

EXHIBIT Q

UNITED STATES OF AMERICA
Before the
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

)
In the Matter of:)
)
)
INTEGRITY ADVANCE, LLC and)
JAMES R. CARNES,)
)
Respondents.)

ORDER DENYING FURTHER DISCOVERY
ON STATUTE OF LIMITATIONS ISSUE

BACKGROUND

Procedural History

On August 16, 2019, I conducted an initial scheduling conference in this matter. At the conference, I made the decision to reopen the record with regards to the statute of limitations issue based upon a decision by the D.C. Circuit Court of Appeals, issued after the previous Administrative Law Judge's (ALJ) recommended decision, that could potentially impact the current matter. *See PHH Corp. v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016) (finding *inter alia* that statutes of limitations apply to claims brought in CFPB's administrative proceedings); and *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (en banc court reversing some parts of the previous panel's decision, but reinstating portion relating to applicability of statutes of limitations). I directed the parties to meet and confer and provide me with a joint proposal for supplementing the record.¹

The parties subsequently submitted a *Joint Statement on Fact Development Regarding Statute of Limitations Defense* on August 23, 2019 (*Joint Statement*; Doc. 231). Respondents'

¹ I note that contrary to Respondents' representation in *Respondents' Brief in Support of Further Discovery on the Statute of Limitations Issue* (Doc. 236), I did not recognize that "Respondents were denied the opportunity to develop the factual record on the statute of limitations issue." Respondents' Brief at p. 3. That characterization is either an overstatement or a misunderstanding of what I said. The point I was making was that there had been a change in the relevant case law and the parties had not had a chance to fully address its impact in the prior proceeding due to the timing of the decision. Therefore, the record is silent as to the applicability of *PHH Corp.* to this matter.

I find that EC have provided documentation showing the material facts underlying their decision to recommend the commencement of enforcement proceedings. I further find that Respondents are attempting to subpoena documents via their subpoena categories 3 and 4 (Doc. 232, Att. A) that clearly fall within the categories of documents that may properly be withheld under Rule 206(b). Respondents have not provided convincing authority entitling them to such categories of information. Accordingly, I DENY Respondents' request for issuance of a subpoena for these two categories, i.e., internal correspondence and internal reports, memoranda, notes, analysis and other documents. I find that the subpoena of these documents is both unreasonable and excessive in scope.

3. Are Respondents entitled to a withheld document list?

In their brief, Respondents acknowledge that some of the documents they are seeking "could be privileged" (Doc. 236 at 13). They therefore request that EC be ordered to provide a "privilege log."⁷ In support of their request for a privilege log they cite to Rule 206(c) which provides that a hearing officer *may* require the OE to produce a list of documents or categories of documents withheld pursuant to paragraphs (b)(1)(i) through (v). Respondents again cite to the *Universal Debt Sols.* case, described above, in which the court did not even address the issue of a withheld document list, but emphasized that the defendants in that case were entitled only to the factual bases for the CFPB's allegations. I therefore do not find the case particularly helpful or supportive of Respondents' request for a withheld document list. Respondents did not cite to any other cases or authorities to support their position that they are entitled to a withheld document list. EC did not address the issue of a withheld document list in its reply brief.

Rule 206(c) provides for the possible production of a "withheld document list" and states that the hearing officer *may* require the OE to produce a list of documents or categories of documents withheld based upon the five withholding categories set forth above or to submit to the hearing officer any document withheld.

The commentary regarding Rule 206(c) states only that a hearing officer *may* require the OE to submit a withheld document list. It provides that the hearing officer *may* require the OE to submit a list of documents or categories of documents withheld "when appropriate" but does not elaborate further. 77 Fed. Reg. 39058, 39074 (June 29, 2012).

I do not find it appropriate in this case to compel EC to produce a detailed withheld document list. Although the rules provide that I may alternatively require EC to provide a list of "categories" of documents that it wishes to withhold, based on the briefs, it is clear that those categories would include categories three and four, set forth in Respondents' subpoena request: internal correspondence, reports, memoranda, notes, analysis, etc. I therefore find requiring a category list to be an unnecessary and dilatory exercise. Given that the documents in question involve EC's internal correspondence and internal reports, etc., reflecting counsels' analysis of the

⁷ I believe what RC are referring to by "privilege log" is a "withheld document list" as discussed in Rule 206(c).