion Teleservices and eFolks, is liable for the actions of its agents.

24. Progrexion Marketing has directed and controlled the marketing and telemarketing activities of its marketing affiliates acting on its behalf, and authorized them to market Lexington Law and CreditRepair.com credit repair services. Progrexion Marketing has knowledge of and controls or has the ability to control the activities of its marketing affiliates discussed herein.

25. Progrexion Marketing, as the principal of its marketing affiliates, is liable for the actions of its agents.

26. PGX Holdings has directed and controlled the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and authorized those entities to offer and provide credit repair services and to market Lexington Law and CreditRepair.com credit repair services. PGX Holdings has knowledge of and controls or has the ability to control the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com discussed herein.

27. PGX Holdings, as the principal of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, is liable for the actions of its agents.

FACTUAL ALLEGATIONS

Progrexion's "Hotswap Program"

28. Lexington Law and CreditRepair.com are among the largest credit repair brands in the United States.

29. Progrexion, or its predecessors, has been in the business of providing credit repair services to consumers under the trade names "Lexington Law Firm" and "Lexington Law" since approximately 1994, and through CreditRepair.com since at least 2012.

30. Progrexion receives the majority of the revenue generated from the sale of

Lexington Law credit repair services.

31. To market Lexington Law’s and CreditRepair.com’s services, Progrexion employs affiliate marketing programs. As Progrexion says on its website, “One of the primary ways Progrexion generates massive quantities of leads for our clients is through our strong working relationships with numerous affiliates.”

32. One of the affiliate marketing programs Progrexion uses to generate such “massive quantities of leads” is its “Hotswap Program.”

33. The marketing affiliates that participate in this program — “Hotswap Partners” — are companies that offer certain products such as rent-to-own housing contracts, mortgages, auto loans, or personal loans.

34. Hotswap Partners use telemarketing campaigns consisting of inbound and outbound telephone calls to consumers across the country to market these products and services to consumers.

35. During these telemarketing calls, the Hotswap Partner identifies potential credit repair customers to refer to Progrexion, and live-transfers them to Progrexion’s telemarketing sales operations.

36. Progrexion refers to these live telephone transfers as “hotswaps.”

37. In some instances, however, the Hotswap Partner does not actually offer the products or services it purports to provide, and is instead functioning purely as a

source of consumer leads for Progrexion.

38. Progrexion cultivates and manages its relationships with Hotswap Partners through Progrexion Marketing.

39. A significant amount of Progrexion's credit repair business is generated by its Hotswap Partners.

40. The Hotswap Program is intended to convince consumers to purchase credit repair services when they have been denied a product or service they wanted.

According to Progrexion's website, "This call-based program is so effective because it connects people to credit repair at the moment they've been denied credit."

41. Hotswap Partners typically offer their products and services through their websites. They drive consumer traffic to their websites through a variety of methods, including: Search Engine Optimization methods that make their websites more likely to appear in an internet search for a product or service; advertisements on third-party websites such as Facebook and Craigslist; and the use of affiliate marketing networks where the Hotswap Partners pay commissions to other companies for providing leads or directing consumers to their websites.

42. If consumers are interested in the products or services advertised by the Hotswap Partner, they are directed to either call the Hotswap Partner or provide

their personal contact information and authorize the Hotswap Partner to contact them via telephone.

43. Consumers who provide their information are either contacted via telephone by the Hotswap Partner, or their contact information — a “lead” — is sent to a third-party company that calls the consumer.

44. Some leads generated by Hotswap Partners are sent to eFolks for it to conduct outbound telemarketing for Lexington Law or CreditRepair.com.

45. When a Hotswap Partner contacts a consumer by phone, it provides the consumer with further information about the products and services advertised by the Hotswap Partner.

46. The Hotswap Partners also pitch Lexington Law’s and CreditRepair.com’s credit repair services, typically after telling the consumer that he or she has been denied a particular credit product or service, offering the consumer unfavorable terms on a loan, or telling the consumer that he or she will be eligible for the product or service, or for better terms on the product, if they first enroll in the credit repair service.

47. For example, a telemarketing script used by one or more of Progrexion’s marketing affiliates, which Progrexion reviewed and distributed to at least one marketing affiliate as a model script, says:

They are credit analysts and have the legal ability to remove questionable negative items on your credit report such as: **(LIST Negatives Client mentioned)**. By removing these negative items, it should allow us to come back and look to refinance you with a conventional lender offering better rates and terms in the future.

48. Progrexion instructs Hotswap Partners to pre-qualify a consumer as suitable for Lexington Law or CreditRepair.com credit repair services prior to the hotswap transfer.

49. Prequalification involves Hotswap Partners ascertaining the following, prior to transferring a consumer to Progrexion: (1) the consumer has derogatory tradelines on his or her credit reports; (2) the consumer is not already a customer of Lexington Law or CreditRepair.com; and (3) the consumer has a valid credit or debit card that they could use to pay for credit repair services.

50. Progrexion instructs the Hotswap Partners to disguise these qualifications for Lexington Law and CreditRepair.com as purported qualifications for the Hotswap Partners' products and services.

51. Once pre-qualified, consumers are offered the opportunity to be connected with Lexington Law or CreditRepair.com for a "free credit repair consultation."

52. Progrexion instructs Hotswap Partners to tie the credit repair consultation to obtaining the consumer's desired product or service.

53. Hotswap Partners follow this instruction. For example, one Hotswap Partner

script told consumers, “in order for you to qualify, you need to work on improving your credit score and the first step in the Rent to Own program is a credit consultation with Lexington Law.”

54. Once the Hotswap Partner completes its pitch, it transfers the consumer to a Progexion call center through a dedicated telephone line assigned to the particular Hotswap Partner.

55. Once connected, the Hotswap Partner indicates to the Progexion representative that he or she is calling on behalf of the Hotswap Partner, introduces the consumer, and states the consumer’s credit goal or the reason why they are seeking credit repair.

56. Progexion then proceeds to offer the consumer its free credit repair consultation and pitch its credit repair services, all the while repeatedly referencing the consumer’s credit goal, as provided by the Hotswap Partner during the live transfer.

57. Progexion tells consumers that during the credit repair consultation, “[w]e will ... go over your credit score, review the reasons for your score and then provide you solutions to improve your credit score and report.”

58. After reviewing a consumer’s summary credit report, Progexion Teleservice’s telemarketing script instructs its employees to tell consumers, “based

on what we have discussed about your credit situation, it sounds like you may be a good candidate for our services.” Thereafter, consumers are offered the opportunity to enroll in Lexington Law’s or CreditRepair.com’s credit repair services.

59. Progrexion pays a fee or a commission to its Hotswap Partners for each consumer transferred to Progrexion who signs up for Lexington Law or CreditRepair.com.

60. At times, Progrexion has trained its teleservices employees on the purported products and services of particular Hotswap Partners so that they could better connect credit repair to the initial offering by those Hotswap Partners.

61. For example, one Progrexion call center held training sessions with its telemarketing staff on the particular services of major Hotswap Partners, the demographics of the consumers the Hotswap Partners transferred to Progrexion, and key points that the Hotswap Partners wanted emphasized about their services and the importance of credit repair.

62. At other times, Progrexion provided written guidance to its telemarketing staff about the Hotswap Partners’ purported products and services, including whether the Hotswap Partner required consumers to sign up for Progrexion credit repair services as a condition of accessing the Hotswap Partner’s purported

products or services.

63. Progexion provided other assistance to Hotswap Partners, such as:
 - a. Providing telemarketing scripts, editing Hotswap Partners' telemarketing scripts, and providing model telemarketing calls for training and scripting purposes;
 - b. Providing prizes and incentives to Hotswap Partner employees for increased credit repair sales;
 - c. Assisting with website design and the creation of new marketing campaigns to replace or supplement the Hotswap Partner's current lead generation activities;
 - d. Creating email templates for direct-to-consumer marketing; and
 - e. Providing Hotswap Partners with demographic information on Lexington Law clients so that the Hotswap Partners could target particular lead sources and optimize their scripting.
64. Progexion provides this assistance to its Hotswap Partners because creating a clear connection between the products and services offered to consumers and credit repair is a key part of its marketing strategy.
65. Describing the Hotswap Program, Progexion's website says, "This program provides a way for companies to monetize their non-qualified customers by live

transferring them to our call centers for a free consultation with the hopes of retaining them in one of our credit repair programs.”

66. This approach gives consumers the impression that they will be able to obtain the product they sought from the Hotswap Partner after their credit is fixed through Progrexion’s credit repair service.

67. Progrexion’s marketing to consumers includes representations that directly tie Lexington Law’s and CreditRepair.com’s services to particular products — what Progrexion calls, in its marketing and telemarketer training materials, a consumer’s aspirational credit “dreams.”

68. For example, in a general guidance document that appears to have been distributed widely to Hotswap Partners, Progrexion provided Hotswap Partners with a sample telemarketing script that references “key components” Hotswap Partners are required to say to generate credit repair leads. The script includes language telling consumers that credit repair services will get them one step closer to obtaining the Hotswap Partner’s purported products:

- Credit repair “can just make the whole process of getting this loan funded easier”; and
- “[Y]ou just need to get a few things taken care of with your credit in order to get qualified for a loan, that is *exactly* what Lexington

specializes in.”

69. By creating a connection between the consumer’s desired credit product and credit repair, through the representations of its Hotswap Partners, Progrexion sought to increase Lexington Law’s and CreditRepair.com’s sales.

70. As one Progrexion Marketing Affiliate Manager explained to a Hotswap Partner in an email dated December 9, 2015, the “biggest/main point to make (in order for this lead to convert on our end) is that the client has to feel that credit repair is a necessary and easy step in the RTO [rent-to-own]->Mortgage process.”

Deceptive Hotswap Marketing

71. Certain of Progrexion’s Hotswap Partners have made misrepresentations to consumers to generate consumer leads and induce consumers to sign up for Lexington Law or CreditRepair.com.

72. Hotswap Partners have used advertisements that included fake real estate ads, fake rent-to-own housing opportunities, fake relationships with lenders, false credit guarantees, and false and unsubstantiated statements about past consumer outcomes. The ads have also included false and unsubstantiated statements about consumers’ likelihood of success in obtaining products and services such as rent-to-own housing contracts, mortgages, or personal loans.

73. Additionally, although Progrexion’s website portrays the Hotswap Partner

program as an opportunity for partners to sell consumer leads as a source of revenue when consumers do not qualify for the products or services the partner is providing, certain Hotswap Partners did not actually offer or provide any such products or services. Instead, they offered illusory products or services to lure in consumers and market credit repair services.

74. For example, from at least 2012 through 2017, one of Progrexion's most productive Hotswap Partners, The H.O.P.E. Program ("HOPE"), used misrepresentations to induce consumers to sign up for Lexington Law.

75. From at least 2012 through 2017, HOPE contacted consumers across the country through campaigns and programs of inbound and outbound phone calls, and transferred to Progrexion over 100,000 consumers who signed up for Lexington Law credit repair services.

76. HOPE purported to offer consumers low-interest mortgages, access to rent-to-own housing, and other products or services, but in reality did not provide any such products or services.

77. HOPE, in its own words, acted "merely as an affiliate call center that transfers potential clients to Lexington Law."

78. Despite merely serving as an affiliate call center, HOPE advertised extensively on Craigslist and Facebook, and through a network of paid affiliates,

claiming to be able to help consumers with poor credit scores obtain favorable mortgages and rent-to-own housing contracts.

79. At various times from 2012 through 2017, HOPE employed numerous falsehoods to induce consumers to contact, or agree to be contacted by, its telemarketing operation, including:

- a. One of HOPE's websites stated that enrolling in its service guaranteed any consumer "a 0-3.5% down" mortgage "no matter how bad their Credit is when we start";
- b. Another HOPE website represented that the company had helped "over 15,000 people buy a home that started with under a 500 Credit Score when they came to [HOPE]";
- c. HOPE's ads offered housing that was not actually available and instead routed interested consumers to HOPE or, at times, directly to Progrexion;
- d. HOPE's Facebook advertisements often referenced a "90-day Blitz" program offering home financing in a very short timeframe with express promises such as: "BUY A HOME IN THE NEXT 30-90 DAYS NO MATTER WHERE YOUR CREDIT IS NOW"; and
- e. Other HOPE advertisements said: "Are you tired of dead ends? Games?"

Gimmicks? Bad Houses and Fake Ads? Would You like to END all that? We know you would.... We ... have helped over 12,000 people get homes who NEVER thought they could.”

80. Once consumers were on the phone with HOPE, HOPE made additional misrepresentations. For example, some consumers were told that HOPE’s program for achieving home ownership “works every time.”

81. In some instances, consumers were told that if they achieved a 640 credit score they would “qualify with one of our lenders.” HOPE, which merely acted as a call center, had no associated lenders.

82. HOPE’s marketing also included specific claims about Progrexion’s credit repair services. For example, one of HOPE’s telemarketing scripts stated about Lexington Law: “They will review everything with you and put a plan together to eliminate any negative items to boost your score.”

83. At times, HOPE told consumers that they had to sign up with Lexington Law in order to enroll in HOPE’s services and ultimately obtain the products or services advertised by HOPE.

84. HOPE told consumers, without any review of their credit history or other eligibility factors, that their credit score was the only thing keeping them from their desired product.

85. For example, one HOPE telemarketing script told consumers “you’d be the perfect candidate for rent-to-own, but your credit is the only thing holding you back – this makes you a great match for credit repair.”

Progrexion’s Knowledge of Deceptive Practices in its Hotswap Program

86. Progrexion had knowledge that HOPE engaged in the deceptive practices described in Paragraphs 74-85, above.

87. Progrexion claims that it prescreens and monitors Hotswap Partner websites prior to and during its marketing relationship with the Hotswap Partners.

88. Despite purportedly monitoring Hotswap Partner websites, Progrexion allowed the misrepresentations described in Paragraph 79(a) and (b) to remain on HOPE’s websites while HOPE generated leads for Progrexion.

89. Progrexion also had knowledge that HOPE used the fake ads described in Paragraph 79(c). For example, a Progrexion employee who reviewed one of HOPE’s ads posted on Craigslist noted: “Seeing the ad firsthand, I understand why so many of these clients feel misled when they call in.”

90. Consumer complaints to the Better Business Bureau and law enforcement agencies describe other Progrexion Hotswap Partners using Craigslist ads with fake housing opportunities to draw in customers.

91. Progrexion had a company policy in place in 2016 that restricted Hotswap

Partners' use of Craigslist to generate traffic for Progrexion.

92. Despite this policy, Progrexion knew that certain Hotswap Partners were using Craigslist ads in their marketing and continued to do business with them for years.

93. At least one other rent-to-own housing Hotswap Partner continued to use Craigslist rent-to-own housing ads in its marketing activities through at least 2018.

94. Progrexion was also aware of HOPE's 90-Day Blitz advertising on Facebook described in Paragraph 79(d), in which it told consumers that they could get into a home in 90 days regardless of their credit situation. At one point a Progrexion employee emailed the owner of HOPE and stated that the company was aware of the 90-Day Blitz program and was concerned that the program was setting "unreal expectations for clients" and creating confusion. She noted that "[m]ost of these clients need more than 3 months of credit repair...."

95. Despite Progrexion's acknowledgement that most consumers would not be able to obtain a mortgage in the promised timeframe, Progrexion continued its marketing relationship with HOPE even as HOPE continued to advertise the 90-Day Blitz on Facebook.

96. Progrexion also provided model scripts to HOPE and its other Hotswap Partners, and even created entire scripts for some affiliates, including HOPE, that

set consumer expectations about the likely results of the credit repair services.

97. For example, Progrexion authored a telemarketing script for HOPE that included statements asking if consumers were interested in “repairing [their] credit to get approved for a [mortgage, refinance, rent-to-own, or car]” and telling consumers that their credit was “the only thing holding you back” from the products they desired.

98. Progrexion also routinely reviewed, and provided edits and suggestions for, the telemarketing scripts used by HOPE and other Hotswap Partners.

99. For example, Progrexion reviewed the telemarketing script from which HOPE made representations regarding the ability of consumers to qualify with one of its purported lenders as well as Lexington Law’s capability to “eliminate any negative items to boost your score.”

100. Progrexion also had knowledge that HOPE did not offer or provide the products and services it advertised, such as low-down-payment mortgages and rent-to-own housing contracts.

101. For example, Progrexion learned that HOPE did not collect location information from consumers inquiring about its rent-to-own housing and mortgage offers when eFolks entered into an agreement with HOPE to receive leads generated by its marketing activities.

102. The failure to collect location information was unusual among Progrexion's rent-to-own housing Hotswap Partners.

103. One eFolks employee noted that such information was necessary to "know the area [consumers are] looking to buy." In fact, eFolks' system required such information in order for the leads to upload into its automatic dialer.

104. Despite such warnings, Progrexion continued its marketing relationship with HOPE and suggested that the company simply make up zip codes for the consumer leads so that eFolks could upload them into its automatic dialer for the purpose of contacting the consumers directly to market Progrexion and Heath PLLC's credit repair services.

105. Progrexion was aware that other Hotswap Partners marketing rent-to-own housing engaged in questionable marketing activities.

106. For example, in a July 2016 email, a Progrexion employee reported concerns to another Progrexion employee that certain Hotswap Partners offering rent-to-own housing were making implicit guarantees that credit repair would result in consumers obtaining the rent-to-own housing advertised. The Progrexion employee suggested that this situation be handled by changing the scripting used by Hotswap Partners in order to "avoid our agents hearing those expectations. The logic being that it is easier to plead ignorance if you're truly ignorant."

107. In another example, in a December 2014 email, Progexion’s Senior Director of Compliance reported that “[m]any [clients] have claimed that [a marketing affiliate] is guaranteeing loan approval as long as they sign up for Lexington’s services.” In response, one of Progexion’s marketing directors noted that the affiliate “is one of our largest Hotswap Partners” and that the company had previously heard the same complaint before.

108. In August 2016, a consumer filed a complaint with the Bureau claiming that the same marketing affiliate discussed in Paragraph 107 represented that “after enrollment with Lexington Law I was guaranteed a loan.” The Bureau forwarded the complaint to Heath PLLC, who replied to the Bureau and the consumer that it had “no knowledge” of the affiliate. Despite it being one of the “largest Hotswap Partners” sending consumers to Lexington Law, and despite Progexion’s prior knowledge of similar guarantee claims, Heath PLLC claimed that the consumer “appears to have constructed a relationship between us and [the marketing affiliate]...that we are unaware of.” Heath PLLC further stated that it could not “take responsibility for the alleged representations that may or may not have been made to this person” by the marketing affiliate.

The Relevant Hotswap Partners

109. Although Progexion uses many Hotswap Partners, for purposes of seeking

relief for deceptive practices in this lawsuit, the following five affiliates comprise the “Relevant Hotswap Partners”:

- a. HOPE, which did business as The HOPE Program, Help Renters, Homes with HOPE, and Hope to Own;
- b. OLP.com, Inc., which did business as One Loan Place and Rocket Daddy;
- c. Ascent Mortgage Resource Group, which did business as Lead Virtue, First Access Rent-to-Own, First Access Mortgage, United Rent-to-Own, Ascent Rent-to-Own, Fileforgrants.net, American Rent-to-Own, Rent to Own Homes, and Hope Resources;
- d. Easyhomeownership.net, which did business as Easy Home Ownership and Renttoownassistance.com; and
- e. YHTBA Corp., which did business as Rent-2-own.house, Rent Then Own Homes, and Renttoown.house.

Defendants’ Marketing and Sale of Services to Fix Consumers’ Credit

110. The Telemarketing Sales Rule prohibits telemarketers and sellers from “[r]equesting or receiving payment” upfront for “goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating.”

111. On behalf of consumers, Lexington Law and CreditRepair.com initiate disputes with furnishers and consumer reporting agencies related to tradelines appearing on consumers' credit reports.

112. Progrexion markets Lexington Law and CreditRepair.com as providing services that will assist consumers in removing derogatory information from, or improving, the consumers' credit history, credit record, or credit rating.

113. For example, at various times since July 21, 2011, the Lexington Law website included the following representations:

a. "If questionable negative items are hurting your credit, removing them can improve your score. Here's how we do it:

1. ANALYZE

We work with you to identify any questionable negative items hurting your score.

2. ADDRESS

We challenge those negative items with the bureaus and your creditors.

3. ACCELERATE

We keep the process going, helping you reach your credit goals."

b. "Lexington Law is here to help you meet your credit score goals. No matter your credit history and financial standing, our credit repair services are designed to help you improve your credit score";

c. "Lexington Law's lawyers have the knowledge and tools to start fixing your credit score by working to remove inaccurate items on your report";

- d. **“Our results prove it can be done.** From late payments to charge-offs to bankruptcies, our firms [sic] clients have improved their credit, by removing practically every type of questionable negative item” (bolded language in larger font type on the website);
- e. **“Ask for professional help:** If you want to dramatically improve your credit standing — ultimately leading to approval for bigger loans with better terms — consider asking a professional. You can considerably improve your financial standing with the right help”; and
- f. “Lexington Law has developed tools and strategies that have proven to be effective at removing unfair, inaccurate, and unsubstantiated negative items.”

114. Other examples are found in Lexington Law’s advertisements published online at various times since July 21, 2011, such as:

- a. “Need Credit Repair Help? Lexington Law can help you remove negative items on your credit reports. . . . Lexington Law | Trusted Leaders in Credit Repair.”
- b. “Credit not where you need it to be? . . . Fix Your Bad Credit. Lexington Law® has assisted over 500,000 clients with their credit profile.”
- c. “40 POINTS ON YOUR CREDIT COULD COST YOU \$40,000 ON A

30-YEAR MORTGAGE. Challenge questionable items with bureaus . . .

TRUSTED LEADERS IN CREDIT REPAIR FOR A REASON.”

115. Another Lexington Law advertisement published online in at least January 2019 stated:

A vertical rectangular advertisement with a dark blue background. At the top, a light blue rectangular box contains a redacted name. To the right of the box, the text reads: ", you may be able to remove 5 of your 9 negative items on your Credit Report*". Below this text is a green rounded rectangular button with the text "Learn More". Underneath the button is the Lexington Law logo, which consists of a stylized white icon of a building or hand, followed by the text "LexingtonLaw®". At the bottom of the advertisement, the text "Call Now for a FREE Consultation" is displayed above the phone number "844-713-4411". At the very bottom, in smaller white text, is a disclaimer: "*On average, Credit Sesame users who signed up with Lexington Law removed 60% of their existing collections." data-bbox="234 299 764 665"/>

[REDACTED], you may be able to remove
5 of your 9 negative items on your
Credit Report*

Learn More

 LexingtonLaw®

Call Now for a FREE Consultation
844-713-4411

*On average, Credit Sesame users who signed up with
Lexington Law removed 60% of their existing collections.

116. Another Lexington Law advertisement published online in at least January 2019 stated:

Lexington Law. Tap to Call

How much will a negative item hurt my credit score?

According to CreditCards.com and CNNMoney, even a single negative on your credit could cost you over 100 points.

NEGATIVE ITEM	SCORE DECREASE
Late payment	up to 110 points
Debt settlement	up to 125 points
Foreclosure	up to 160 points
Bankruptcy	up to 240 points
Collection	up to 110 points
Hard inquiry	up to 15 points

Negative items on your credit could cost you thousands of dollars in higher interest rates, or you could be denied altogether.

Lexington Law can help
Call 1-844-868-2710

117. Another Lexington Law advertisement published online in at least January 2019 stated:

Credit Report

Your Credit Score: **760**

Credit Score Range: **Excellent**

Credit Score Grades: **A+**

Lexington Law® Firm

Repair Your Credit Report

Free Credit Report Summary. Call Us To Start Repairing Your Credit!

118. At various times since July 21, 2011, CreditRepair.com's services were marketed as follows:

- a. "We work with the credit bureaus and your creditors to challenge the unfair or inaccurate negative report items that affect your credit score This can all help to fix your credit";
- b. "CreditRepair.com will help you challenge the negative items on credit reports with the intention of getting them removed";
- c. "Our credit repair services help to fix your credit report";
- d. "Previous members have seen an average 40 point TransUnion credit score gain during four months of membership";
- e. "CreditRepair.com Averages 11.6 removals in 4 months";
- f. "TURN A HIGH CREDIT SCORE INTO A LOW MORTGAGE RATE. IMPROVE YOUR CREDIT SCORE AND QUALIFY FOR A LOW INTEREST MORTGAGE THAT FITS YOUR NEEDS"; and
- g. "Not Sure What to Do About Bad Credit? Let us help guide the way. You don't have to live with bad credit and high interest rates. Take advantage of our knowledge, experience, and advanced technology, and we'll help you create a personal game plan to help you repair your credit. Call 1-844-372-1974 to get started. Sign Up Today! Our System is Proven and It Works."

119. One CreditRepair.com advertisement published online in at least August 2018 stated:



120. During telemarketing calls, Progrexion and its marketing affiliates make additional representations that their credit repair services will result in the removal of derogatory tradelines from credit reports or improvements to the consumer's credit rating.

121. For example, one Progrexion telemarketing script from 2012 says: ". . . our service includes an array of letters with your creditors . . . designed to persuade your creditors to remove items;" and "[we] will analyze your credit reports ... and show specific ways you can improve your credit" The script tells consumers:

You can see that your credit score can have dramatic effects on your life. Your credit score is comprised solely from the information found in your credit report. In other words, if you want to improve your score, you have to improve your credit report.

The script also asks the consumer: “[h]ow would your life be different in a year from now with good credit?”

122. In an audio recording of a telemarketing call from May 2016, a Progrexion agent told a consumer “we assist our clients with cleaning up their credit reports completely by working on getting every single negative item, amount, and remark completely deleted off their reports altogether. It is what we do best. In other words, credit repair.”

Illegal Upfront Fees for Telemarketed Credit Repair Services

123. The Telemarketing Sales Rule states that fees for telemarketed “goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating” cannot be charged until the time frame in which the seller has represented all of the goods or services will be provided to that person has expired and the seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved.

124. At the time of enrollment with Lexington Law or CreditRepair.com, Progrexion charges consumers a fee, which has been between \$9.99 and \$14.99 since July 2011, for a complete copy of their TransUnion credit report.

125. Consumers are told that paying this fee is necessary to begin the credit repair process.

126. After enrolling with Lexington Law or CreditRepair.com, consumers are then charged their first credit repair service work fee, typically \$99.95, five to fifteen days after enrollment.

127. Consumers are then charged ongoing monthly fees by Progexion and Heath PLLC for their credit repair services of \$79.95 to \$129.95, depending on the service level the consumer chooses.

128. Heath PLLC and Progexion request and receive these fees from consumers prior to providing consumers with documentation, in the form of a consumer report from a consumer reporting agency, demonstrating that the promised credit repair results have been achieved, such report having been issued more than six months after the results were achieved.

129. Heath PLLC and Progexion continue to charge monthly fees until consumers affirmatively cancel their Lexington Law or CreditRepair.com contracts.

COUNT I

The Progrexion Defendants and Heath PLLC Charged Advance Fees for Credit Repair Services in Violation of the TSR

130. The Bureau re-alleges and incorporates by reference Paragraphs 1-129.

131. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, until:

- a. The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
- b. The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. 16 C.F.R. § 310.4(a)(2).

132. The Progrexion Defendants and Heath PLLC are sellers and the Progrexion Defendants are telemarketers under the TSR. 16 C.F.R. § 310.2(dd), (ff).

133. The Progrexion Defendants' and Heath PLLC's credit repair services are represented to consumers as services to remove derogatory information from, or improve, the consumers' credit histories, credit reports, or credit ratings.

134. Progrexion Defendants and Heath PLLC routinely requested and received payment of a fee or consideration for their credit repair services before:

- a. The time frame in which they represented all of their goods or services would be provided to the consumer expired; or
- b. They provided the consumer with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results were achieved, such report having been issued more than six months after the results were achieved.

135. Therefore, the Progrexion Defendants' and Heath PLLC's conduct constitutes abusive telemarketing acts or practices in violation of 16 C.F.R. § 310.4(a)(2).

COUNT II
The Progrexion Defendants Engaged in Deceptive Acts
or Practices in Violation of the CFPA

136. The Bureau re-alleges and incorporates by reference Paragraphs 1-129.

137. It is unlawful for any covered person or service provider to engage in a deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

138. The Progrexion Defendants are covered persons, service providers, or both,

under the CFPA. 12 U.S.C. § 5481(6), (26).

139. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Lexington Law and CreditRepair.com credit repair services, the Progrexion Defendants, directly or through a Relevant Hotswap Partner, acting on Progrexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the Relevant Hotswap Partner, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

140. In truth and in fact:

- a. The advertised product or service was not available through the Relevant Hotswap Partner; or
- b. Neither Progrexion nor the Relevant Hotswap Partner had a reasonable basis for representing that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a

loan or rent-to-own housing contract.

141. These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

142. The Progexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by the Relevant Hotswap Partners.

143. Despite this knowledge, the Progexion Defendants continued to sign up consumers through the Relevant Hotswap Partners or participated in the Relevant Hotswap Partners' deceptive conduct.

144. Therefore, the representations as set forth in Paragraph 139 of this Complaint are false and misleading, and constitute deceptive acts or practices in violation of 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

COUNT III

The Progexion Defendants Made False or Misleading Statements to Induce Another Person to Pay for Goods or Services in Violation of the TSR

145. The Bureau re-alleges and incorporates by reference Paragraphs 1-129.

146. It is a deceptive telemarketing act or practice and a violation of the TSR for a seller or telemarketer to make a false or misleading statement to induce another

person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

147. The Progexion Defendants are telemarketers, sellers, or both, under the TSR. 16 C.F.R. § 310.2(dd), (ff).

148. In connection with the telemarketing of Lexington Law and CreditRepair.com credit repair services, the Progexion Defendants, directly or through a Relevant Hotswap Partner, acting on Progexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the Relevant Hotswap Partner, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

149. In truth and in fact:

- a. The advertised product or service was not available through the Relevant Hotswap Partner; or
- b. Neither Progexion nor the Relevant Hotswap Partner had a reasonable basis for representing that consumers were either guaranteed or had a

high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

150. These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

151. The Progexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by the Relevant Hotswap Partners.

152. Despite this knowledge, the Progexion Defendants continued to sign up consumers through the Relevant Hotswap Partners or participated in the Relevant Hotswap Partners' deceptive conduct.

153. Therefore, the representations as set forth in Paragraph 148 of this Complaint are false and misleading, and constitute deceptive telemarketing acts or practices in violation of 16 C.F.R. § 310.3(a)(4).

COUNT IV

The Progexion Defendants Violated the CFPA by Substantially Assisting a Covered Person Engaged in Deceptive Acts or Practices

154. The Bureau re-alleges and incorporates by reference Paragraphs 1-129.

155. It is unlawful for any person to knowingly or recklessly provide substantial

assistance to a covered person or service provider in violation of the provisions of 12 U.S.C. § 5531. 12 U.S.C. § 5536(a)(3).

156. Each Relevant Hotswap Partner was, at all times relevant to this Complaint, a “covered person,” as that term is defined by 12 U.S.C. § 5481(6)(A), because it offered or provided financial products or services for use by consumers primarily for personal, family, or household purposes, or that were delivered, offered, or provided in connection with such a product or service. The products or services the Relevant Hotswap Partners offered or provided included consumer credit, including mortgages; financial advisory services, including credit counseling; and services relating to consumer report information, including credit repair services. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

157. Each Relevant Hotswap Partner was also, at all times relevant to this Complaint, a “service provider” to a covered person as that term is defined by 12 U.S.C. § 5481(26), because it provided material services to one or more covered persons, including Progexion.

158. At all times relevant to this Complaint, the Relevant Hotswap Partners engaged in deceptive acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either

guaranteed or had a high likelihood of obtaining the advertised product or service. These misrepresentations have been material and likely to mislead consumers acting reasonably under the circumstances.

159. The Progrexion Defendants provided substantial assistance to the Relevant Hotswap Partners, including by providing advice and content for the Relevant Hotswap Partners' telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the Relevant Hotswap Partners and Progrexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

160. The Progrexion Defendants had the requisite knowledge of or reckless disregard for the deceptive conduct described in Paragraph 158.

161. Therefore, the Progrexion Defendants violated 12 U.S.C. § 5536(a)(3).

COUNT V

The Progrexion Defendants Assisted and Facilitated Violations of the TSR

162. The Bureau re-alleges and incorporates by reference Paragraphs 1-129.

163. It is a deceptive telemarketing act or practice and a violation of the TSR for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 16 C.F.R. §§ 310.3(a), (c), (d), or 310.4. 16 C.F.R. § 310.3(b).

164. Each Relevant Hotswap Partner was, at all times relevant to this Complaint, a “telemarketer,” as that term is defined by 16 C.F.R. § 310.2(ff), that was offering or providing consumer financial products or services, including consumer credit, financial advisory services, or services relating to consumer report information. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

165. At all times relevant to this Complaint, the Relevant Hotswap Partners made false or misleading statements to induce another person to pay for goods or services in violation of the TSR, 16 C.F.R. § 310.3(a)(4), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service.

166. The Progrexion Defendants provided substantial assistance or support to the Relevant Hotswap Partners, including by providing advice and content for the Relevant Hotswap Partners’ telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the Relevant Hotswap Partners and Progrexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

167. The Progrexion Defendants provided substantial assistance or support to the Relevant Hotswap Partners when the Progrexion Defendants knew or consciously

avoided knowing that the Relevant Hotswap Partner made false or misleading statements to induce consumers to pay for goods and services, in violation of the TSR, 16 C.F.R. § 310.3(a)(4).

168. Therefore, the Progrexion Defendants violated 16 C.F.R. § 310.3(b).

THIS COURT'S POWER TO GRANT RELIEF

169. The CFPA empowers this Court to grant any appropriate legal or equitable relief including, without limitation, a permanent or temporary injunction, rescission or reformation of contracts, the refund of monies paid, restitution, disgorgement or compensation for unjust enrichment, damages, and monetary relief, including but not limited to civil money penalties, to prevent and remedy any violation of any provision of law enforced by the Bureau. 12 U.S.C. §§ 5564(a), 5565.

PRAYER FOR RELIEF

170. The Bureau requests that the Court, as permitted by 12 U.S.C. § 5565:

- a. Impose appropriate injunctive relief against the Progrexion Defendants for their violations of the CFPA and the TSR and other provisions of Federal consumer financial law as defined by 12 U.S.C. § 5481(14);
- b. Impose appropriate injunctive relief against Heath PLLC for its violations of the TSR;

- c. Grant additional injunctive relief as the Court may deem to be just and proper;
- d. Award monetary relief, including, but not limited to, rescission or reformation of contracts; the refund of monies paid; restitution; disgorgement or compensation for unjust enrichment; and payment of damages;
- e. Award Plaintiff civil money penalties;
- f. Award Plaintiff the costs of bringing this action; and
- g. Award such other and additional relief as the Court may determine to be just and proper.

Dated: July 14, 2022

Respectfully submitted,

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Enforcement Director

DAVID RUBENSTEIN
Deputy Enforcement Director

/s/ Maureen McOwen
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Exhibit 2

(Proposed Amended Complaint Showing Redline)

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*Attorneys for Plaintiff Bureau of
Consumer Financial Protection*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

PROGREXION MARKETING, INC.; PGX
HOLDINGS, INC.; PROGREXION
TELESERVICES, INC.; EFOLKS, LLC;
CREDITREPAIR.COM, INC.; JOHN C.
HEATH, ATTORNEY AT LAW, PLLC,
D/B/A LEXINGTON LAW

Defendants.

Case No. 2:19-CV-00298-BSJ

AMENDED COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) brings this action against PGX Holdings, Inc. (PGX Holdings), and its subsidiaries Progrexion Marketing, Inc. (Progrexion Marketing), Progrexion Teleservices, Inc. (Progrexion Teleservices), eFolks, LLC (eFolks), and CreditRepair.com, Inc. (CreditRepair.com), and John C. Heath, Attorney at Law, PLLC (Heath PLLC), d/b/a Lexington Law Firm or Lexington Law, and alleges the following:

INTRODUCTION

1. The Bureau brings this action against Defendants alleging deceptive acts and practices in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536, and deceptive and abusive telemarketing acts or practices in violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq., and its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3 and 310.4.

2. Defendants operate two of the largest credit repair companies in the country, Lexington Law and CreditRepair.com. They market their services through various media, including online and over the telephone, offering to help consumers remove negative information from their credit reports and improve their credit scores. Consumers sign up for Defendants' credit repair services and pay hundreds of

dollars in fees seeking to improve their credit scores and get better access to credit products, on better terms.

3. To generate credit repair sales, Defendants rely on a network of marketing affiliates who advertise a variety of products and services, often related to consumer credit products. As alleged below, Progexion's marketing affiliates have used deceptive, bait advertising to generate referrals to Lexington Law's credit repair service. For example, one of Progexion's most productive marketing affiliates falsely advertised that it "guarantee[d] ANYONE a 0-3.5% Down Home Loan no matter how bad their Credit is when we start!" In reality, the affiliate did not provide any loans at all. Interested consumers were told that, to participate in the (non-existent) loan program, they had to sign up with Lexington Law. The Progexion Defendants paid this marketing affiliate for each credit repair sale that resulted from its efforts, despite knowing that it engaged in deceptive practices.

4. Defendants also violated the law in another way. Federal law forbids requesting or receiving payment upfront for certain telemarketed credit repair services; if a company offers services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, fees can only be collected after a certain time period has elapsed and it has been demonstrated that the promised results have been achieved. As alleged below,

Defendants charged consumers when they signed up for the service and on a monthly basis thereafter, without waiting the prescribed period of time and demonstrating that the promised results were achieved, in violation of the federal ban on this type of upfront fee.

5. The Bureau brings this action to stop Defendants from engaging in ongoing, unlawful practices that harm consumers nationwide by charging consumers unlawful advance fees in connection with credit repair services and by marketing and telemarketing those services through deceptive representations, and to obtain relief for consumers who were harmed by these practices.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because it concerns federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

7. Venue is proper in this district because all Defendants reside in or do business in this district. 12 U.S.C. § 5564(f).

PARTIES

8. **The Bureau** is an independent agency of the United States. 12 U.S.C. § 5491. The Bureau is charged with enforcing Federal consumer financial laws. 12

U.S.C. §§ 5563 and 5564. The Bureau has independent litigating authority, 12 U.S.C. § 5564(a) and (b), including the authority to enforce the TSR with respect to the offering or provision of a consumer financial product or service subject to the CFPA, 15 U.S.C. § 6105(d).

9. **PGX Holdings** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It is the holding company that wholly owns and controls Defendants Progexion Marketing, Progexion Teleservices, eFolks, and CreditRepair.com (referred to collectively, with PGX Holdings, as Progexion or the Progexion Defendants). A subsidiary of PGX Holdings owns and licenses proprietary software that serves as the platform for most of the credit repair services provided by Heath PLLC and CreditRepair.com, including initiating challenges related to tradelines appearing on consumers' credit reports. Other subsidiaries of PGX Holdings perform telemarketing and telesales for Lexington Law and CreditRepair.com services. Through its subsidiaries and the Progexion common enterprise, PGX Holdings offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

10. **Progexion Marketing** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It provides advertising and marketing services,

including identifying consumer leads through telemarketing, to Heath PLLC and CreditRepair.com. It also provides key parts of the credit repair services marketed and sold to consumers under the brand names Lexington Law and CreditRepair.com. For example, Progexion Marketing contracted with one or more major consumer reporting agencies to obtain copies of Defendants' customers' credit reports and to allow Progexion to challenge its customers' credit report information directly through electronic portals between Progexion and the consumer reporting agency. Directly, through its affiliates, and through the Progexion common enterprise, Progexion Marketing offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

11. **Progexion Teleservices** is a Delaware corporation with its principal place of business in Salt Lake City, Utah. It telemarkets and sells Lexington Law credit repair services on behalf of Progexion and Heath PLLC. Progexion Teleservices employs approximately 1,200 people, most of whom are "telephone service representatives." Directly and through the Progexion common enterprise, Progexion Teleservices offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

12. **eFolks** is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. It generates leads for and telemarkets Lexington Law and CreditRepair.com credit repair services on behalf of Progrexion. eFolks also owns the trademarks for the CreditRepair.com name and logo and licenses them to CreditRepair.com. Directly and through the Progrexion common enterprise, eFolks offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

13. **CreditRepair.com** is a Florida corporation with its principal place of business in Salt Lake City, Utah. PGX Holdings created CreditRepair.com in January 2012 as PGX Holdings' direct-to-consumer brand of credit repair services. CreditRepair.com engages in its own telesales to enroll consumers, handling inbound, outbound, and live-transfer calls. It generates leads directly through its website and through Progrexion Marketing and eFolks. Directly and through the Progrexion common enterprise, CreditRepair.com offers and provides financial advisory services and services relating to consumer report information and engages in telemarketing and telesales.

14. **Heath PLLC** is a law firm based in North Salt Lake, Utah that does business under the trade names Lexington Law Firm and Lexington Law. Heath PLLC has been associated with Progrexion, or its predecessors, and has licensed

the trademark “Lexington Law” since at least 2004. Progrexion conducts most of Lexington Law’s core business operations, but Heath PLLC, operating as Lexington Law Firm, serves as the face of Lexington Law. For example, Heath PLLC is the entity that formally registers as Lexington Law for purposes of the applicable state credit services or credit repair registrations and bonds. Heath PLLC also fields consumers’ complaints about the credit repair services, and consumers’ contracts are with Heath PLLC. Heath PLLC contracts with PGX Holdings’ subsidiaries, including Defendants Progrexion Marketing and Progrexion Teleservices, to: (1) have Progrexion market, telemarket, and sell over the telephone the credit repair services that Heath PLLC provides; (2) use Progrexion’s proprietary credit repair products, the tradename Lexington Law, and the domain name www.LexingtonLaw.com; and (3) obtain other business services, such as payment processing and payroll services. Because Heath PLLC is a law firm, Progrexion markets Lexington Law’s credit repair services as legal services.

15. Heath PLLC offers or provides financial advisory services and services relating to consumer report information that are for use by consumers primarily for personal, family, or household purposes, or that are delivered, offered, or provided in connection with such a consumer financial product or service; Heath PLLC thereby offers or provides a consumer financial product or service as that term is

defined by 12 U.S.C. § 5481(5). *See also* 12 U.S.C. § 5481(15)(A)(viii), (ix).

16. The Progexion Defendants are, and have been at all times relevant to this Complaint, “covered persons,” as that term is defined by 12 U.S.C. § 5481(6)(A), because they offer or provide a financial product or service for use by consumers primarily for personal, family, or household purposes; or that is delivered, offered, or provided in connection with such a product or service. The products or services they offer or provide consist of financial advisory services, including credit counseling, and the service of “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.” 12 U.S.C. § 5481(15)(A)(viii), (ix).

17. Progexion Marketing, Progexion Teleservices, and eFolks are, and have been at all times relevant to this Complaint, “service providers” to a covered person as that term is defined by 12 U.S.C. § 5481(26), because they have provided material services to covered persons, including the persons offering or providing Lexington Law and CreditRepair.com credit repair services.

18. PGX Holdings is, and has been at all times relevant to this Complaint, a “related person,” as that term is defined by 12 U.S.C. § 5481(25), because it has

been, directly or indirectly, the controlling owner of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and because it has been a shareholder, consultant, joint venture partner, or other person who materially participated in the conduct of the affairs of those entities. By virtue of its status as a “related person” under the CFPA, PGX Holdings is also a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

19. The Progrexion Defendants operate as a common enterprise. They have conducted the business practices described below through interconnected companies that operate under common control, have common business functions, officers, employees, and office locations, and share advertising and marketing. Accordingly, an act by one entity constitutes an act by each entity comprising the common enterprise, and PGX Holdings, Progrexion Marketing, Progrexion Teleservices, CreditRepair.com, and eFolks are each jointly and severally liable for the acts and practices of the Progrexion Defendants, or the acts and practices for which the Progrexion Defendants are responsible, as alleged below.

20. The Progrexion Defendants and Heath PLLC are, and have been at all times relevant to this Complaint, “sellers,” as that term is defined by 16 C.F.R. § 310.2(dd), because, in connection with telemarketing transactions, they provide, offer to provide, or arrange for others to provide goods or services to customers in

exchange for consideration.

21. The Progexion Defendants are, and have been at all times relevant to this Complaint, “telemarketers,” as that term is defined by 16 C.F.R. § 310.2(ff), because, in connection with telemarketing, they initiate or receive telephone calls to or from customers.

22. Progexion Marketing has directed and controlled the telemarketing and telesales activities of Progexion Teleservices and eFolks, and authorized Progexion Teleservices and eFolks to market Lexington Law and CreditRepair.com credit repair services. Progexion Marketing has knowledge of and controls or has the ability to control the activities of Progexion Teleservices and eFolks discussed herein.

23. Progexion Marketing, as the principal of Progexion Teleservices and eFolks, is liable for the actions of its agents.

24. Progexion Marketing has directed and controlled the marketing and telemarketing activities of its marketing affiliates acting on its behalf, and authorized them to market Lexington Law and CreditRepair.com credit repair services. Progexion Marketing has knowledge of and controls or has the ability to control the activities of its marketing affiliates discussed herein.

25. Progexion Marketing, as the principal of its marketing affiliates, is liable for

the actions of its agents.

26. PGX Holdings has directed and controlled the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, and authorized those entities to offer and provide credit repair services and to market Lexington Law and CreditRepair.com credit repair services. PGX Holdings has knowledge of and controls or has the ability to control the activities of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com discussed herein.

27. PGX Holdings, as the principal of Progrexion Marketing, Progrexion Teleservices, eFolks, and CreditRepair.com, is liable for the actions of its agents.

FACTUAL ALLEGATIONS

Progrexion's "Hotswap Program"

28. Lexington Law and CreditRepair.com are among the largest credit repair brands in the United States.

29. Progrexion, or its predecessors, has been in the business of providing credit repair services to consumers under the trade names "Lexington Law Firm" and "Lexington Law" since approximately 1994, and through CreditRepair.com since at least 2012.

30. Progrexion receives the majority of the revenue generated from the sale of Lexington Law credit repair services.

31. To market Lexington Law’s and CreditRepair.com’s services, Progrexion employs affiliate marketing programs. As Progrexion says on its website, “One of the primary ways Progrexion generates massive quantities of leads for our clients is through our strong working relationships with numerous affiliates.”

32. One of the affiliate marketing programs Progrexion uses to generate such “massive quantities of leads” is its “Hotswap Program.”

33. The marketing affiliates that participate in this program — “Hotswap Partners” — are companies that offer certain products such as rent-to-own housing contracts, mortgages, auto loans, or personal loans.

34. Hotswap Partners use telemarketing campaigns consisting of inbound and outbound telephone calls to consumers across the country to market these products and services to consumers.

35. During these telemarketing calls, the Hotswap Partner identifies potential credit repair customers to refer to Progrexion, and live-transfers them to Progrexion’s telemarketing sales operations.

36. Progrexion refers to these live telephone transfers as “hotswaps.”

37. In some instances, however, the Hotswap Partner does not actually offer the products or services it purports to provide, and is instead functioning purely as a source of consumer leads for Progrexion.

38. Progrexion cultivates and manages its relationships with Hotswap Partners through Progrexion Marketing.

39. A significant amount of Progrexion's credit repair business is generated by its Hotswap Partners.

40. The Hotswap Program is intended to convince consumers to purchase credit repair services when they have been denied a product or service they wanted.

According to Progrexion's website, "This call-based program is so effective because it connects people to credit repair at the moment they've been denied credit."

41. Hotswap Partners typically offer their products and services through their websites. They drive consumer traffic to their websites through a variety of methods, including: Search Engine Optimization methods that make their websites more likely to appear in an internet search for a product or service; advertisements on third-party websites such as Facebook and Craigslist; and the use of affiliate marketing networks where the Hotswap Partners pay commissions to other companies for providing leads or directing consumers to their websites.

42. If consumers are interested in the products or services advertised by the Hotswap Partner, they are directed to either call the Hotswap Partner or provide their personal contact information and authorize the Hotswap Partner to contact

them via telephone.

43. Consumers who provide their information are either contacted via telephone by the Hotswap Partner, or their contact information — a “lead” — is sent to a third-party company that calls the consumer.

44. Some leads generated by Hotswap Partners are sent to eFolks for it to conduct outbound telemarketing for Lexington Law or CreditRepair.com.

45. When a Hotswap Partner contacts a consumer by phone, it provides the consumer with further information about the products and services advertised by the Hotswap Partner.

46. The Hotswap Partners also pitch Lexington Law’s and CreditRepair.com’s credit repair services, typically after telling the consumer that he or she has been denied a particular credit product or service, offering the consumer unfavorable terms on a loan, or telling the consumer that he or she will be eligible for the product or service, or for better terms on the product, if they first enroll in the credit repair service.

47. For example, a telemarketing script used by one or more of Progrexion’s marketing affiliates, which Progrexion reviewed and distributed to at least one marketing affiliate as a model script, says:

They are credit analysts and have the legal ability to remove questionable negative items on your credit report such as: **(LIST Negatives Client**

mentioned). By removing these negative items, it should allow us to come back and look to refinance you with a conventional lender offering better rates and terms in the future.

48. Progrexion instructs Hotswap Partners to pre-qualify a consumer as suitable for Lexington Law or CreditRepair.com credit repair services prior to the hotswap transfer.

49. Prequalification involves Hotswap Partners ascertaining the following, prior to transferring a consumer to Progrexion: (1) the consumer has derogatory tradelines on his or her credit reports; (2) the consumer is not already a customer of Lexington Law or CreditRepair.com; and (3) the consumer has a valid credit or debit card that they could use to pay for credit repair services.

50. Progrexion instructs the Hotswap Partners to disguise these qualifications for Lexington Law and CreditRepair.com as purported qualifications for the Hotswap Partners' products and services.

51. Once pre-qualified, consumers are offered the opportunity to be connected with Lexington Law or CreditRepair.com for a "free credit repair consultation."

52. Progrexion instructs Hotswap Partners to tie the credit repair consultation to obtaining the consumer's desired product or service.

53. Hotswap Partners follow this instruction. For example, one Hotswap Partner script told consumers, "in order for you to qualify, you need to work on improving

your credit score and the first step in the Rent to Own program is a credit consultation with Lexington Law.”

54. Once the Hotswap Partner completes its pitch, it transfers the consumer to a Progexion call center through a dedicated telephone line assigned to the particular Hotswap Partner.

55. Once connected, the Hotswap Partner indicates to the Progexion representative that he or she is calling on behalf of the Hotswap Partner, introduces the consumer, and states the consumer’s credit goal or the reason why they are seeking credit repair.

56. Progexion then proceeds to offer the consumer its free credit repair consultation and pitch its credit repair services, all the while repeatedly referencing the consumer’s credit goal, as provided by the Hotswap Partner during the live transfer.

57. Progexion tells consumers that during the credit repair consultation, “[w]e will ... go over your credit score, review the reasons for your score and then provide you solutions to improve your credit score and report.”

58. After reviewing a consumer’s summary credit report, Progexion Teleservice’s telemarketing script instructs its employees to tell consumers, “based on what we have discussed about your credit situation, it sounds like you may be a

good candidate for our services.” Thereafter, consumers are offered the opportunity to enroll in Lexington Law’s or CreditRepair.com’s credit repair services.

59. Progrexion pays a fee or a commission to its Hotswap Partners for each consumer transferred to Progrexion who signs up for Lexington Law or CreditRepair.com.

60. At times, Progrexion has trained its teleservices employees on the purported products and services of particular Hotswap Partners so that they could better connect credit repair to the initial offering by those Hotswap Partners.

61. For example, one Progrexion call center held training sessions with its telemarketing staff on the particular services of major Hotswap Partners, the demographics of the consumers the Hotswap Partners transferred to Progrexion, and key points that the Hotswap Partners wanted emphasized about their services and the importance of credit repair.

62. At other times, Progrexion provided written guidance to its telemarketing staff about the Hotswap Partners’ purported products and services, including whether the Hotswap Partner required consumers to sign up for Progrexion credit repair services as a condition of accessing the Hotswap Partner’s purported products or services.

63. Progrexion provided other assistance to Hotswap Partners, such as:
- a. Providing telemarketing scripts, editing Hotswap Partners' telemarketing scripts, and providing model telemarketing calls for training and scripting purposes;
 - b. Providing prizes and incentives to Hotswap Partner employees for increased credit repair sales;
 - c. Assisting with website design and the creation of new marketing campaigns to replace or supplement the Hotswap Partner's current lead generation activities;
 - d. Creating email templates for direct-to-consumer marketing; and
 - e. Providing Hotswap Partners with demographic information on Lexington Law clients so that the Hotswap Partners could target particular lead sources and optimize their scripting.
64. Progrexion provides this assistance to its Hotswap Partners because creating a clear connection between the products and services offered to consumers and credit repair is a key part of its marketing strategy.
65. Describing the Hotswap Program, Progrexion's website says, "This program provides a way for companies to monetize their non-qualified customers by live transferring them to our call centers for a free consultation with the hopes of

retaining them in one of our credit repair programs.”

66. This approach gives consumers the impression that they will be able to obtain the product they sought from the Hotswap Partner after their credit is fixed through Progrexion’s credit repair service.

67. Progrexion’s marketing to consumers includes representations that directly tie Lexington Law’s and CreditRepair.com’s services to particular products — what Progrexion calls, in its marketing and telemarketer training materials, a consumer’s aspirational credit “dreams.”

68. For example, in a general guidance document that appears to have been distributed widely to Hotswap Partners, Progrexion provided Hotswap Partners with a sample telemarketing script that references “key components” Hotswap Partners are required to say to generate credit repair leads. The script includes language telling consumers that credit repair services will get them one step closer to obtaining the Hotswap Partner’s purported products:

- Credit repair “can just make the whole process of getting this loan funded easier”; and
- “[Y]ou just need to get a few things taken care of with your credit in order to get qualified for a loan, that is *exactly* what Lexington specializes in.”

69. By creating a connection between the consumer's desired credit product and credit repair, through the representations of its Hotswap Partners, Progrexion sought to increase Lexington Law's and CreditRepair.com's sales.

70. As one Progrexion Marketing Affiliate Manager explained to a Hotswap Partner in an email dated December 9, 2015, the "biggest/main point to make (in order for this lead to convert on our end) is that the client has to feel that credit repair is a necessary and easy step in the RTO [rent-to-own]->Mortgage process."

Deceptive Hotswap Marketing

71. ~~At least one, if not more,~~Certain of Progrexion's Hotswap Partners have made misrepresentations to consumers to generate consumer leads and induce consumers to sign up for Lexington Law or CreditRepair.com.

72. Hotswap Partners have used advertisements that included fake real estate ads, fake rent-to-own housing opportunities, fake relationships with lenders, false credit guarantees, and false and unsubstantiated statements about past consumer outcomes. The ads have also included false and unsubstantiated statements about consumers' likelihood of success in obtaining products and services such as rent-to-own housing contracts, mortgages, or personal loans.

73. Additionally, although Progrexion's website portrays the Hotswap Partner program as an opportunity for partners to sell consumer leads as a source of

revenue when consumers do not qualify for the products or services the partner is providing, ~~one or more~~certain Hotswap Partners did not actually offer or provide any such products or services. Instead, they offered illusory products or services to lure in consumers and market credit repair services.

74. ~~From~~For example, from at least 2012 through 2017, one of Progrexion's most productive Hotswap Partners, ~~referred to in this Complaint as "HSP1,"~~The H.O.P.E. Program ("HOPE"), used misrepresentations to induce consumers to sign up for Lexington Law.

75. From at least 2012 through 2017, ~~HSP1~~HOPE contacted consumers across the country through campaigns and programs of inbound and outbound phone calls, and transferred to Progrexion over 100,000 consumers who signed up for Lexington Law credit repair services.

76. ~~HSP1~~HOPE purported to offer consumers low-interest mortgages, access to rent-to-own housing, and other products or services, but in reality did not provide any such products or services.

77. ~~HSP1~~HOPE, in its own words, acted "merely as an affiliate call center that transfers potential clients to Lexington Law."

78. Despite merely serving as an affiliate call center, ~~HSP1~~HOPE advertised extensively on Craigslist and Facebook, and through a network of paid affiliates,

claiming to be able to help consumers with poor credit scores obtain favorable mortgages and rent-to-own housing contracts.

79. At various times from 2012 through 2017, HSP4HOPE employed numerous falsehoods to induce consumers to contact, or agree to be contacted by, its telemarketing operation, including:

- a. One of HSP4'sHOPE's websites stated that enrolling in its service guaranteed any consumer “a 0-3.5% down” mortgage “no matter how bad their Credit is when we start”;
- b. Another HSP4HOPE website represented that the company had helped “over 15,000 people buy a home that started with under a 500 Credit Score when they came to [HSP4HOPE]”;
- c. HSP4'sHOPE's ads offered housing that was not actually available and instead routed interested consumers to HSP4HOPE or, at times, directly to Progexion;
- d. HSP4'sHOPE's Facebook advertisements often referenced a “90-day Blitz” program offering home financing in a very short timeframe with express promises such as: “BUY A HOME IN THE NEXT 30-90 DAYS NO MATTER WHERE YOUR CREDIT IS NOW”; and
- e. Other HSP4HOPE advertisements said: “Are you tired of dead ends?”

Games? Gimmicks? Bad Houses and Fake Ads? Would You like to
END all that? We know you would.... We ... have helped over 12,000
people get homes who NEVER thought they could.”

80. Once consumers were on the phone with ~~HSP1~~, ~~HSP1~~HOPE, HOPE made additional misrepresentations. For example, some consumers were told that ~~HSP1~~'sHOPE's program for achieving home ownership “works every time.”

81. In some instances, consumers were told that if they achieved a 640 credit score they would “qualify with one of our lenders.” ~~HSP1~~HOPE, which merely acted as a call center, had no associated lenders.

82. ~~HSP1~~'sHOPE's marketing also included specific claims about Progrexion's credit repair services. For example, one of ~~HSP1~~'sHOPE's telemarketing scripts stated about Lexington Law: “They will review everything with you and put a plan together to eliminate any negative items to boost your score.”

83. At times, ~~HSP1~~HOPE told consumers that they had to sign up with Lexington Law in order to enroll in ~~HSP1~~'sHOPE's services and ultimately obtain the products or services advertised by ~~HSP1~~HOPE.

84. ~~HSP1~~HOPE told consumers, without any review of their credit history or other eligibility factors, that their credit score was the only thing keeping them from their desired product.

85. For example, one HSP1HOPE telemarketing script told consumers “you’d be the perfect candidate for rent-to-own, but your credit is the only thing holding you back – this makes you a great match for credit repair.”

Progrexion’s Knowledge of Deceptive Practices in its Hotswap Program

86. Progrexion had knowledge that HSP1HOPE engaged in the deceptive practices described in Paragraphs 74-85, above.

87. Progrexion claims that it prescreens and monitors Hotswap Partner websites prior to and during its marketing relationship with the Hotswap Partners.

88. Despite purportedly monitoring Hotswap Partner websites, Progrexion allowed the misrepresentations described in Paragraph 79(a) and (b) to remain on HSP1’sHOPE’s websites while HSP1HOPE generated leads for Progrexion.

89. Progrexion also had knowledge that HSP1HOPE used the fake ads described in Paragraph 79(c). For example, a Progrexion employee who reviewed one of HSP1’sHOPE’s ads posted on Craigslist noted: “Seeing the ad firsthand, I understand why so many of these clients feel misled when they call in.”

90. Consumer complaints to the Better Business Bureau and law enforcement agencies describe other Progrexion Hotswap Partners using Craigslist ads with fake housing opportunities to draw in customers.

91. Progrexion had a company policy in place in 2016 that restricted Hotswap

Partners' use of Craigslist to generate traffic for Progexion.

92. Despite this policy, Progexion knew that certain Hotswap Partners were using Craigslist ads in their marketing and continued to do business with them for years.

93. At least one other rent-to-own housing Hotswap Partner continued to use Craigslist rent-to-own housing ads in its marketing activities through at least 2018.

94. Progexion was also aware of HSP4HOPE's 90-Day Blitz advertising on Facebook described in Paragraph 79(d), in which it told consumers that they could get into a home in 90 days regardless of their credit situation. At one point a Progexion employee emailed the owner of HSP4HOPE and stated that the company was aware of the 90-Day Blitz program and was concerned that the program was setting "unreal expectations for clients" and creating confusion. She noted that "[m]ost of these clients need more than 3 months of credit repair...."

95. Despite Progexion's acknowledgement that most consumers would not be able to obtain a mortgage in the promised timeframe, Progexion continued its marketing relationship with HSP4HOPE even as HSP4HOPE continued to advertise the 90-Day Blitz on Facebook.

96. Progexion also provided model scripts to HSP4HOPE and its other Hotswap Partners, and even created entire scripts for some affiliates, including

HSP+HOPE, that set consumer expectations about the likely results of the credit repair services.

97. For example, Progexion authored a telemarketing script for HSP+HOPE that included statements asking if consumers were interested in “repairing [their] credit to get approved for a [mortgage, refinance, rent-to-own, or car]” and telling consumers that their credit was “the only thing holding you back” from the products they desired.

98. Progexion also routinely reviewed, and provided edits and suggestions for, the telemarketing scripts used by HSP+HOPE and other Hotswap Partners.

99. For example, Progexion reviewed the telemarketing script from which HSP+HOPE made representations regarding the ability of consumers to qualify with one of its purported lenders as well as Lexington Law’s capability to “eliminate any negative items to boost your score.”

100. Progexion also had knowledge that HSP+HOPE did not offer or provide the products and services it advertised, such as low-down-payment mortgages and rent-to-own housing contracts.

101. For example, Progexion learned that HSP+HOPE did not collect location information from consumers inquiring about its rent-to-own housing and mortgage offers when eFolks entered into an agreement with HSP+HOPE to receive leads

generated by its marketing activities.

102. The failure to collect location information was unusual among Progrexion's rent-to-own housing Hotswap Partners.

103. One eFolks employee noted that such information was necessary to "know the area [consumers are] looking to buy." In fact, eFolks' system required such information in order for the leads to upload into its automatic dialer.

104. Despite such warnings, Progrexion continued its marketing relationship with ~~HSP~~HOPE and suggested that the company simply make up zip codes for the consumer leads so that eFolks could upload them into its automatic dialer for the purpose of contacting the consumers directly to market Progrexion and Heath PLLC's credit repair services.

105. Progrexion was aware that other Hotswap Partners marketing rent-to-own housing engaged in questionable marketing activities.

106. For example, in a July 2016 email, a Progrexion employee reported concerns to another Progrexion employee that certain Hotswap Partners offering rent-to-own housing were making implicit guarantees that credit repair would result in consumers obtaining the rent-to-own housing advertised. The Progrexion employee suggested that this situation be handled by changing the scripting used by Hotswap Partners in order to "avoid our agents hearing those expectations. The logic being

that it is easier to plead ignorance if you're truly ignorant.”

107. In another example, in a December 2014 email, Progexion’s Senior Director of Compliance reported that “[m]any [clients] have claimed that [a marketing affiliate] is guaranteeing loan approval as long as they sign up for Lexington’s services.” In response, one of Progexion’s marketing directors noted that the affiliate “is one of our largest Hotswap Partners” and that the company had previously heard the same complaint before.

108. In August 2016, a consumer filed a complaint with the Bureau claiming that the same marketing affiliate discussed in Paragraph 107 represented that “after enrollment with Lexington Law I was guaranteed a loan.” The Bureau forwarded the complaint to Heath PLLC, who replied to the Bureau and the consumer that it had “no knowledge” of the affiliate. Despite it being one of the “largest Hotswap Partners” sending consumers to Lexington Law, and despite Progexion’s prior knowledge of similar guarantee claims, Heath PLLC claimed that the consumer “appears to have constructed a relationship between us and [the marketing affiliate]...that we are unaware of.” Heath PLLC further stated that it could not “take responsibility for the alleged representations that may or may not have been made to this person” by the marketing affiliate.

The Relevant Hotswap Partners

109. Although Progrexion uses many Hotswap Partners, for purposes of seeking relief for deceptive practices in this lawsuit, the following five affiliates comprise the “Relevant Hotswap Partners”:

- a. HOPE, which did business as The HOPE Program, Help Renters, Homes with HOPE, and Hope to Own;
- b. OLP.com, Inc., which did business as One Loan Place and Rocket Daddy;
- c. Ascent Mortgage Resource Group, which did business as Lead Virtue, First Access Rent-to-Own, First Access Mortgage, United Rent-to-Own, Ascent Rent-to-Own, Fileforgrants.net, American Rent-to-Own, Rent to Own Homes, and Hope Resources;
- d. Easyhomeownership.net, which did business as Easy Home Ownership and Renttoownassistance.com; and
- e. YHTBA Corp., which did business as Rent-2-own.house, Rent Then Own Homes, and Renttoown.house.

Defendants’ Marketing and Sale of Services to Fix Consumers’ Credit

109:110. The Telemarketing Sales Rule prohibits telemarketers and sellers from “[r]equesting or receiving payment” upfront for “goods or services represented to

remove derogatory information from, or improve, a person's credit history, credit record, or credit rating.”

~~110.111.~~ 111.111. On behalf of consumers, Lexington Law and CreditRepair.com initiate disputes with furnishers and consumer reporting agencies related to tradelines appearing on consumers' credit reports.

~~111.112.~~ 112.112. Progexion markets Lexington Law and CreditRepair.com as providing services that will assist consumers in removing derogatory information from, or improving, the consumers' credit history, credit record, or credit rating.

~~112.113.~~ 113.113. For example, at various times since July 21, 2011, the Lexington Law website included the following representations:

- a. “If questionable negative items are hurting your credit, removing them can improve your score. Here's how we do it:
 1. ANALYZE
We work with you to identify any questionable negative items hurting your score.
 2. ADDRESS
We challenge those negative items with the bureaus and your creditors.
 3. ACCELERATE
We keep the process going, helping you reach your credit goals.”
- b. “Lexington Law is here to help you meet your credit score goals. No matter your credit history and financial standing, our credit repair services are designed to help you improve your credit score”;

- c. “Lexington Law’s lawyers have the knowledge and tools to start fixing your credit score by working to remove inaccurate items on your report”;
- d. “**Our results prove it can be done.** From late payments to charge-offs to bankruptcies, our firms [sic] clients have improved their credit, by removing practically every type of questionable negative item” (bolded language in larger font type on the website);
- e. “**Ask for professional help:** If you want to dramatically improve your credit standing — ultimately leading to approval for bigger loans with better terms — consider asking a professional. You can considerably improve your financial standing with the right help”; and
- f. “Lexington Law has developed tools and strategies that have proven to be effective at removing unfair, inaccurate, and unsubstantiated negative items.”

113.114. Other examples are found in Lexington Law’s advertisements published online at various times since July 21, 2011, such as:

- a. “Need Credit Repair Help? Lexington Law can help you remove negative items on your credit reports. . . . Lexington Law | Trusted Leaders in Credit Repair.”
- b. “Credit not where you need it to be? . . . Fix Your Bad Credit. Lexington

Law® has assisted over 500,000 clients with their credit profile.”

- c. “40 POINTS ON YOUR CREDIT COULD COST YOU \$40,000 ON A 30-YEAR MORTGAGE. Challenge questionable items with bureaus . . . TRUSTED LEADERS IN CREDIT REPAIR FOR A REASON.”

114.115. Another Lexington Law advertisement published online in at least January 2019 stated:



The advertisement is a dark blue rectangular graphic. At the top, it features a light blue rectangular box containing a redacted name. To the right of the box, the text reads: ", you may be able to remove 5 of your 9 negative items on your Credit Report*". Below this text is a green rounded rectangular button with the text "Learn More". Underneath the button is the Lexington Law logo, which consists of a stylized white icon of a hand or a building, followed by the text "LexingtonLaw®". At the bottom of the graphic, the text "Call Now for a FREE Consultation" is displayed above the phone number "844-713-4411". At the very bottom, in smaller white text, is a disclaimer: "*On average, Credit Sesame users who signed up with Lexington Law removed 60% of their existing collections."

115.116. Another Lexington Law advertisement published online in at least January 2019 stated:

LexingtonLaw. Tap to Call

How much will a negative item hurt my credit score?

According to CreditCards.com and CNNMoney, even a single negative on your credit could cost you over 100 points.

NEGATIVE ITEM	SCORE DECREASE
Late payment	up to 110 points
Debt settlement	up to 125 points
Foreclosure	up to 160 points
Bankruptcy	up to 240 points
Collection	up to 110 points
Hard inquiry	up to 15 points

Negative items on your credit could cost you thousands of dollars in higher interest rates, or you could be denied altogether.

Lexington Law can help
Call 1-844-868-2710

116.117. Another Lexington Law advertisement published online in at least January 2019 stated:

Credit Report

Your Credit Score: **760**

Credit Score Range: **Excellent**

Credit Score Grades: A+, A+

Payment History - 35% of Score

Debt Usage - 30% of Score

Age - 15% of Score

Lexington Law® Firm

Repair Your Credit Report

Free Credit Report Summary. Call Us To Start Repairing Your Credit!

117.118. At various times since July 21, 2011, CreditRepair.com's services were marketed as follows:

- a. "We work with the credit bureaus and your creditors to challenge the unfair or inaccurate negative report items that affect your credit score This can all help to fix your credit";
- b. "CreditRepair.com will help you challenge the negative items on credit reports with the intention of getting them removed";
- c. "Our credit repair services help to fix your credit report";
- d. "Previous members have seen an average 40 point TransUnion credit score gain during four months of membership";
- e. "CreditRepair.com Averages 11.6 removals in 4 months";
- f. "TURN A HIGH CREDIT SCORE INTO A LOW MORTGAGE RATE. IMPROVE YOUR CREDIT SCORE AND QUALIFY FOR A LOW INTEREST MORTGAGE THAT FITS YOUR NEEDS"; and
- g. "Not Sure What to Do About Bad Credit? Let us help guide the way. You don't have to live with bad credit and high interest rates. Take advantage of our knowledge, experience, and advanced technology, and we'll help you create a personal game plan to help you repair your credit. Call 1-844-372-1974 to get started. Sign Up Today! Our System is Proven and It Works."

118.119. One CreditRepair.com advertisement published online in at least August 2018 stated:



119.120. During telemarketing calls, Progrexion and its marketing affiliates make additional representations that their credit repair services will result in the removal of derogatory tradelines from credit reports or improvements to the consumer's credit rating.

120.121. For example, one Progrexion telemarketing script from 2012 says: ". . . our service includes an array of letters with your creditors . . . designed to persuade your creditors to remove items;" and "[we] will analyze your credit reports . . . and show specific ways you can improve your credit" The script tells consumers:

You can see that your credit score can have dramatic effects on your life. Your credit score is comprised solely from the information found in your credit

report. In other words, if you want to improve your score, you have to improve your credit report.

The script also asks the consumer: “[h]ow would your life be different in a year from now with good credit?”

121.122. In an audio recording of a telemarketing call from May 2016, a Progexion agent told a consumer “we assist our clients with cleaning up their credit reports completely by working on getting every single negative item, amount, and remark completely deleted off their reports altogether. It is what we do best. In other words, credit repair.”

Illegal Upfront Fees for Telemarketed Credit Repair Services

122.123. The Telemarketing Sales Rule states that fees for telemarketed “goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating” cannot be charged until the time frame in which the seller has represented all of the goods or services will be provided to that person has expired and the seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved.

123.124. At the time of enrollment with Lexington Law or CreditRepair.com, Progexion charges consumers a fee, which has been between \$9.99 and \$14.99

since July 2011, for a complete copy of their TransUnion credit report.

~~124.125.~~ Consumers are told that paying this fee is necessary to begin the credit repair process.

~~125.126.~~ After enrolling with Lexington Law or CreditRepair.com, consumers are then charged their first credit repair service work fee, typically \$99.95, five to fifteen days after enrollment.

~~126.127.~~ Consumers are then charged ongoing monthly fees by Progrexion and Heath PLLC for their credit repair services of \$79.95 to \$129.95, depending on the service level the consumer chooses.

~~127.128.~~ Heath PLLC and Progrexion request and receive these fees from consumers prior to providing consumers with documentation, in the form of a consumer report from a consumer reporting agency, demonstrating that the promised credit repair results have been achieved, such report having been issued more than six months after the results were achieved.

~~128.129.~~ Heath PLLC and Progrexion continue to charge monthly fees until consumers affirmatively cancel their Lexington Law or CreditRepair.com contracts.

COUNT I
**The Progexion Defendants and Heath PLLC Charged Advance Fees for
Credit Repair Services in Violation of the TSR**

~~129.~~130. The Bureau re-alleges and incorporates by reference Paragraphs 1-
~~128~~129.

~~130.~~131. It is an abusive telemarketing act or practice and a violation of the
TSR for any seller or telemarketer to request or receive payment of any fee or
consideration for goods or services represented to remove derogatory information
from, or improve, a person's credit history, credit record, or credit rating, until:

- a. The time frame in which the seller has represented all of the goods or
services will be provided to that person has expired; and
- b. The seller has provided the person with documentation in the form of a
consumer report from a consumer reporting agency demonstrating that
the promised results have been achieved, such report having been issued
more than six months after the results were achieved. 16 C.F.R. §
310.4(a)(2).

~~131.~~132. The Progexion Defendants and Heath PLLC are sellers and the
Progexion Defendants are telemarketers under the TSR. 16 C.F.R. § 310.2(dd),
(ff).

~~132.~~133. The Progexion Defendants' and Heath PLLC's credit repair services

are represented to consumers as services to remove derogatory information from, or improve, the consumers' credit histories, credit reports, or credit ratings.

~~133.~~134. Progrexion Defendants and Heath PLLC routinely requested and received payment of a fee or consideration for their credit repair services before:

- a. The time frame in which they represented all of their goods or services would be provided to the consumer expired; or
- b. They provided the consumer with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results were achieved, such report having been issued more than six months after the results were achieved.

~~134.~~135. Therefore, the Progrexion Defendants' and Heath PLLC's conduct constitutes abusive telemarketing acts or practices in violation of 16 C.F.R. § 310.4(a)(2).

COUNT II
The Progrexion Defendants Engaged in Deceptive Acts
or Practices in Violation of the CFPA

~~135.~~136. The Bureau re-alleges and incorporates by reference Paragraphs 1-

~~128.~~129.

~~136.~~137. It is unlawful for any covered person or service provider to engage in a deceptive act or practice in connection with any transaction with a consumer for

a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

~~137.~~138. The Progexion Defendants are covered persons, service providers, or both, under the CFPA. 12 U.S.C. § 5481(6), (26).

~~138.~~139. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Lexington Law and CreditRepair.com credit repair services, the Progexion Defendants, directly or through ~~at least one~~ affiliate Relevant Hotswap Partner, acting on Progexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the ~~affiliate~~Relevant Hotswap Partner, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

~~139.~~140. In truth and in fact:

- a. The advertised product or service was not available through the ~~affiliate~~Relevant Hotswap Partner; or

b. Neither Progexion nor the ~~affiliate~~Relevant Hotswap Partner had a reasonable basis for representing that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

~~140.141.~~ 141. These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

~~141.142.~~ 142. The Progexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by ~~at least one affiliate~~the Relevant Hotswap Partners.

~~142.143.~~ 143. Despite this knowledge, the Progexion Defendants continued to sign up consumers through the ~~affiliate~~Relevant Hotswap Partners or participated in the ~~affiliate's~~Relevant Hotswap Partners' deceptive conduct.

~~143.144.~~ 144. Therefore, the representations as set forth in Paragraph ~~138~~139 of this Complaint are false and misleading, and constitute deceptive acts or practices in violation of 12 U.S.C. §§ 5531 and 5536(a)(1)(B).

COUNT III
The Progexion Defendants Made False or Misleading Statements to Induce Another Person to Pay for Goods or Services in Violation of the TSR

~~144.~~145. The Bureau re-alleges and incorporates by reference Paragraphs 1-
~~128~~129.

~~145.~~146. It is a deceptive telemarketing act or practice and a violation of the TSR for a seller or telemarketer to make a false or misleading statement to induce another person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

~~146.~~147. The Progrexion Defendants are telemarketers, sellers, or both, under the TSR. 16 C.F.R. § 310.2(dd), (ff).

~~147.~~148. In connection with the telemarketing of Lexington Law and CreditRepair.com credit repair services, the Progrexion Defendants, directly or through ~~at least one affiliate~~ Relevant Hotswap Partner, acting on Progrexion's behalf and for its benefit, have represented, expressly or by implication, that:

- a. The advertised product or service, such as a loan or rent-to-own housing contract, was available through the ~~affiliate~~ Relevant Hotswap Partner, or that it would be available after signing up for credit repair services with Lexington Law or CreditRepair.com; or
- b. Consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

~~148.~~149. In truth and in fact:

- a. The advertised product or service was not available through the ~~affiliate~~Relevant Hotswap Partner; or
- b. Neither Progexion nor the ~~affiliate~~Relevant Hotswap Partner had a reasonable basis for representing that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service, such as a loan or rent-to-own housing contract.

~~149.150.~~ These representations have been material and likely to mislead consumers acting reasonably under the circumstances.

~~150.151.~~ The Progexion Defendants had actual knowledge of the misrepresentations, reckless indifference to the misrepresentations, or an awareness of the high probability of the misrepresentations along with an intentional avoidance of the truth, with respect to the deceptive representations made by ~~at least one affiliate~~the Relevant Hotswap Partners.

~~151.152.~~ Despite this knowledge, the Progexion Defendants continued to sign up consumers through the ~~affiliate~~Relevant Hotswap Partners or participated in the ~~affiliate's~~Relevant Hotswap Partners' deceptive conduct.

~~152.153.~~ Therefore, the representations as set forth in Paragraph ~~147~~148 of this Complaint are false and misleading, and constitute deceptive telemarketing acts or practices in violation of 16 C.F.R. § 310.3(a)(4).

COUNT IV

The Progrexion Defendants Violated the CFPA by Substantially Assisting a Covered Person Engaged in Deceptive Acts or Practices

~~153.154.~~ 154. The Bureau re-alleges and incorporates by reference Paragraphs 1-
~~128~~129.

154.155. It is unlawful for any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of 12 U.S.C. § 5531. 12 U.S.C. § 5536(a)(3).

~~155.156.~~ 156. ~~At least one of the Progrexion Defendants' affiliates, HSP1, Each Relevant Hotswap Partner~~ was, at all times relevant to this Complaint, a “covered person,” as that term is defined by 12 U.S.C. § 5481(6)(A), because it offered or provided financial products or services for use by consumers primarily for personal, family, or household purposes, or that were delivered, offered, or provided in connection with such a product or service. The products or services ~~HSP1~~the Relevant Hotswap Partners offered or provided included consumer credit, including mortgages; financial advisory services, including credit counseling; and services relating to consumer report information, including credit repair services. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

~~156.157.~~ 157. ~~At least one of the Progrexion Defendants' affiliates, HSP1, Each Relevant Hotswap Partner~~ was also, at all times relevant to this Complaint, a

“service provider” to a covered person as that term is defined by 12 U.S.C. § 5481(26), because it provided material services to one or more covered persons, including Progrexion.

~~157.158.~~ At all times relevant to this Complaint, ~~at least one affiliate, HSP1,~~ the Relevant Hotswap Partners engaged in deceptive acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531 and 5536(a)(1)(B), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service. These misrepresentations have been material and likely to mislead consumers acting reasonably under the circumstances.

~~158.159.~~ The Progrexion Defendants provided substantial assistance to ~~at least one affiliate, HSP1,~~ the Relevant Hotswap Partners, including by providing advice and content for the ~~affiliate’s~~ Relevant Hotswap Partners’ telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the ~~affiliate~~ Relevant Hotswap Partners and Progrexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

~~159.160.~~ The Progrexion Defendants had the requisite knowledge of or reckless disregard for the deceptive conduct described in Paragraph ~~157~~ 158.

~~160.161.~~ Therefore, the Progrexion Defendants violated 12 U.S.C. § 5536(a)(3).

COUNT V

The Progrexion Defendants Assisted and Facilitated Violations of the TSR

~~161.162.~~ The Bureau re-alleges and incorporates by reference Paragraphs 1-
~~128129.~~

~~162.163.~~ It is a deceptive telemarketing act or practice and a violation of the TSR for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 16 C.F.R. §§ 310.3(a), (c), (d), or 310.4. 16 C.F.R. § 310.3(b).

~~163.164.~~ ~~At least one of the Progrexion Defendants' affiliates, HSP1, Each~~
~~Relevant Hotswap Partner~~ was, at all times relevant to this Complaint, a “telemarketer,” as that term is defined by 16 C.F.R. § 310.2(ff), that was offering or providing consumer financial products or services, including consumer credit, financial advisory services, or services relating to consumer report information. 12 U.S.C. § 5481(15)(A)(i), (viii), (ix).

~~164.165.~~ At all times relevant to this Complaint, ~~at least one affiliate, HSP1, the~~
~~Relevant Hotswap Partners~~ made false or misleading statements to induce another person to pay for goods or services in violation of the TSR, 16 C.F.R. §

310.3(a)(4), by misrepresenting, expressly or by implication, the availability of an advertised product or service, such as a loan, or that consumers were either guaranteed or had a high likelihood of obtaining the advertised product or service.

~~165.166.~~ The Progexion Defendants provided substantial assistance or support to ~~at least one affiliate, HSP1,~~ the Relevant Hotswap Partners, including by providing advice and content for the ~~affiliate's~~ Relevant Hotswap Partners' telemarketing scripts, advice regarding its websites and other marketing vehicles, the means and mechanisms for live-transferring consumers between the ~~affiliate~~ Relevant Hotswap Partners and Progexion, and payment for each lead that resulted in a Lexington Law or CreditRepair.com sale.

~~166.167.~~ The Progexion Defendants provided substantial assistance or support to ~~at least one affiliate telemarketer, HSP1,~~ the Relevant Hotswap Partners when the Progexion Defendants knew or consciously avoided knowing that the ~~affiliate~~ Relevant Hotswap Partner made false or misleading statements to induce consumers to pay for goods and services, in violation of the TSR, 16 C.F.R. § 310.3(a)(4).

~~167.168.~~ Therefore, the Progexion Defendants violated 16 C.F.R. § 310.3(b).

THIS COURT'S POWER TO GRANT RELIEF

~~168.~~169. The CFPA empowers this Court to grant any appropriate legal or equitable relief including, without limitation, a permanent or temporary injunction, rescission or reformation of contracts, the refund of monies paid, restitution, disgorgement or compensation for unjust enrichment, damages, and monetary relief, including but not limited to civil money penalties, to prevent and remedy any violation of any provision of law enforced by the Bureau. 12 U.S.C. §§ 5564(a), 5565.

PRAYER FOR RELIEF

~~169.~~170. The Bureau requests that the Court, as permitted by 12 U.S.C. § 5565:

- a. Impose appropriate injunctive relief against the Progrexion Defendants for their violations of the CFPA and the TSR and other provisions of Federal consumer financial law as defined by 12 U.S.C. § 5481(14);
- b. Impose appropriate injunctive relief against Heath PLLC for its violations of the TSR;
- c. Grant additional injunctive relief as the Court may deem to be just and proper;
- d. Award monetary relief, including, but not limited to, rescission or reformation of contracts; the refund of monies paid; restitution;

- disgorgement or compensation for unjust enrichment; and payment of damages;
- e. Award Plaintiff civil money penalties;
 - f. Award Plaintiff the costs of bringing this action; and
 - g. Award such other and additional relief as the Court may determine to be just and proper.

Dated: ~~May 2, 2019~~ July 14, 2022

Respectfully submitted,

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~~ERIC HALPERIN~~

~~Enforcement Director~~

DAVID RUBENSTEIN

Deputy Enforcement Director

~~CYNTHIA GOOEN-LESSER~~

~~Assistant Deputy Enforcement Director~~

/s/ Maureen McOwen

MAUREEN MCOWEN

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Exhibit 3

(Excerpts from 6/30/22 Pretrial Hearing)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

BUREAU OF FINANCIAL CONSUMER)
PROTECTION,)
Plaintiff,)

vs.) Case No. 2:19-CV-298BSJ

PROGREXION MARKETING, et al,)
Defendants.)

_____)

BEFORE THE HONORABLE BRUCE S. JENKINS

June 30, 2022

Final Pretrial Conference

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A P P E A R A N C E S

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Salt Lake City, Utah 84101-2180
801-328-3202
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1 THE COURT: None of us are in a position to say.
2 It may be yes and it may be no.

3 MS. KRAMER: Correct, Your Honor.

4 THE COURT: When we get to the question of legal
5 issues as to whether something has been amply
6 demonstrated --

7 MS. KRAMER: In terms of paragraph four, Your
8 Honor, and this applies to the statute of limitations, and
9 are those counts of the complaint barred or limited by the
10 applicable statute of limitations.

11 THE COURT: Well, we talked about that before.
12 How about number five?

13 MS. KRAMER: Number five. Your Honor, this is
14 relevant specifically to count four. Were the relevant
15 Hotswap companies covered persons or service providers as
16 those terms are defined in the C.F.P.A. during the relevant
17 time period? There is a legal dispute here, Your Honor.

18 THE COURT: What is the legal dispute?

19 MS. KRAMER: The defendants' position is at least
20 a portion of the relevant Hotswap companies do not meet the
21 legal definition of covered persons or service providers and
22 the government disagrees.

23 THE COURT: Well, it depends on what they do for
24 those who are covered. We are not defining their status.
25 We are defining your status.

1 MS. KRAMER: Well, Your Honor, specifically for
2 count four it is not just about our status. Count four is
3 about providing substantial assistance to a covered person
4 or service provider. So there is a legal requirement there
5 that the third party, in this case the relevant Hotswap
6 company be a covered person or service provider based on the
7 definition of what is a covered person.

8 For example, if we look at 12 U.S.C. 5481 Section
9 6-A --

10 THE COURT: Well, let's see. Count four, page 42
11 of the complaint and paragraph 155, there is an assertion
12 that at least one of the Progrexion defendant affiliates,
13 H.S.P.I., was at all times relative to this complaint a
14 covered person as that term is defined by 12 U.S.C.
15 54816(a), because it offered or provided financial products
16 or services for use by consumers, primarily for personal,
17 family or household purposes, or that were delivered,
18 offered or provided in connection with such a product or
19 service. The products or services that H.S.P.I. offered or
20 provided included consumer credit, including mortgages,
21 financial advisory services, including credit counseling,
22 and services relating to consumer report information,
23 including credit repair services.

24 So they are talking about one who purportedly is
25 in the business.

1 MS. KRAMER: That is in the complaint, Your Honor,
2 and the defendants specifically denied those allegations.

3 THE COURT: Well, that is fine.

4 MS. KRAMER: Yes.

5 THE COURT: People have burdens.

6 MS. KRAMER: Of course, Your Honor.

7 I will just point out that this allegation in the
8 complaint was about one specific Hotswap affiliate of the
9 five Hotswap affiliates that are in this case live for
10 consideration. The defendants --

11 THE COURT: Well, number five covers far more than
12 that on page 28.

13 MS. KRAMER: It does, Your Honor. It says --

14 THE COURT: I'm not going to deal with that. I'll
15 deal with the complaint and count four and that is a
16 question of proof.

17 MS. KRAMER: I believe it is a mixed question of
18 fact and law, Your Honor, which is why we included it here,
19 because of the relevant Hotswap companies, the five at
20 issue, several of them do not offer a financial product or
21 service.

22 THE COURT: They don't claim they do. They claim
23 this one does.

24 MS. KRAMER: That is correct, Your Honor.

25 THE COURT: Well, let's confine it to what the

1 complaint is.

2 MS. KRAMER: Okay, Your Honor.

3 Well, in that case then if it is confined to the
4 complaint, the other four relevant Hotswap affiliates would
5 not be on the table for at least count four because --

6 THE COURT: Well, they don't claim they are.

7 Why bother?

8 MS. KRAMER: All right. Moving on to paragraph
9 six on page 29 of the proposed pretrial order, this is
10 specific to count five. Again, it is a definitional
11 question. Were the relevant Hotswap companies sellers or
12 telemarketers as those terms are defined in the regulation
13 during the period of advertisement? There is a disagreement
14 there as well, Your Honor.

15 THE COURT: Well, on page 44, paragraph 163 talks
16 about the same outfit.

17 MS. KRAMER: That is exactly right, Your Honor.

18 THE COURT: We are not dealing with anything other
19 than what is alleged, which would be an extracurricular
20 activity on the part of both of us.

21 MS. KRAMER: If we look then at paragraph seven,
22 Your Honor, the next disputed legal issue, I note it begins
23 with the word if and we can revise that according to Your
24 Honor's instructions, but the question here, though, is did
25 Progrexion provide substantial assistance or support to the

1 relevant Hotswap companies? Substantial assistance or
2 support is a specific legal concept defined both in the
3 relevant statutes and in the case law.

4 THE COURT: Well, isn't that an evidentiary
5 question?

6 MS. KRAMER: We believe it is a mixed question of
7 fact and law, Your Honor.

8 THE COURT: Well, if it is mixed, we need to get
9 the evidence in so that we can deal with it.

10 MS. KRAMER: Yes, Your Honor. We do need to see
11 that and then see if the legal burden is met.

12 THE COURT: You're in a position to deal with that
13 question if they don't demonstrate that it is connected.

14 MS. KRAMER: Here, Your Honor, in paragraph eight
15 it speaks specifically to the appropriate method for
16 calculating --

17 THE COURT: I am not going to deal with iffy
18 questions. If defendants are found liable --

19 MS. KRAMER: I understand, Your Honor. We'll
20 revise that accordingly, but just to let Your Honor know
21 about the substance -- we'll revise it. I understand.

22 THE COURT: Well, they will be forced to tell me
23 what it is that they are asking for.

24 MS. KRAMER: We look forward to hearing that, Your
25 Honor, as well as making sure that the --

1 MS. McOWEN: I just want to be clear, Your Honor,
2 that --

3 THE COURT: Well, I have been misapprehending and
4 if I have misapprehended, then we'll look at it and make
5 sure that we are operating on the same page.

6 MS. McOWEN: Thank you.

7 Your Honor, I will just clarify that as to count
8 one we are not seeking relief going back before March 8th of
9 2016, so there is no dispute on that. This really only
10 pertains to the deception claims, the Hotswap deception
11 claims.

12 THE COURT: We have got a different statute?

13 MS. McOWEN: We have a different date of
14 discovery, Your Honor.

15 THE COURT: Okay.

16 MS. McOWEN: The other important matter I want to
17 bring up is your reference to the paragraphs of the
18 complaint describing count two. So if we turn to paragraph
19 138 --

20 THE COURT: 138.

21 MS. McOWEN: In fact, let's turn to paragraph 155
22 of the complaint, which is count four.

23 THE COURT: Which paragraph?

24 MS. McOWEN: Paragraph 155.

25 THE COURT: 155? I thought it was 138.

1 MS. McOWEN: I misspoke, Your Honor. I apologize.

2 THE COURT: Well, if it is count two they don't
3 have a 155, do they?

4 MS. McOWEN: No. This is count four, Your Honor.
5 I misspoke. I apologize.

6 THE COURT: Count one?

7 MS. McOWEN: Count four.

8 THE COURT: Four. Okay. 155.

9 At least one of Progrexion's defendant affiliates,
10 H.S.P.I. -- is that the paragraph?

11 MS. McOWEN: That is the paragraph, Your Honor.

12 THE COURT: Okay.

13 MS. McOWEN: The meaning of this allegation is to
14 say that at least one -- at the time of the filing we knew
15 it was at least one of the Hotswap partners had been
16 substantially assisted, but our allegation at this time,
17 Your Honor, is that all five of the relevant Hotswap
18 partners were substantially assisted by --

19 THE COURT: Where do I find that in the pleading?

20 MS. McOWEN: Your Honor, it is captured in the
21 entirety of count four, which asserts that at least one of
22 Progrexion's affiliates --

23 THE COURT: Nobody has filed a motion to change
24 the pleading.

25 MS. McOWEN: Your Honor, I will make an oral

1 motion for leave to amend the pleading if --

2 THE COURT: Yes. Well, I won't deal with that
3 now. I think people need to -- you define who the affiliate
4 was. We'll see how the burden shakes down.

5 MS. McOWEN: Your Honor --

6 THE COURT: While you are there, look on page 35
7 of your suggested order and you have got one, two, three,
8 four, five, six will-call witnesses, and maybe you can tell
9 me briefly what each one of those will-calls will say.

10 MS. McOWEN: Yes, Your Honor.

11 Give me one moment to grab my folder.

12 THE COURT: Yes.

13 MS. McOWEN: Your Honor, Christopher Albanese is
14 an investigator and employee of the Bureau. During the
15 investigation he retrieved and recorded several online
16 advertisements. He filled out some online forms and called
17 phone numbers on online advertisements which he used to
18 conduct undercover calls of H.O.P.E., Ascent and Lexington
19 Law. He would testify to those materials and to his
20 undercover calls. He would testify also as to the receipt
21 of facts in the investigation to the extent that the statute
22 of limitations issue is live.

23 THE COURT: How about Timothy Hanson?

24 MS. McOWEN: He is a Bureau employee as well. He
25 is offered as a summary witness for a limited purpose. He

1 provided a summary declaration in the summary judgment stage
2 that added up how much of One Loan Place's income came from
3 Progrexion.

4 THE COURT: And Jacob Lichtblau?

5 MS. McOWEN: Mr. Lichtblau is a Bureau employee.
6 He is a paralegal. He is also offered as a summary witness.
7 He prepared summary declarations in the summary judgment
8 phase regarding the defendants' advertisements and consumer
9 complaints.

10 He is also a Bureau records custodian and may
11 testify to certain records retained by the Bureau.

12 THE COURT: Andrew Nigrinis?

13 MS. McOWEN: He is also a Bureau employee offered
14 as a summary witness. He has tallied the amounts that we
15 showed earlier as far as the monitory relief that the Bureau
16 is seeking. Those numbers were added up from the data
17 provided by the defendants. So he is a summary witness
18 primarily on the issue of --

19 THE COURT: Allen Weinberg?

20 MS. McOWEN: He is a Bureau designated expert. He
21 has done an analysis of the defendants' charge backs and
22 return rates in the Hotswap marketing channel. He would
23 speak to how those high rates are an indicia that the
24 defendants were on notice of the deception in the Hotswap
25 channel. His testimony would go to --