UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

Ad Astra Recovery Services, Inc., Plaintiff, vs. John Clifford Heath, Esq.; John C. Heath, Attorney at Law, PLLC d/b/a Lexington Law Firm; Progrexion Holdings, Inc. d/b/a "Progrexion;" Progrexion Teleservices, Inc. d/b/a "Progrexion;" Kevin Jones, Esq.; Adam C. Fullman, Esq.; Lexington Consumer Advocacy, Inc.; and XYZ Corps. 1-20; John Does 1-20, Defendants.	Case No.: 18-cv-1145-JWB

PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR SPOLIATION SANCTIONS

Plaintiff, Ad Astra Recovery Services ("Plaintiff") respectfully requests spoliation sanctions, including an adverse inference jury instruction, monetary sanctions, and other appropriate relief as determined by the Court. This motion is submitted following the Court's order granting leave, dated October 31, 2019 (DE 86-1).

PRELIMINARY STATEMENT

Defendants have repeatedly thwarted Plaintiff's efforts to obtain copies of the fraudulent consumer dispute letters that form sent the basis of this case (the "letters"). Defendants maintain that copies of the 594,117 letters[1] sent to Plaintiff do not exist, despite witness testimony and Defendant documents that reflect otherwise.

Given Defendants' current representations that these letters no longer exist, the only logical conclusion is that the letters were destroyed in bad faith to prevent Plaintiffs from establishing that Defendants prepared and sent the letters. Based on their admitted practice of saving the client letters and their duty to preserve them, an adverse jury instruction is appropriate.

FACTS

Plaintiff initially requested the letters in the first Requests for Production of Documents ("RFPD"), request number 7, served on October 8, 2018.[2] Following Plaintiff's first motion to compel on February 28, 2019, which was granted in large part by verbal order on April 4, 2019, copies of the letters and a plethora of other information was ordered to be produced. Defendants

[1] The number of letters Defendants contend they sent to Plaintiff, as evidenced in Defendants' Second Amended Responses to Plaintiffs Requests for Admissions, dated November 11, 2019.

[2] A copy of the pertinent portions of the request and response are annexed as Exhibit A. The requests defined the applicable period as January 1, 2012 – present, but the Court narrowed the applicable period to May 21, 2013 to present. Plaintiff has since served supplemental requests for production attempting to obtain the information in other forms, but has not yet received any documents, and Defendants responses to the second set of requests for production are overdue.

have repeatedly represented that they "does not retain" copies of the letters,[3] however, three attorneys at Lexington Law Firm [John C. Heath, Kevin Jones, and Cody Johnson] (plus one Of-Counsel attorney [Adam C. Fullman]) testified that they retain copies of the letters for an indefinite period in client folders.[4] Heath and Jones testified that the letters are kept in "in their case file,"[5] or "on the client's Revolution account."[6] and Defendants' own engagement letter indicates that documents from consumer files are subject to their retention policy and can be requested for six months after termination of the relationship.[7]

ARGUMENT

Spoliation is the loss of evidence, either as a result of negligence or bad faith, which impairs a party's ability to prove a claim. *Browder v. City of Albuquerque*, 209 F.Supp.3d 1236, 1243 (D.N.M. 2016). Spoliation sanctions are appropriate where a defendant had a duty to preserve the discovery at issue and the destruction of such discovery is prejudicial to the moving party. *Burlington N. v. Grant*, 505 F.3d 1013, 1032 (10th Cir. 2007). An adverse inference jury instruction is further appropriate where the evidence was lost or destroyed in bad faith. *Turner v. Pub. Serv. Co.* 563 F.3d 1136, 1149 (10th Cir. 2009). In the instant case, Defendants had a duty to preserve the letters sent to Plaintiff and the loss or destruction of those letters is prejudicial to

[3] See, for example, Exhibit B.

[4] Copies of pertinent portions of the deposition transcripts, with highlights, are annexed hereto as Exhibit C.

[5] *See Id.*, Heath deposition, at p. 91.

[6] *See Id.*, Jones deposition, at p. 127.

[7] *See* Defendants' Sample Engagement Letter, produced at bate no. Lexington Law 002819. This document is not being filed as an exhibit here because it is marked confidential and subject to a protective order, but it can be produced under seal at the Court's request. In a subsequent deposition of Lexington Law's corporate representative taken on November 5, 2019, after this issue was raised to the Court, the representative claimed that the company's retention policy is seven years, but that Lexington Law does not keep copies of the letters after they are printed and mailed. Even if that were true, which is highly questionable given the other conflicting prior testimony by numerous individuals, that does not explain why, at a minimum, Defendants did not preserve copies since this litigation was commenced, as discussed below.

Plaintiff's case. Further, because the letters were destroyed in bad faith, an adverse jury instruction is appropriate in addition to monetary sanctions.

I. Defendants intentionally destroyed documents they had a duty to preserve.

Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *West v. Goodyear Tire and Rubber Co*., 167 F.3d 776, 779 (2d Cir. 1999). As an initial matter, because copies of the letters once existed and now do not, spoliation has occurred. In addition, because Defendants knew or should have known that litigation was imminent, they had a duty to preserve evidence. *See Burlington Northern and Santa Fe Railway Company v. Grant*, 505 F. 3d 1013, 1032 (10th Cir. 2007). To start, Defendants were aware of the duty to preserve the letters when a separate action for similar conduct was commenced against them in the Northern District of Texas on July 14, 2017.[8] Defendants were further put on notice of a pending dispute with Plaintiff in the instant case when the then-CEO of Ad Astra had a meeting with John C. Heath of Lexington Law on September 6, 2017. At the meeting, as alleged in the complaint [DE 1], Mr. Newman discussed Ad Astra's issues with the receipt of the overwhelming influx of letters and attempted to open a dialog about ways to mitigate Ad Astra's damages—even asking Defendants about how many letters it was sending (after which Defendants stopped responding to Mr. Newman's emails). Aside from that, Defendants were aware of the duty to preserve the letters when this case was commenced on May 17, 2018, and through the August 20, 2018 scheduling order.[9] Separately,

[8] Complaint, *CBE Group v. Lexington Law Firm*, (N.D.Tx. 2017) (No. 3:17-cv-02594-L), a copy of which is annexed as Exhibit D.

[9] "The Parties agree to the preservation of ESI, which includes but is not limited to: attachments, word processing documents, spreadsheets…" Scheduling Order, p. 5, Aug. 20, 2018, copies of which are annexed as Exhibit E.

Lexington Law and the attorney defendants (Heath and Jones) possessed an ethical duty to their clients to preserve the letters in accordance with Utah R. of Prof'l. Conduct 1.15.[10]

The record supports the conclusion that the letters were still available to Defendant at the time the litigation began, and if they no longer exist, they were destroyed in bad faith. Even contemplating the most conservative interpretation of Defendants' duty to preserve, at a minimum Plaintiff should have ensured it retained copies of letters they sent since the commencement of this case in May 2018—but they did not.

II. Destruction of the letters prejudices Plaintiff because they go to an issue of critical importance.

Plaintiff's case suffers significant, actual prejudice because of the destruction of the letters because they are relevant and material to the instant case. *See Henning v. Union*. 530 F.3d 1206, 1220 (10th Cir. 2008). Defendants' entire enterprise is based on inundating credit furnishers, like Plaintiff, with these fraudulent letters in the name of the consumer. By their own admission, Defendants sent upwards of three hundred letters a day to Plaintiff. The destroyed letters would prove that they were drafted and sent by Defendants, instead of the consumers, and would substantiate the quantity of letters and their contents. Also, each letter sent constitutes a predicate act of mail fraud—by destroying over 590,000 other dispute letters that were sent to Plaintiff, Defendants have limited Plaintiff's ability to prove the scope and breadth of the fraud, and establish the Defendants' fraudulent intent.

Moreover, Defendants have repeatedly responded in discovery that the letters sent to Plaintiff were not "dispute" letters under the Fair Credit Reporting Act ("FCRA") (15 U.S.C. §

[10] The rule requires a lawyer to hold a client's property and appropriately safeguard it for a period of five years after termination of their representation.

1681s-2(8)(G)) and did not require Plaintiff to investigate or respond, which would ordinarily be the FCRA standard applied to letters received from a Credit Repair Organization, like Defendants (15 U.S.C. § 1681s-2(8)(E)). But in the letters Plaintiff has been able to uncover, they are allegedly from consumers seeking to *dispute* or challenge a credit matter. While Defendants maintain, in contradiction of the available evidence, that the letters sent were not dispute letters, the destroyed letters would resolve that conflict.

III. Lexington Law Firm destroyed the letters in bad faith.

An adverse inference jury instruction requires a showing of bad faith destruction of the evidence at issue. *Turner v. Pub. Serv. Co.*, 563 F.3d 1136, 1149 (10th Cir. 2009). Courts generally find a lack of bad faith where the record supports a finding that evidence was merely accidentally or negligently lost. *Browder v. City of Albuquerque*, 209 F.Supp.3d 1236, 1245 (D.N.M. 2016).

What is apparent is that numerous attorneys testified that copies of letters are maintained, as does the engagement agreement, and that copies once existed. Notably, in the *CBE Group v. Lexington Law Firm* trial referenced in footnote 8, Defendants argued that Plaintiffs had not met their burden because they had not entered each and every letter sent by Defendants into evidence.[11] At worst, Defendants intentionally destroyed the letters to disconnect Defendants from the conduct at issue and frustrate Plaintiff's ability to meet its burden of proof. Even if that were not the case, Defendants clearly violated and disregarded their unmistakably duty to preserve the letters once they had notice of this litigation, to Plaintiff's detriment, and the only reasonable inference is that

[11] This representation is based on a conversation Plaintiff's counsel had with CBE's counsel in that case. The trial transcript has been ordered and is pending.

these acts or failure were done in bad faith. Thus, an adverse inference instruction is appropriate.[12]

Accordingly, the Plaintiff proposes the following adverse jury instruction:

> Plaintiffs have shown that the Defendants destroyed relevant evidence. This is known as the "spoliation of evidence." Spoliation is the destruction of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. To demonstrate that spoliation occurred, several elements must be proven by a preponderance of the evidence:
>
> *First*, that relevant evidence was destroyed after the duty to preserve arose.
>
> *Second*, that the evidence lost would have been favorable to the Plaintiff.
>
> As to the first element I instruct you, as a matter of law, that Defendants failed to preserve relevant evidence after its duty to preserve arose. This failure resulted from Defendants' failure to preserve more than 594,117 letters sent by the Defendants to Plaintiff. I direct you that I have already found as a matter of law that this lost evidence is relevant to the issues in this case.
>
> As to the second element, you may presume, if you so choose, that such lost evidence would have been favorable to the Plaintiffs. In deciding whether to adopt this presumption, you may take into account the egregiousness of the defendants' conduct in failing to preserve the evidence.
>
> If you decline to presume that the lost evidence would have been favorable to the Plaintiff, then your consideration of the lost evidence is at an end, and you will not draw any inference arising from the lost evidence.
>
> However, if you decide to presume that the lost evidence would have been favorable to the Plaintiff, you must next decide whether Defendants have rebutted that presumption. If you determine that Defendants rebutted the presumption that the lost evidence was favorable to the Plaintiff, you will not draw any inference arising from the lost evidence against Defendants. If, on the other hand, you determine that Defendants have not rebutted the presumption that the lost evidence is favorable to the Plaintiff, you may draw an inference against Defendants and in favor of Plaintiff – namely that the lost evidence would have been favorable to the Plaintiff.

[12] *See Decker v. Target Corporation*, 1:16-cv-00171-JNP-BCW, 2018 WL 4921534 (D. Ut. Oct. 10, 2018) (holding that an adverse jury instruction was appropriate when employees had failed to preserve evidence because the company had 1) failed to instruct them to preserve it, 2) failed to preserve *any* footage, and 3) tried to use the lack of evidence to their advantage in argument.)

CONCLUSION

The destruction of 594,117 consumer letters warrants spoliation sanctions including, but not limited to, an adverse jury instruction, award of attorney's fees related to this motion, and monetary sanctions. The destruction of the consumer letters was done in contravention of the duty to preserve owed to Defendants' clients, the duty to preserve once litigation has commenced, and the duty to preserve imposed by the Court. The loss of these letters significantly prejudicial to Plaintiff's as it takes away the best and only tangible evidence of the scale of Defendants' scheme.

WHEREFORE, Plaintiff requests that its Motion for Spoliation Sanctions pursuant to Fed.R.Civ.P. 37, D.Kan.R. 7.1, 37.1 and 37.2, be granted in its entirety, and for such other and further relief as is just and appropriate.

Dated: Wichita, Kansas
November 20, 2019

Respectfully submitted,

THOMPSON LAW FIRM, LLC

By: s/ *Lee Thompson*
Lee Thompson, No. 8361
106 East 2nd Street
Wichita, Kansas 67202
Telephone: (316) 267-3933
Fax: (316) 267-3901
Email: lthompson@tslawfirm.com

- *and* –

BLANK ROME LLP

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Attorneys for Plaintiff Ad Astra Recovery Services, Inc.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 20th day of November, 2019, a true and correct copy of the foregoing Brief in Support of Plaintiff's Motion for Spoliation Sanctions was filed electronically via the court's CM/ECF filing system which will send notification of such filing to all counsel of record.

/s/ Lee Thompson

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

X	
Ad Astra Recovery Services, Inc., Plaintiff, vs. John Clifford Heath, Esq.; John C. Heath, Attorney at Law, PLLC d/b/a Lexington Law Firm; Progrexion Holdings, Inc. d/b/a "Progrexion;" Progrexion Teleservices, Inc. d/b/a "Progrexion;" Kevin Jones, Esq.; Adam C. Fullman, Esq.; Lexington Consumer Advocacy, Inc.; and XYZ Corps. 1-20; John Does 1-20, Defendants.	Case No.: 18-cv-1145-JWB

PLAINTIFF'S EXHIBIT INDEX FOR MOTION FOR SPOLIATION SANCTIONS

EXHIBIT A	Defendant John C. Heath, Attorney at Law, PLLC D/B/A Lexington Law Firm's Objections and Responses to Plaintiff's First Set of Requests for Production
EXHIBIT B	Email from Counsel Addressing Dispute Letters, October 14, 2019
EXHIBIT C	Portions of Cody Johnson Deposition, November 5, 2019; Portions of Adam Fullman Deposition, January 10, 2019; Portions of John C. Heath Deposition, September 25, 2019; Portions of Kevin Jones Deposition, September 24, 2019
EXHIBIT D	Plaintiff's Original Class Action Petition, *The CBE Group, Inc., v. John C. Heath, Attorney at Law PLLC d/b/a Lexington Law Firm*
EXHIBIT E	Scheduling Order, August 20, 2018

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

AD ASTRA RECOVERY SERVICES, INC.	§	
	§	
Plaintiff,	§	
	§	**CASE NO. 6:18-cv-01145-JWB-KGS**
v.	§	
	§	
JOHN CLIFFORD HEATH, ESQ.,	§	
JOHN C. HEATH, ATTORNEY AT LAW,	§	
PLLC d/b/a LEXINGTON LAW FIRM;	§	
PROGREXION HOLDINGS, INC.	§	
d/b/a "PROGREXION,"	§	
PROGREXION TELESERVICES, INC.	§	
d/b/a PROGREXION;	§	
KEVIN JONES, ESQ;	§	
ADAM C. FULLMAN, ESQ.;	§	
LEXINGTON CONSUMER ADVOCACY,	§	
INC.; and XYZ CORPS 1-20;	§	
JOHN DOES 1-20,	§	
	§	
Defendants.	§	

DEFENDANT JOHN C. HEATH, ATTORNEY AT LAW, D/B/A LEXINGTON LAW FIRM'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION

To: Plaintiff, AD ASTRA RECOVERY SERVICES, INC., by and through its counsel of record: Hillary F. Korman, Scott Wortman, Blank Rome LLP, 405 Lexington Avenue, New York, New York 10174; Nicholas Harbist, 300 Carnegie Center, Suite 220, Princeton, New Jersey 08540; and Lee Thompson, 106 East 2nd Street, Wichita, Kansas 67202

COMES NOW Defendant John C. Heath Attorney at Law, PLLC d/b/a Lexington Law Firm (hereinafter, "Defendant"), and serves its Amended Objections and Responses to Plaintiff's First Set of Requests in accordance with the Federal Rules of Civil Procedure.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

1. Documents sufficient to show all names under which the "d/b/a" or tradename Lexington Law Firm has been used by entities other than Lexington Law Firm to conduct business at any time, including, but not limited to, predecessor companies, successor companies, and affiliates.

RESPONSE:

None.

2. All documents licensing to Lexington Law Firm the right to use the tradename, or "d/b/a," Lexington Law.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, the documents requested are equally available through the state of Utah**.**

AMENDED RESPONSE:

See Lexington Law Bates Nos. 236-239; 2828-2832; 3483-3486

3. All formation documents for Lexington Law Firm, including, but not limited to Lexington Law Firm's operating agreement and all amendments thereto.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, the documents requested are equally available through the state of Utah.

4. Documents sufficient to show the full legal names, title, last known addresses, and telephone numbers for all current and former members, owners, officers, directors, or

principals of Lexington Law Firm.

RESPONSE:

See the interrogatory answers. See also the formations documents on file with the state of Utah**.**

AMENDED RESPONSE:

See Lexington Law Bates Nos. 236-239; 2828-2832; 3483-3486.

5. Documents sufficient to show the organizational structure of Lexington Law Firm, including, but not limited to, organizational charts, telephone directories, personnel lists, charts, or diagrams.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, the documents requested are equally available through the state of Utah and also available by reviewing the lexingtonlaw.com website.

AMENDED RESPONSE:

See Lexington Law Bates Nos. 236-239; 2828-2832; 3483-3486.

6. Documents sufficient to show the names of all "of counsel" law firms and/or attorneys with whom Lexington Law Firm has had a contractual relationship during the Applicable Period.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time given Plaintiff's definition of applicable period and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, the information sought is available by reviewing the lexingtonlaw.com website.

AMENDED RESPONSE:

See Lexington Law Bates Nos. 2633-2706.

7. All Dispute Letters sent by, or caused to be sent by, Lexington Law Firm, the Defendants, and/or any other individuals or entities concerning the content of template Dispute Letters.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, the request is vague and confusing.

AMENDED RESPONSE:

See the Lexington Law spreadsheet identifying customers who sent a communication to Ad Astra as Lexington Law Bates Nos. 3548-7110; see also letter templates as Lexington Law Bates Nos. 7111-17038.

8. All Communications involving Lexington Law Firm, the Defendants, and/or any other individuals or entities concerning the content of template Dispute Letters.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time and for the reasons that it is not important in resolving the issues in the action and the burden of responding is not proportional to the issues of the present action. Subject to same, Defendant will timely supplement.

9. All Communications concerning the Dispute Letters sent by, or caused to be sent by, Lexington Law Firm to Ad Astra during the Applicable Period, including, but not limited to, internal communications and communications between Lexington Law Firm and consumers.

RESPONSE:

Defendant objects to this request because the request is not proportional to the needs of the case as it is overly broad and not limited in scope or time given the "Applicable Period" definition of Plaintiff and for the reasons that it is not important in resolving the issues in the

Exhibit B

From: Brent W. Martinelli <brent.martinelli@qpwblaw.com>
Sent: Monday, October 14, 2019 3:53 PM
To: Korman, Hilary; Philip R. Dupont; Steven A. Wood
Cc: lthompson@tslawfirm.com; Wortman, Scott E.; Harbist, Nicholas C.; Vigilante, Maria K.; Kessler, John; Wylma Chance; Frank Alvarez; Brent W. Martinelli
Subject: RE: Producing Outstanding Items

My assistant is going to upload the ledgers/trial reports momentarily for Holdings and Teleservices as you requested. I also revisited the issue regarding copies of letters and their production. I have again confirmed with my clients that they do not maintain copies of letters.

Thank you.

Brent W. Martinelli
Partner

Quintairos, Prieto, Wood & Boyer, P.A.
1700 Pacific Avenue, Suite 4545
Dallas, Texas 75201
Telephone: (214)754-8755
Facsimile: (214)754-8744
Email: brent.martinelli@qpwblaw.com

From: Korman, Hilary [mailto:HKorman@BlankRome.com]
Sent: Monday, October 14, 2019 2:19 PM
To: Brent W. Martinelli; Philip R. Dupont; Steven A. Wood
Cc: lthompson@tslawfirm.com; Wortman, Scott E.; Harbist, Nicholas C.; Vigilante, Maria K.; Kessler, John; Wylma Chance
Subject: RE: Producing Outstanding Items

Brent, please advise.

Hilary F. Korman | BLANKROME
1271 Avenue of the Americas | New York, NY 10020
O: 212.885.5118 | F: 917.332.3078 | hkorman@blankrome.com

From: Korman, Hilary
Sent: Monday, October 14, 2019 11:30 AM
To: 'Brent W. Martinelli' <brent.martinelli@qpwblaw.com>; 'Philip R. Dupont' <pdupont@sandbergphoenix.com>; 'Steven A. Wood' <steven.wood@qpwblaw.com>
Cc: 'lthompson@tslawfirm.com' <lthompson@tslawfirm.com>; Wortman, Scott E. <SWortman@BlankRome.com>; Harbist, Nicholas C. <Harbist@BlankRome.com>; Vigilante, Maria K. <MVigilante@BlankRome.com>; Kessler, John

<JKessler@BlankRome.com>; 'Wylma Chance' <wylma.chance@qpwblaw.com>
Subject: RE: Producing Outstanding Items

Ok, thanks.

The failure to produce these items is preventing our expert from furnishing a complete report by 10/16. We are planning on asking the court for an extension of time. Do you consent?

Thanks,

Hilary F. Korman | BLANKROME
1271 Avenue of the Americas | New York, NY 10020
O: 212.885.5118 | F: 917.332.3078 | hkorman@blankrome.com

From: Brent W. Martinelli <brent.martinelli@qpwblaw.com>
Sent: Monday, October 14, 2019 11:03 AM
To: Korman, Hilary <HKorman@BlankRome.com>; Philip R. Dupont <pdupont@sandbergphoenix.com>; Steven A. Wood <steven.wood@qpwblaw.com>
Cc: lthompson@tslawfirm.com; Wortman, Scott E. <SWortman@BlankRome.com>; Harbist, Nicholas C. <Harbist@BlankRome.com>; Vigilante, Maria K. <MVigilante@BlankRome.com>; Kessler, John <JKessler@BlankRome.com>; Wylma Chance <wylma.chance@qpwblaw.com>
Subject: RE: Producing Outstanding Items

Yes, I am working today to secure and/or confirm status and will send you an email/notification later today.

Thanks.

Brent

From: Korman, Hilary [mailto:HKorman@BlankRome.com]
Sent: Monday, October 14, 2019 9:50 AM
To: Brent W. Martinelli; Philip R. Dupont; Steven A. Wood
Cc: lthompson@tslawfirm.com; Wortman, Scott E.; Harbist, Nicholas C.; Vigilante, Maria K.; Kessler, John
Subject: Producing Outstanding Items
Importance: High

Brent,

Will you be producing the Progrexion defendants' general ledgers and communications sent to Ad Astra, as set forth in the attached emails?

Thanks,

Hilary F. Korman | BLANKROME
1271 Avenue of the Americas | New York, NY 10020
O: 212.885.5118 | F: 917.332.3078 | hkorman@blankrome.com

****

This message and any attachments may contain confidential or privileged information and are only for the use of the intended recipient of this message. If you are not the intended recipient, please notify the Blank Rome LLP or Blank Rome Government Relations LLC sender by return email, and delete or destroy this and all copies of this message and all attachments. Any unauthorized disclosure, use, distribution, or reproduction of this message or any attachments is prohibited and may be unlawful.

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Exhibit C

UNITED STATES DISTRICT COURT

DISTRICT OF KANSAS - WICHITA

Ad Astra Recovery Services, Inc., Plaintiff, v. John Clifford Heath, Esq.; John C. Heath, Attorney at Law, PLLC d/b/a Lexington Law Firm; Progrexion Teleservices, Inc., d/b/a/ "Progrexion;" Kevin Jones, Esq., Adam C. Fullman, Esq.; Lexington Consumer Advocacy, LLC.; and XYZ Corps, 1-20; John Does 1-20. Defendants.	Civil No. 18-1145-JWB

DEPOSITION OF CODY JOHNSON

November 5, 2019 9:05 a.m.

Location: CitiCourt Reporting
236 South 300 East
Salt Lake City, Utah 84111

Reporter: Heidi Hunter, RPR, CCR

Job No. 171281

paralegals or attorneys or anybody can just -- that the paralegal -- I'm sorry, the client has requested a copy request. So then that would get sent to the staff members that pull those copy requests.

Q Is there ever a point in time when those sorts of letters are destroyed?

A We have a retention policy of seven years. And I think it -- there's -- it's supposed to be done within 90 days, after that time period is expired.

Q Are you aware of any professional rules of conduct in Utah or otherwise that requires law firms to maintain material, property, or documents of their clients?

A No, I'm not familiar with the Utah rules.

Q What about Arizona?

A I don't know what they are.

Q If I were to give you consumer names today that I'd like to see copies of the letters that you sent for them, would you be able to get those for me?

A If you wanted letters that were sent?

Q On behalf of the consumers, like we just discussed, the challenge letters.

A No, we don't get copies of them.

Q You just testified that you are able to access

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

AD ASTRA RECOVERY SERVICES, INC.,	)	
Plaintiff,	)	
vs.	)	Case No.
	)	18-1145-JWB
JOHN CLIFFORD HEATH, ESQ.; JOHN C. HEATH, ATTORNEY AT LAW, PLLC d/b/a "PROGREXION"; PROGREXION TELESERVICES, INC., d/b/a "PROGREXION"; KEVIN JONES, ESQ.; ADAM C. FULLMAN, ESQ.; LEXINGTON CONSUMER ADVOCACY, LLC; and XYZ Corps. 1-20; JOHN DOES 1-20,	)	
Defendants.	)	

(Portions of this transcript are confidential subject to protective order and are bound under separate cover)

DEPOSITION OF ADAM FULLMAN
Thursday, January 10, 2019

Reported By:
DEBORAH KINSELLA
CSR No. 13808
Job No. 3187611
Pages 1 to 166

Q Okay.
A So we can always see whatever information we receive from the client by looking it up in the system.
Q But is there a notation of what Lexington Law is going to do for the consumer, or where is that memorialized?
A I don't think there's a written plan, like "We're going to do all these things." Lexington has procedures.
Q Well, it would just seem to me there would have to be some sort of automated process to handle the volume of consumers and what they need done.
A Yeah, I mean there's procedures that Lexington follows.
Q It's just kind of programmed into the system where certain things automatically happen based on maybe the level of service or some other factor?
A I don't know automatically. It's based on information from the client. Information from a client will trigger an action in the system.
Q Okay. So it will trigger. And is there a record of letters that are sent on behalf of a consumer?
A Like if -- like can we find them again after we send them?
Q Yeah.

A Yeah, I'm sure copies are kept. Yeah, copies are kept.

Q And do you know the process that Lexington Law uses to transmit the letters?

A Some -- there's some electronic information with some credit bureaus, and there's some physical letters sent.

Q Is there a system or name, like e-OSCAR, is that the electronic transmittal that you're referring to?

A I don't know the name of the transmittal. I do recognize that word from the Complaint that I read yesterday, but I've never come across or thought about the name of transmitting systems.

Q Do you know if any other mailing methods are used besides USPS?

A Like FedEx or something?

Q Uh-huh.

A I'm not aware of it.

Q Do you have any knowledge about Progrexion, and I'm using Progrexion broadly -- there are several different subsections of Progrexion apparently -- what their role is potentially in the intake or mailing process? I mean, Ms. Tanner, you know that she's obviously interested in the case.

John C. Heath

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

AD ASTRA RECOVERY SERVICES, INC.,	)	
Plaintiff,	)	Deposition of:
vs.	)	John C. Heath
JOHN CLIFFORD HEATH, ESQ.; John C.. HEATH, ATTORNEY AT LAW, PLLC D/B/A LESINGTON LAW FIRM; PROGREXION HOLDINGS, INC., D/B/A "PROGREXION"; KEITH JONES, ESQ.; ADAM C. FULLMAN, ESQ.; LEXINGTON CONSUMER ADVOCACY, LLC; AND XYZ CORPS. 1-20; DOHN DOES 1-20,	)	Civil No. 18-1145-JWB
Defendants.	)	

September 25, 2019 * 9:23 a.m.

236 South 300 East
Salt Lake City, Utah 84111

Reporter: Diana Kent, RPR, CRR
Notary Public in and for the State of Utah

Job No. 168008

Q. I'll mark this as Exhibit B.

(EXHIBIT B WAS MARKED.)

Q. Mr. Heath, this is a document produced in discovery numbered 501. It's titled Case Setup, as you can see. Take a minute to review it in case you haven't already.

A. Okay.

Q. Have you seen this document before?

A. I have not.

Q. Do you know where this document comes from?

A. I don't.

Q. What about the content on the document?

A. The content is familiar.

Q. Where have you seen the content before?

A. I don't recall right offhand.

Q. And for the record, the content is, Never Late, Not Mine, Military Service, Court Decision, Student Loan, Collection, or Do Not Challenge, and they are accompanied by descriptions of what those terms mean. Do you know who came up with these different categories?

A. That would be best answered by a Lexington Law representative. I don't.

Q. Does Lexington Law keep copies of the

letters that it sends on behalf of consumers?

A. That would need to be answered by a Lexington Law representative. We do keep copies of items -- from personal experience, we do keep copies of items that were sent on behalf of the consumer in their case file.

Q. Is there a -- you know -- strike that.

In your experience where are copies typically kept? Is there a folder, a subtab?

A. From my experience, it would be a tab in the Revolution program. I'm not sure exactly where the data is stored.

Q. And it would be a pdf of what the letter was, basically?

A. From experience, yes.

Q. Can you describe what Inquiry Assist is?

A. It would be best answered by a Lexington Law firm representative, but from experience it's a service that is provided to our clients and allows them to send out letters to the credit bureaus that dispute inquiries on their credit reports.

Q. Is it only letters to credit bureaus, or could it be to creditors, as well?

A. My recollection is that it is to credit

bureaus, but I could be corrected on that.

Q. And does a consumer have access to copies of the various letters that are sent on their behalf in your system?

A. That would be better answered by a Lexington Law firm representative. From experience, yes, if a client makes a request they can certainly get their letters and their case file.

Q. Do you know if the letters that are sent on a client's behalf are sent to them for approval before they are sent?

A. That would be better answered by a Lexington Law representative. I don't know right offhand.

Q. And just to expand upon my last question about how consumers can access copies of the letter, do they have to make a request in writing or by phone or can they log into the portal and pull a copy of a letter that was sent?

A. I don't know specifically. But they can make a communication of the form I'm sure in a number of various ways, from experience, and request their file.

Q. Okay. Have you drafted any policies and

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS - WICHITA

AD ASTRA RECOVERY SERVICES, INC.,

Plaintiff,

-against-

Case No.
18-1145-JWB

JOHN CLIFFORD HEATH, ESQ.; JOHN C. HEATH, ATTORNEY AT LAW, PLLC d/b/a/ LEXINGTON LAW FIRM; PROGREXION HOLDINGS, INC., d/b/a "PROGREXION;" PROGEXION TELESERVICES, INC., d/b/a "PROGREXION;" KEVIN JONES, ESQ.; ADAM C. FULLMAN, ESQ.; LEXINGTON CONSUMER ADVOCACY, LLC.; and XYZ CORPS. 1-20; JOHN DOES 1-20,

Defendants.

VIDEOTAPED DEPOSITION OF KEVIN JONES
Phoenix, Arizona
September 24, 2019

Judi Johnson, CSR, RMR, RPR, CRR, CLR
Arizona License #: 50853
Job No.: 168007

this question. So you're asking correspondence that is sent from the client to Lexington Law Firm?

Q Correct.

A Yes. It would be -- if it was an e-mail, it would be saved in the system. If it were a hard copy, it would be scanned into the client's file on the system.

Q So Rev basically aggregates all of the information you're receiving from the client in one place?

A I think that's an accurate representation, yes.

Q Does it store copies of letters sent to creditors on behalf of the consumer?

A I don't know. I'm not sure.

Q Does it store communications with credit bureaus on behalf of a consumer?

A Yeah. There would be a record of a challenge with the credit bureau, yes, on the -- on the client's Revolution account.

Q Does it save copies of recordings of conversations with consumers?

A No, I do not believe it does.

Exhibit D

FILED
DALLAS COUNTY
9/14/2017 10:28 AM
FELICIA PITRE
DISTRICT CLERK

CAUSE NO. DC-17-00708

THE CBE GROUP, INC. individually and on behalf of all others similarly situated	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	44th JUDICIAL DISTRICT
JOHN C. HEATH, ATTORNEY AT LAW PLLC d/b/a LEXINGTON LAW FIRM.,	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL CLASS ACTION PETITION

Plaintiff THE CBE GROUP, INC ("**Plaintiff**" or "**The CBE Group**"), individually and on behalf of all other persons similarly situated, files its *Original Class Action Petition* against Defendant JOHN C. HEATH, ATTORNEY AT LAW PLLC d/b/a LEXINGTON LAW FIRM ("**Defendant**" or "**Lexington Law Firm**") for damages and injunctive relief and alleges as follows:

DISCOVERY LEVEL

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this cause of action is intended to be conducted under Level 3.

NATURE OF THE ACTION

2. Plaintiff brings this class action individually and on behalf of the Class as defined below, who received purported consumer dispute correspondences, which Defendant drafted, signed, and mailed without the knowledge and consent of the consumer.

3. By this action, Plaintiff, on behalf of itself and the Class as defined below, seeks economic damages and injunctive relief at common law.

4. Plaintiff seeks judgment for recovery of its damages in the amount between two hundred thousand and one million dollars. Tex. R. Civ. P. 47.

PARTIES

5. Plaintiff The CBE Group is an *Iowa Corporation* which has a location in New Braunfels, Comal County, Texas.

6. Defendant Lexington Law Firm is a *Utah limited liability corporation* with its principal place of office at 360 North Cutler Drive, Salt Lake City, Utah 84054. Defendant may be served with process by serving its registered agent, JOHN C. HEATH, at the same address.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and issues in this cause. Venue is proper in Dallas County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because a substantial part of the acts and events giving rise to the violations complained of occurred in this judicial district and the State of Texas.

COMMON FACTUAL ALLEGATIONS

8. Plaintiff, individually and on behalf of the Class, as defined below, files this suit for fraud, fraud by nondisclosure, and tortious interference with existing contract.

9. By this action, Plaintiff, individually and on behalf of the Class seeks judgment recovery of its damages in an amount in excess of this Court's jurisdiction and permanent injunction against Defendant for its fraudulent activities.

10. Defendant is a law firm that advertises itself as "the leading credit repair law firm."

11. On at least one occasion, Defendant, its employee or agent, drafted a dispute correspondence, purportedly from a consumer, without the consumer's specific knowledge or consent.

12. On at least one occasion, Defendant, its employee or agent, signed a dispute correspondence, purportedly from consumers, using the consumer's name without a consumer's specific knowledge or consent.

13. On at least one occasion signed, Defendant, its employee or agent, mailed a dispute correspondence, purportedly from consumers, without a consumer's specific knowledge or consent.

14. Defendant, its employee or agent, has drafted, signed, and mailed hundreds or thousands of dispute correspondences, purportedly from consumers, without a consumer's specific knowledge or consent.

15. With neither the knowledge nor the opportunity to obtain information about Defendant, its employee or agent's conduct, Plaintiff and Class Members, as defined below, investigated or responded to the consumer dispute correspondences drafted, signed, or mailed by Defendant, its employee or agent, without the consumer's specific knowledge or consent.

16. Plaintiff and Class Members incurred costs and expenses from investigating or responding to the consumer dispute correspondences drafted, signed, and mailed by Defendant without the consumer's specific knowledge or consent.

FACTS SPECIFIC TO PLAINTIFF THE CBE GROUP, INC.

17. Plaintiff has evidence that Defendant has been drafting and mailing hundreds or thousands of pieces of frivolous dispute correspondence, purportedly from consumers, on behalf of consumers and without the consumers' specific knowledge or consent.

18. Plaintiff has received hundreds or thousands of pieces of frivolous dispute correspondence purportedly from consumers.

19. Plaintiff has incurred significant cost to investigate and respond to these pieces of frivolous dispute correspondences.

20. These pieces of frivolous dispute correspondences have the same signature as the signatures in hundreds of other frivolous dispute correspondence purportedly from consumers.

21. These pieces of frivolous dispute correspondences were sent in the same style of accompanying envelope as the envelope accompanying hundreds of other frivolous dispute correspondence purportedly from consumers.

22. At least one consumer has called Plaintiff stating that he had not signed the referenced dispute correspondence.

23. At least one of the frivolous dispute correspondences was signed under the name, LANCE GARZA ("**Mr. Garza**").

24. On February 8, 2017, Plaintiff filed an *Amended Verified Petition to Take Deposition Under Rule 202* (the "**Rule 202 Petition**") in the 44th Judicial District Court of Dallas County, Texas, Case Number DC-17-00708.

25. Pursuant to the Rule 202 Petition, on April 1, 2017, Plaintiff deposed Mr. Garza.

26. Mr. Garza owes $767.69 in debt to DIRECT TV.

27. Mr. Garza hired Defendant to assist in credit issues.

28. Mr. Garza did not hire Defendant to get out of any debts he owed.

29. Mr. Garza did not hire Defendant to assist him in creating a lawsuit against a party.

30. Defendant sent a dispute correspondence to Plaintiff signed under the name, LANCE GARZA.

31. Defendant never gave Mr. Garza an opportunity to review the dispute correspondence.

32. Defendant never consulted with Mr. Garza about the accuracy of the content of the dispute correspondence.

33. Mr. Garza never signed the dispute correspondence.

34. Defendant never received Mr. Garza's permission to sign the dispute correspondence with Mr. Garza's name.

35. Defendant never received any direction from Mr. Garza's request to submit the dispute correspondence.

36. Plaintiff has information and belief that Defendant has drafted, signed, and mailed hundreds or thousands of pieces of frivolous dispute correspondence, purportedly from consumers, on behalf of consumers and without the consumers' specific knowledge or consent.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action pursuant to Rule 42 of the Texas Rules of Civil Procedure on behalf of itself and the following Class defined as follows:

> **Class** includes all persons within the United States who contract to collect the debt of third-party creditors; received a dispute letter purportedly from a consumer, which was drafted, signed, and mailed by Defendant without the knowledge or consent of the consumer, within the four years preceding the filing of Plaintiff's *Original Class Action Petition*.

38. The term, "**Class Members**" as used in this *Original Class Action Petition*, includes all persons who are part of the Class but excludes all individuals listed in Paragraph 39.

39. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and its current or former employees, officers, and directors; (3) Plaintiff's counsel and Defendant's counsel; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded

persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated or released.

40. Plaintiff reserves the right to add additional Classes or to expand the definitions of the Class to seek recovery on behalf of additional persons as warranted by the facts discovered in further investigation and discovery.

41. The Class is so numerous and geographically dispersed that the joinder is impracticable.

42. Common questions of law and fact predominate over any questions affecting only individual members of the Class.

43. Common questions for the Class Members include, but are not necessarily limited to the following:

a. Whether Defendant drafted, signed, and mailed a purported consumer dispute correspondence to a member of the Class, without the consumer's knowledge or consent;

b. Whether Defendant engaged in fraudulent acts alleged herein;

c. Whether Defendant injured Class Members;

d. Whether an injunction should be issued to prohibit Defendant from engaging in the fraudulent acts alleged herein

44. Plaintiff's claims are typical of Class Members' claims. Tex. R. Civ. P. 42(a)(3).

45. Plaintiff will fairly and adequately protect the interests of Class Members. Plaintiff has no interest adverse to the interest of the Class Members. Tex. R. Civ. P. 42(a)(4).

46. Plaintiff is a Class representative that has retained counsel experienced and competent in the prosecution of class actions and complex litigation and will vigorously prosecute this action. Tex. R. Civ. P. 42(a)(4).

47. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, due to the fraudulent nature of Defendant's conduct, Class Members will continue to suffer damages and Defendant's unlawful conduct will continue without remedy, exposing untold numbers of persons to such unlawful conduct.

48. There are three separate and stand-alone bases upon which to certify this case to proceed as a class action:

a. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant. Tex. R. Civ. P. 42(b)(1)(A). By contrast, the prosecution of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each Class Member.

b. The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Tex. R. Civ. P. 42(b)(1)(B). Given the size of the individual Class Members' claims many of the Class Members may not be able to seek legal redress, individually, for the wrongs Defendant committed against them. And given the fraudulent nature of Defendant's conduct, many Class Members may not even be

aware of Defendant's unlawful conduct. The prosecution of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each Class Member.

c. Defendant has acted on grounds generally applicable to the Class. Tex. R. Civ. P. 42(b)(2). The common liability issues that exist between Plaintiff and the Class Members, on one hand, and Defendant, on the other hand, should be resolved in one action to converse the resources of the parties and the court system.

SUBSTANTIVE ALLEGATIONS

COUNT I
Fraud

49. Plaintiff repeats and re-alleges each of the preceding allegations as though fully set forth herein.

50. Through the dispute correspondences purportedly drafted, signed, and sent by a consumer to Plaintiff or Class Members, Defendant represented that the consumer wished to dispute a debt.

51. Defendant's representation is material because Plaintiff and Class Members are obligated by the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Texas Debt Collection Act to investigate and respond to the dispute letter.

52. Defendant's representation is false because Defendant has drafted, signed, and mailed the dispute correspondence purportedly by consumers, without the consumers' knowledge or consent.

53. When Defendant made the representation, Defendant knew the representation was false or made the representation recklessly, as a positive assertion, and without knowledge of its truth.

54. Defendant intended that Plaintiff and Class Members act upon the representation.

55. Plaintiff and Class Members relied on Defendant's representation to investigate and respond to the dispute correspondences.

56. But for the truth of the signed disputed correspondences, Plaintiff and Class Members would not have initiated the investigation and responses to the dispute correspondences.

57. Because of Defendant's representation, Plaintiff and Class Members incurred costs and expenses investigating and responding to the dispute correspondences.

COUNT II
Fraud by Nondisclosure

58. Plaintiff repeats and re-alleges each of the preceding allegations as though fully set forth herein.

59. Defendant concealed from or failed to disclose to Plaintiff and Class Members that the purported consumer dispute correspondences sent by Defendant were sent without the consumers' knowledge or consent.

60. Defendant had a duty to disclose the facts to Plaintiff, because Defendant created a false impression that the correspondence was sent with a consumer's knowledge or consent by making drafting, signing, and mailing the dispute correspondence in the consumer's name.

61. Defendant's representation is material because Plaintiff and Class Members are obligated by the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Texas Debt Collection Act to investigate and respond to the dispute correspondence.

62. When Defendant made the representation, Defendant knew Plaintiff and Class Members were ignorant of the fact that the consumers did not authorize the dispute correspondence.

63. Neither Plaintiff nor Class Members had an equal opportunity to discover this fact.

64. Defendant was deliberately silent when it had a duty to speak.

65. By failing to disclose the facts, Defendant intended to induce Plaintiff and Class Members to conduct an investigation and respond to the dispute correspondence.

66. Plaintiff and Class Members relied on Defendant's nondisclosure.

67. Plaintiff and Class Members incurred costs and expenses investigating and responding to the dispute correspondences.

COUNT III
Tortious Interference with Existing Contract with Creditors

68. Plaintiff repeats and re-alleges each of the preceding allegations as though fully set forth herein.

69. Plaintiff and Class Members had valid contracts with creditors.

70. The contracts with creditors allowed Plaintiff and Class Members to collect debt on behalf of the creditors from third-party debtors.

71. Defendant willfully and intentionally interfered with the contracts by sending purported consumer dispute correspondences without the consumers' knowledge or consent.

72. Defendant's interference proximately caused hindrances to Plaintiff and Class Members' contractual obligations, because Plaintiff and Class Members had to investigate and respond to the dispute correspondences, which delayed Plaintiff and Class Members' ability to collect the valid debts.

73. Plaintiff and Class Members incurred actual damages or loss from the delays caused by the purported consumer dispute correspondences drafted, signed, and mailed by Defendant without the consumers' knowledge or consent.

COUNT IV
Tortious Interference with Prospective Relations

74. Plaintiff repeats and re-alleges each of the preceding allegations as though fully set forth herein.

75. Plaintiff and Class Members had a reasonable probability of entering into a business relationship with third-party creditors who sought to have their debts collected.

76. Defendant intentionally interfered with the relationship by inundating Plaintiff and Class Members with purported consumer dispute correspondences drafted, signed, and mailed by Defendant without the consumers' knowledge or consent.

77. Defendant's conduct of drafting, signing, and mailing purported consumer dispute correspondences without the consumers' knowledge or consent is independently tortious or unlawful.

78. The purported consumer dispute correspondences drafted, signed, and mailed by Defendant without the consumers' knowledge or consent caused delays to Plaintiff and Class Members' business operations.

79. Because of the delays caused by Defendant's tortious or unlawful conduct, Plaintiff and Class Members could not enter into the business relationship with third-party creditors.

80. Defendant's interference proximately caused Plaintiff and Class Members' injury.

81. Plaintiff and Class Members suffered actual damage or loss by their failure to enter into the business relationship with third-party creditors.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

82. Plaintiff repeats and re-alleges each of the preceding allegations as though fully set forth herein.

83. Unless Defendant, its employee or agent, and any other persons or entities acting in concert with Defendant are restrained and enjoined from undertaking and maintaining the conduct and activities described above, Plaintiff will continue to suffer imminent and irreparable harm for which Plaintiff has no adequate remedy at law.

84. Specifically, Plaintiff will continue to receive the frivolous dispute correspondences purportedly from consumers but drafted, signed, and sent by Defendant with the knowledge and consent of the consumer—dispute correspondences for which Plaintiff is obligated by law to investigate and respond.

85. Furthermore, the activities described prove that Plaintiff is likely to succeed on the merits of its suit.

86. Accordingly, Plaintiff requests that this Court issue an injunction prohibiting Defendant, its employee or agent, and all other persons or entities acting in concert with Defendant from drafting, signing, or mailing dispute correspondences.

87. Furthermore, to preserve the right of Plaintiff during the pendency of this action, Defendant should be cited to appear and show cause as to why they should not be enjoined from engaging in any of the conduct described above, during the pendency of this action.

88. At present, Plaintiff respectfully requests a Permanent Injunction be issued, after final trial for this action, permanently enjoining Defendant from directly or indirectly engaging in any of the conduct described above.

JURY DEMAND

89. Plaintiff, individually and behalf of the Class, demands a trial by jury trial.

PRAYER FOR RELIEF

Considering the above premises, Plaintiff THE CBE GROUP, INC, individually and on behalf of the Class, respectfully prays for the following relief:

a. Injunctive relief, against Defendant, its employees, agents, and all persons acting in concert with them, from engaging in the unlawful practices and patterns set forth herein;

b. A designation of this action as a class action on behalf of the Class Members; recognizing, approving, and certifying the Class; appointing Plaintiff and their counsel to represent the Class as specified herein;

c. An award of actual and exemplary damages against Defendant;

d. An award of pre-judgment and post-judgment interest;

e. An award of costs and expenses of this action;

f. An award of reasonable attorney's fees; and

g. Such other and further legal and equitable relief as this Court deems just and proper.

Dated: July 14, 2017

Respectfully Submitted,

MALONE AKERLY MARTIN PLLC

/s/ Robbie Malone
ROBBIE MALONE
State Bar No. 12876450
Email: rmalone@mamlaw.com
EUGENE XERXES MARTIN, IV
State Bar No. 24078928
Email: xmartin@mamlaw.com

Northpark Central, Suite 1850
8750 North Central Expressway
Dallas, Texas 75231
TEL: (214) 346-2630
FAX: (214) 346-2631

COUNSEL FOR PLAINTIFF

STATE OF TEXAS }
COUNTY OF DALLAS }

I, FELICIA PITRE, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears on record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 21st day of Sept, A.D., 2017.

FELICIA PITRE, DISTRICT CLERK
DALLAS COUNTY, TEXAS
By Michael E Clark Deputy

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

AD ASTRA RECOVERY SERVICES, INC., Plaintiff, v. JOHN CLIFFORD HEATH, *ET AL.*, Defendants.	Case No. 18-1145-JWB

SCHEDULING ORDER

On August 20, 2018, in accordance with Fed. R. Civ. P. 16, the undersigned U.S. Magistrate Judge, K. Gary Sebelius, conducted a scheduling conference in this case with the parties.[1] Plaintiff appeared through counsel, Lee Thompson, Hilary F. Korman, and Nicholas C. Harbist. Defendant appeared through counsel, Philip R. Dupont, Brent W. Martinelli, and Frank Alvarez.

After consultation with the parties, the court enters this scheduling order, summarized in the table that follows:

[1] As used in this scheduling order, the term "plaintiff" includes plaintiffs as well as counterclaimants, cross-claimants, third-party plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term "defendant" includes defendants as well as counterclaim defendants, cross-claim defendants, third-party defendants, and any other parties who are defending against affirmative claims for relief.

SUMMARY OF DEADLINES AND SETTINGS	
Event	Deadline/Setting
Plaintiff's settlement proposal	**September 24, 2018**
Defendant's settlement counter-proposal	**October 19, 2018**
Jointly filed mediation notice, or confidential settlement reports to magistrate judge	**November 9, 2018**
Mediation completed	**February 28, 2019**
All discovery completed	**August 20, 2019**
Experts disclosed by plaintiff	**May 20, 2019**
Experts disclosed by defendant	**June 19, 2019**
Rebuttal experts disclosed	**July 19, 2019**
Physical and mental examinations	**n/a**
Jointly proposed protective order submitted to court	**September 6, 2018**
Motion and brief in support of proposed protective order (only if parties disagree about need for and/or scope of order)	**September 6, 2018**
Motions to dismiss	**n/a**
Motions to amend	**November 20, 2018**
All other potentially dispositive motions (e.g., summary judgment) and motions challenging admissibility of expert testimony	**September 18, 2019**
Comparative fault identification	**n/a**
Proposed pretrial order due	**August 28, 2019**
Pretrial conference	**September 4, 2019 at 10:00 AM**
Trial	**n/a**

1) Alternative Dispute Resolution (ADR).

After discussing ADR during the scheduling conference, the court has determined that settlement of this case potentially would be enhanced by use of early mediation. Toward that end, plaintiff must submit a good-faith settlement proposal to defendant by **September 24, 2018**. Defendant must make a good-faith counter-proposal by **October 19, 2018**. By **November 9, 2018**, unless the parties have jointly filed a notice stating the full name, mailing address, and telephone number of the person whom they have selected to serve as mediator, along with the firmly scheduled date, time, and place of mediation, each party must submit a confidential settlement report by e-mail to the undersigned U.S. Magistrate Judge (but not the presiding U.S. District Judge). These reports must briefly set forth the parties' settlement efforts to date, current evaluations of the case, views concerning future settlement negotiations, the overall prospects for settlement, and a specific recommendation regarding mediation or any other ADR method. If the parties cannot agree on a mediator and any party wishes the court to consider a particular mediator or other ADR neutral, then up to three nominations may be provided in the confidential settlement reports; such nominations must include a statement of the nominee's qualifications and billing rates, and confirmation that the nominee already has pre-cleared all ethical and scheduling conflicts. These reports must not be filed with the Clerk's Office. Absent further order of the court, mediation must be held no later than **February 28, 2019**. An ADR report must be filed by defense counsel within 14 days of any scheduled ADR process, using the form located on the court's website:

http://www.ksd.uscourts.gov/adr-report/

2) Discovery.

a) The parties already have served their initial disclosures with regard to witnesses, exhibits, damage computations, and any applicable insurance coverage, as required by Fed. R. Civ. P. 26(a)(1). Supplementations of those disclosures under Fed. R. Civ. P. 26(e) must be served at such times and under such circumstances as required by that rule. In addition, such supplemental disclosures must be served by **July 11, 2019**, 40 days before the deadline for completion of all discovery. The supplemental disclosures served 40 days before the deadline for completion of all discovery must identify all witnesses and exhibits that probably or even might be used at trial. The opposing party and counsel should be placed in a realistic position to make judgments about whether to take a particular deposition or pursue follow-up "written" discovery before the time allowed for discovery expires. Should anything be included in the final disclosures under Fed. R. Civ. P. 26(a)(3) that has not previously appeared in the initial Rule 26(a)(1) disclosures or a timely Rule 26(e) supplement thereto, the witness or exhibit probably will be excluded from offering any testimony under Fed. R. Civ. P. 37(c)(1).

b) All discovery in this case must be commenced or served in time to be completed by **August 20, 2019**. Under recent amendments to the Federal Rules of Civil Procedure, the court respectfully reminds the parties and counsel that they are entitled to obtain pretrial discovery regarding any nonprivileged matter *provided* it's (a) relevant to a party's claim or defense, AND (b) proportional to the needs of this case. Under Fed. R. Civ. P. 26(b)(1), whether any particular discovery request is proportional is to be determined by considering, to the extent they apply, the following six factors: (1) the importance of the issues at stake in the action, (2) the amount in controversy, (3) the parties' relative access to relevant information, (4) the parties' resources, (5)

the importance of the discovery in resolving the issues, and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

c) If expert testimony is used in this case, disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, must be served by plaintiff by **May 20, 2019**, and by defendant by **June 19, 2019**; disclosures and reports by any rebuttal experts must be served by **July 19, 2019**. The parties must serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 14 days after service of the disclosures. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2)(B) has been provided) and need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel must confer or make a reasonable effort to confer consistent with D. Kan. Rule 37.2 before filing any motion based on those objections.

d) The parties agree that physical or mental examinations pursuant Fed. R. Civ. P. 35 are not appropriate in this case.

e) Consistent with the parties' agreements as set forth in their planning conference report, electronically stored information (ESI) in this case will be handled as follows:

1. The Parties will determine and advise whether any potentially relevant ESI is stored by third parties.

2. The Parties agree to the preservation of ESI, which includes but is not limited to: attachments, word processing documents, spreadsheets, graphics and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer

logs, text messages, backup materials, native files, and any data stored in social media.

3. The Parties agree to the elimination of duplicative ESI across all custodians.

4. The Parties will attempt to delineate between files that are systems generated rather than user generated.

5. The Parties are not aware of any potentially relevant information that has been deleted or purged, thus obviating the need for an agreement for restoration.

6. The attorneys for the respective parties have issued litigation hold notifications, specifically to make certain that there is no metadata scrubbing or deletion of embedded data, among other things.

7. The Parties agree to use digital bates stamping (hash algorithm for unique identification) for the production of ESI.

8. The parties agree that ESI production will be exchanged via an FPT or similar secure file share-site.

f) Consistent with the parties' agreements as set forth in their planning conference report, claims of privilege or of protection as trial-preparation material asserted after production will be handled as follows: "The parties will submit a clawback agreement on inadvertently-produced, privileged and/or trial-preparation materials. It will be included in the parties' forthcoming proposed protective order."

g) To encourage cooperation, efficiency, and economy in discovery, and also to limit discovery disputes, the court adopts as its order the following procedures agreed to by parties and counsel in this case:

i. The parties will meet and confer in an attempt to resolve discovery disputes in accordance with Fed. R. Civ. P. 37(a)(1) and D. Kan. Rule. 37.2.

ii. Discovery disputes will be resolved with a phone call between lead counsel.

iii. Documents will be produced on a rolling basis.

iv. Exhibits will be numbered sequentially.

h) No party may serve more than 25 interrogatories, including all discrete subparts, on any other party.

i) No more than 20 depositions may be taken by plaintiff, and no more than 20 depositions may be taken by defendants collectively. Each deposition must be limited to 7 hours. All depositions must be governed by the written guidelines that are available on the court's website:

http://www.ksd.uscourts.gov/deposition-guidelines/

j) Discovery in this case may be governed by a protective order. If the parties agree concerning the need for and scope and form of such a protective order, they must confer and then submit a jointly proposed protective order by **September 6, 2018**. This proposed protective order should be drafted in compliance with the guidelines available on the court's website:

http://www.ksd.uscourts.gov/guidelines-for-agreed-protective-orders-district-of-kansas/

At a minimum, such proposed orders must include a concise but sufficiently specific recitation of the particular facts in this case that would provide the court with an adequate basis upon which to make the required finding of good cause pursuant to Fed. R. Civ. P. 26(c). A pre-approved form of protective order is available on the court's website:

http://www.ksd.uscourts.gov/flex/?fc=9&term=5062

If the parties disagree concerning the need for, and/or the scope or form of a protective order, the party or parties seeking such an order must file an appropriate motion and supporting memorandum, with the proposed protective order attached, by **September 6, 2018**.

k) The parties consent to electronic service of disclosures and discovery requests and responses. *See* Fed. R. Civ. P. 5(b) and D. Kan. Rules 5.4.2 and 26.3.

l) The expense and delay often associated with civil litigation can be dramatically reduced if the parties and counsel conduct discovery in the "just, speedy, and inexpensive" manner mandated by Fed. R. Civ. P. 1. Accordingly, the parties are respectfully reminded that this court plans to strictly enforce the certification requirements of Fed. R. Civ. P. 26(g). Among other things, Rule 26(g)(1) provides that, by signing a discovery request, response, or objection, it's certified as (i) consistent with the applicable rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law; (ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. If a certification violates these restrictions without substantial justification, under Rule 26(g)(3), the court *must* impose an appropriate sanction on the responsible attorney or party, or both; the sanction *may* include an order to pay the reasonable expenses, including attorney fees, caused by the violation. Therefore, *before* the parties and counsel serve any discovery requests, responses, or objections in this case, lest they incur sanctions later, the court *strongly* suggests that they

carefully review the excellent discussion of Rule 26(g) found in *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008).

3) Motions.

a) A motion to dismiss is not expected to be filed.

b) Any motion for leave to join additional parties or to otherwise amend the pleadings must be filed by **November 20, 2018**.

c) All other potentially dispositive motions (e.g., motions for summary judgment), must be filed by **September 18, 2019**. The court plans to decide dispositive motions, to the extent they are timely filed and briefed without any extensions, approximately 60 days before trial.

d) Compliance with Fed. R. Civ. P. 56 and D. Kan. Rule 56.1 is mandatory, i.e., summary-judgment briefs that fail to comply with these rules may be rejected, resulting in summary denial of a motion or consideration of a properly supported motion as uncontested. Further, the court strongly encourages the parties to explore submission of motions on stipulated facts and agreement resolving legal issues that are not subject to a good faith dispute. The parties should follow the summary-judgment guidelines available on the court's website:

http://www.ksd.uscourts.gov/summary-judgment/

e) All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed by **September 18, 2019**.

f) If issues remain unresolved after the parties have complied with the "meet and confer" requirements applicable to discovery-related motions under Fed. R. Civ. P. 37(a)(1) and

D. Kan. Rule 37.2, the parties and counsel are strongly encouraged to consider emailing the chambers of the undersigned magistrate judge to request a discovery conference *before* filing such a motion. But such a conference is not mandatory.

g) Any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 must be filed and served within 30 days of the default or service of the response, answer, or objection that is the subject of the motion, unless the time for filing such a motion is extended for good cause shown. Otherwise, the objection to the default, response, answer, or objection is waived. *See* D. Kan. Rule 37.1(b).

h) To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for the briefing or hearing of a motion, or for trial. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(a). Nor does this apply to modifying the requirements of Fed. R. Civ. P. 26(a)(2) concerning experts' reports. *See* D. Kan. Rule 26.4(c).

i) The arguments and authorities section of briefs or memoranda submitted must not exceed 30 pages, absent an order of the court.

4) Pretrial Conference, Trial, and Other Matters.

a) The parties agree that principles of comparative fault do not apply to this case.

b) Pursuant to Fed. R. Civ. P. 16(a), a final pretrial conference is scheduled for **September 4, 2019 at 10:00 AM**. This pretrial conference will be conducted by telephone unless the judge determines that the proposed pretrial order is not in the appropriate format or that there are some problems requiring counsel to appear in person. **Participants shall dial into the**

conference call at 888-363-4749, enter access code 3977627#, and follow the prompts to join the call. Unless otherwise notified, the undersigned U.S. Magistrate Judge will conduct the conference. No later than **August 28, 2019,** defense counsel must submit the parties' proposed pretrial order (formatted in Word or WordPerfect) as an attachment to an e-mail sent to *ksd_sebelius_chambers@ksd.uscourts.gov*. The proposed pretrial order must not be filed with the Clerk's Office. It must be in the form available on the court's website:

http://www.ksd.uscourts.gov/flex/?fc=9&term=5062

The parties must affix their signatures to the proposed pretrial order according to the procedures governing multiple signatures set forth in paragraphs II(C) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases*.

c) The parties expect the trial of this case to take approximately 5-8 trial days. The court will subsequently set the case for trial.

d) The parties are not prepared to consent to trial by a U.S. Magistrate Judge at this time.

e) This court, like the Kansas Supreme Court, has formally adopted the Kansas Bar Association's *Pillars of Professionalism* (2012) as aspirational goals to guide lawyers in their pursuit of civility, professionalism, and service to the public. Counsel are expected to familiarize themselves with the *Pillars of Professionalism* and conduct themselves accordingly when litigating cases in this court. The *Pillars of Professionalism* are available on this court's website:

http://www.ksd.uscourts.gov/pillars-of-professionalism/

This scheduling order will not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated August 20, 2018, at Topeka, Kansas.

s/ K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge