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7 CREDIT REPAIR CLOUD, AND DANIEL ROSEN

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 CONSUMER FINANCIAL
PROTECTION BUREAU,

13 Plaintiff,

14 v.

15 DANIEL A. ROSEN, INC., D/B/A
16 CREDIT REPAIR CLOUD, AND
17 DANIEL ROSEN,

18 Defendants.

Case No.: 2:21-cv-07492 VAP (JDEx)

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

JURY TRIAL DEMANDED

Date: February 14, 2022
Time: 2:00 p.m.
Location: Courtroom 8A, 8th Floor
350 West 1st Street
Los Angeles, CA 90012
Judge: Honorable Virginia A Phillips

Complaint Filed: September 20, 2021
Trial Date: None Set

1 **TO THIS HONORABLE COURT, TO ALL PARTIES AND TO THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on February 14, 2022 at 2:00 p.m. or as soon
4 thereafter as the matter may be heard before the Honorable Judge Virginia A Phillips
5 in Courtroom 8A of the above-entitled court, located at 350 West 1st Street, Los
6 Angeles, CA 90012, Defendants DANIEL A. ROSEN, INC., D/B/A CREDIT
7 REPAIR CLOUD, and DANIEL ROSEN (collectively, “Defendants”), by and
8 through their counsel, will and hereby do respectfully move this Honorable Court, for
9 an Order dismissing this action in its entirety and with prejudice pursuant to Federal
10 Rule of Civil Procedure Rule 12(b)(6).

11 Defendants request dismissal of all of the claims asserted against them. As a
12 threshold matter, Plaintiff does not have authority to enforce the Telemarketing Sales
13 Rule (“TSR”) against Defendants because they are neither a “covered person,” nor
14 “service provider,” and the product/services at issue are not a “consumer financial
15 product or service,” as defined under 12 U.S.C. § 5481. Second, Plaintiff’s
16 Complaint does not state facts sufficient to comply with the pleading requirements of
17 Rule 8 and thus fails to state a claim for relief for all three causes of action. Finally,
18 Plaintiff’s claims should be dismissed because the Credit Repair Organization Act’s
19 (“CROA”) trumps the application of the TSR’s “advance fee” rule in the credit repair
20 industry.

21 This motion is made following the conference of counsel pursuant to L.R. 7-3
22 which took place on November 15, 2021.

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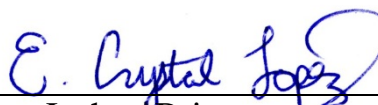
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1 This motion is based upon this Notice of Motion, the attached Memorandum
2 of Points and Authorities, the pleadings, documents, and records on file in this
3 action, all other matters judicially noticeable, such further papers as may be filed in
4 connection with this Motion, and on further documentary evidence and oral
5 argument as this Court may allow at the hearing.

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7 Dated: December 17, 2021

Respectfully submitted,

8 MINTZ LEVIN COHN FERRIS GLOVSKY AND
9 POPEO P.C.

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11 By: Joshua Briones
E. Crystal Lopez

12 Attorneys for Defendants,
13 DANIEL A. ROSEN, INC., D/B/A
14 CREDIT REPAIR CLOUD, AND
15 DANIEL ROSEN

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