

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LAW OFFICES OF CRYSTAL  
MORONEY, P.C.,

Plaintiff,

v.

BUREAU OF CONSUMER FINANCIAL  
PROTECTION

and

KATHY KRANINGER, in her official  
capacity as Director of the Bureau of  
Consumer Financial Protection,

Defendants.

Case No. 7:19-cv-11594 (KMK)

**AMENDED VERIFIED  
COMPLAINT FOR PERMANENT  
INJUNCTIVE AND  
DECLARATORY RELIEF**

**| JURY TRIAL DEMANDED |**

Plaintiff Law Offices of Crystal Moroney, P.C. (“Ms. Moroney’s Law Firm” or the “Law Firm”) submits this Amended Verified Complaint for Permanent Injunctive and Declaratory Relief to declare the actions of Defendant Bureau of Consumer Financial Protection, also known as the Consumer Financial Protection Bureau (“the Bureau” or “CFPB”), and Defendant Director Kathy Kraninger, unconstitutional and void of statutory authority, and alleges as follows:

**INTRODUCTORY STATEMENT**

This case offers an object lesson on what happens to civil liberties when an administrative agency lacks any semblance of control or oversight from the executive or legislative branches. Only the judicial branch—and this Court in particular—can restore Plaintiff’s civil liberties by reestablishing constitutional order and commanding respect for Plaintiff’s due process rights.

“[O]ther than the President, the Director of the CFPB is the single most powerful official in the entire U.S. Government, at least when measured in terms of unilateral power. That is not an overstatement.”<sup>1</sup> Because she is removable only for cause, the President cannot set CFPB’s policy priorities or exercise effective oversight of CFPB’s enforcement activities or its financial operating plans or forecasts.<sup>2</sup> Neither the President nor Congress can review or restrain the Director’s budget, and she can demand disbursements of up to 12% of Federal Reserve receipts per year (with statutory adjustments) to fund her agency.<sup>3</sup> In FY2020, CFPB can demand **\$695.9 million** in effectively off-the-books funding free from congressional appropriation.<sup>4</sup>

CFPB’s structure evades constitutional governance. CFPB’s for-cause removal provision violates Article II, § 3’s Take Care Clause because the President is the chief executive, and he is responsible to see that the laws are faithfully executed. He cannot fulfill this duty if he has limited control over the most powerful official in the executive branch aside from himself. Moreover, Congress cannot divest itself of its constitutional responsibility to appropriate funds to government operations through bicameral passage and presentment of legislation for the President’s signature. CFPB’s funding mechanism violates Article I, § 1’s Vesting Clause and § 9’s Appropriations Clause by ceding this funding authority to an administrative agency—a clear affront to the Nondelegation Doctrine.

It should come as no surprise that a self-funded federal agency completely free from oversight by the political branches would serve its own ends, rather than that laid out for it by Congress. Such has been the experience of Plaintiff Law Offices of Crystal Moroney, P.C., a

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<sup>1</sup> *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 171 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).

<sup>2</sup> *See, e.g.*, 12 U.S.C. §§ 5492(c)(4) & 5497(a)(4)(E).

<sup>3</sup> *See, e.g.*, 12 U.S.C. § 5497(a)(1) & (2).

<sup>4</sup> CFPB CFO Update (Mar. 16, 2020) available at [https://files.consumerfinance.gov/f/documents/cfpb\\_cfo-update\\_report\\_fy-2020\\_q1.pdf](https://files.consumerfinance.gov/f/documents/cfpb_cfo-update_report_fy-2020_q1.pdf).

lawful business with an A-minus Better Business Bureau rating and without any complaints of unlawful consumer financial practices against it at CFPB. Ms. Moroney's Law Firm has been subject to an ongoing series of investigative and enforcement manipulations, delays, and dirty tricks that beggar belief in the good faith of the agency.

In June 2017, Defendants issued a Civil Investigative Demand ("CID" or "Demand") seeking *inter alia* production of certain confidential and privileged documents. Plaintiff declined to disclose privileged documents due to attorney ethics requirements, but she<sup>5</sup> turned over thousands of pages of other documents pursuant to the CID. Eventually, Defendants asked this Court to compel Plaintiff's production of the confidential and privileged documents. Just four days prior to a November 2019 hearing that would have conclusively resolved the privilege issue—as well as addressed the Law Firm's challenge to CFPB's constitutional authority—the Bureau withdrew the CID. So, two and a half years and nearly \$75,000 in legal fees after CFPB began its investigation, the Bureau said that the Court "must" dismiss the case before it, claiming that there was nothing left to decide.

But it soon became apparent that CFPB's mootness claim was a precalculated ruse. Within hours of the dismissal, CFPB announced that it would issue a *second* Demand, which sheer timing dictates must have been its plan all along. The new CID proved to be substantively the same as the first. It seems plain that Defendants manufactured mootness for an ulterior motive. At best, Defendants sought to forestall the Court from ruling on the attorney-client

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<sup>5</sup> This Amended Verified Complaint employs the pronouns "she" and "her" instead of "it" because Plaintiff is a professional corporation. A corporation is an artificial entity that can only act through its agents. *See Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983). Crystal G. Moroney, Esq. is the majority shareholder of Ms. Moroney's Law Firm. She is responsible for its course and conduct in its provision of legal services and she alone decides whether and how to address demands made by Defendants. Moreover, the law licenses at risk of state bar censure for the unethical disclosure of client confidences are Ms. Moroney's, not Ms. Moroney's Law Firm. While Ms. Moroney may not be a plaintiff in this action, she is inextricably intertwined with Plaintiff regarding the operative facts of this case.

privilege question and Plaintiff's challenge to CFPB's constitutional legitimacy. Such rulings threatened to end the case in Plaintiff's favor or at least to stay the enforcement action pending the U.S. Supreme Court's *Seila Law* decision expected in June 2020. Either way a ruling would have provided Plaintiff with relief from the agency's ongoing investigation. In retrospect, mooting the case under false pretenses enabled Defendants to string out their never-ending investigatory process beyond the watchful eye of the courts, delay justice, employ further coercive tactics, and turn the process itself into a punishment of Ms. Moroney's Law Firm.

But CFPB did not stop there. Within one week, the Bureau further turned the screws on Plaintiff by serving third-party CIDs on her clients. That is, once freed from judicial supervision, Defendants quickly renewed their coercive efforts to obtain attorney-client privileged communications. This obnoxious tactic created an air of reputational risk to the business and stigmatized Ms. Moroney's Law Firm. In their coup de grâce, Defendants are intimidating Plaintiff's clients by increasing these clients' costs of regulatory compliance if they maintain a business relationship with Ms. Moroney's Law Firm.

Defendants' cynical and systematic scheme deprives Plaintiff of her liberty interest in working in the profession of her choice. It hardly matters whether Defendants mainly seek retribution for Plaintiff's temerity in challenging Defendants' right to obtain attorney-client privileged information and CFPB's constitutional legitimacy in court, or if they are chiefly motivated to tie up and eventually destroy the business. But as other cases have already demonstrated, CFPB does use tactics like the ones employed against Ms. Moroney's Law Firm when its aim is to shut down a legal but disfavored industry. Either way, the fact remains that

Defendants' Operation Choke Point-style tactics<sup>6</sup> violate Plaintiff's due process rights and interfere with her right to run a legal business.

Defendants' investigative strategies and tactics manifest a contemptuous disregard for the bounds of their own purported authority—especially having already been ruled unconstitutional by another court in this jurisdiction—and for the right of Plaintiff to engage in the lawful profession of her choice. Now it is time for CFPB to face the judicial scrutiny that it so disrespectfully and disingenuously circumvented on November 4, 2019. Serial investigations of Ms. Moroney's Law Firm and the punitive harassment of her clients has left her reputation in tatters and her business on the brink of insolvency.

The Plaintiff's request of this Court is a simple one, grounded in familiar notions of fundamental fairness. Ms. Moroney's Law Firm merely asks for the opportunity to present evidence of an astonishing abuse of process by a constitutionally defective and rogue federal agency<sup>7</sup> and to have her evidence judged on a level playing field before an impartial tribunal.

#### **JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction over this action pursuant to the Administrative Procedure Act 5 U.S.C. § 706, and 28 U.S.C. §§ 1331, 1346, and 2201, the All Writs Act § 28 U.S.C. 1651, and Federal Rule of Civil Procedure 71.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e).

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<sup>6</sup> Operation Choke Point's principal goal is "to 'choke out' companies the Administration considers a 'high risk' or otherwise objectionable, despite the fact that they are legal businesses." Staff of H. Comm. on Oversight & Gov't Reform, 113th Cong., Dep't of Justice's 'Operation Choke Point': Illegally Choking Off Legitimate Businesses? 1 (Comm. Print 2014). Operation Choke Point sought to leave payday lenders, in particular, "choked-out" from the lending marketplace by leveraging banks not to process electronic payments.

<sup>7</sup> CFPB is facing dissolution in an appeal awaiting argument in the United States Supreme Court. *Seila Law, LLC v. Consumer Financial Protection Bureau*, No. 19-7 (cert. granted to consider whether (1) CFPB is unconstitutionally structured; and (2) if it is unconstitutionally structured, whether the unconstitutional structure is fatal to the entire agency).

3. Sovereign immunity does not bar this action because Plaintiff seeks cessation of Defendants' unconstitutional conduct. Federal courts have jurisdiction "to issue injunctions to protect rights safeguarded by the Constitution[.]" See *Bell v. Hood*, 327 U.S. 678, 684 (1908).

### PARTIES

4. Plaintiff Law Offices of Crystal Moroney, P.C. is a law firm organized under the laws of the State of New York with a principal place of business in New City, New York.

5. Plaintiff is a woman-owned small business. Its majority shareholder, Crystal G. Moroney, Esq., is a member in good standing of the New York and New Jersey state bars. Ms. Moroney is the only attorney in her law firm that currently employs a staff of nine.

6. Defendant Bureau of Consumer Financial Protection is an independent executive agency of the United States of America. It regulates consumer financial products and services and is headquartered in Washington, District of Columbia.

7. Defendant Kathy Kraninger is the Director of the Bureau of Consumer Financial Protection. She is sued in her official capacity.

### FACTUAL ALLEGATIONS

#### **A. Ms. Moroney's Chosen Profession Is Attorney-at-Law and Her Law Firm's Chosen Practice Is Delinquent Debt Resolution**

8. Crystal G. Moroney, Esq.'s chosen profession is attorney-at-law. She was admitted to the New Jersey State Bar in 2007, and the New York State Bar in 2008.

9. Ms. Moroney's Law Firm is a lawful business, established in 2013, and organized and licensed under the laws of New York State.

10. Ms. Moroney's Law Firm represents clients resolving outstanding accounts with delinquent debtors. To advance her clients' goals and interests, Ms. Moroney's Law Firm

negotiates payment terms that afford debtors the opportunity to amicably resolve their delinquencies through reasonable repayment terms.

11. Ms. Moroney's Law Firm's clients demand confidentiality and discretion regarding the communications and documents shared with Plaintiff. Most of these documents are either protected from disclosure by the attorney-client communication privilege, or they contain highly sensitive consumer data that, if made public, could have devastating personal and professional consequences for debtors.

12. The Better Business Bureau has awarded Ms. Moroney's Law Firm an A-minus rating.

13. As a licensed attorney, her law practice is closely regulated by New York and New Jersey state bars. Ms. Moroney's continued licensure is conditioned upon her strict adherence to the New York and New Jersey Rules of Professional Conduct. Among other things, the Rules of Professional Conduct prohibit Ms. Moroney's Law Firm from disclosing confidential attorney-client communications, attorney work product, and other client confidences, absent a court order. *See, e.g.*, N.Y.R. of Prof'l Conduct 1.6 and N.J.R. of Prof'l Conduct 1.6.

14. Because Plaintiff resolves debt delinquencies, she must conform her business practices to federal consumer protection statutes including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Gramm-Leach-Bliley Act.

15. In addition to concurrent jurisdiction with other federal agencies, Defendants claim jurisdiction to regulate Ms. Moroney's Law Firm's compliance with these Acts pursuant to Title X of the Consumer Financial Protection Act (CFPA), which serves as CFPB's enabling statute. Defendants do not regulate the Law Firm's practice of law.

16. Ms. Moroney's Law Firm is obligated to abide by federal and state consumer finance protection laws regardless of whether Defendants, state agencies, or other federal agencies provide oversight and enforcement.

**B. Defendants Are Engaged in a Punitive and Harassing Investigation that Violates Due Process by Choking-off Essential Components of Plaintiffs' Business, Denying Plaintiff Her Right to Engage in the Profession of Her Choice**

17. Defendants' investigative strategies and tactics manifest a contemptuous disregard for the bounds of their own purported authority and the right of Plaintiff to engage in the lawful profession of her choice.

**i. Through Operation Choke Point, Defendants Have Engaged in a Pattern and Practice of Eliminating Lawful, Disfavored Businesses by Choking-off Essential Components of Targeted Businesses' Enterprises**

18. CFPB, in coordination with other federal agencies, has targeted "disfavored" (but lawful) businesses through a scheme known as Operation Choke Point. *See* C. Boyden Gray, RealClear Markets, *The FDIC's 'Operation Chokepoint' Settlement Doesn't Make Victims Whole* (June 26, 2019) (citing unsealed court documents implicating CFPB) *available at* [https://www.realclearmarkets.com/articles/2019/06/26/the\\_fdics\\_operation\\_chokepoint\\_settlement\\_doesnt\\_make\\_victims\\_whole\\_103798.html](https://www.realclearmarkets.com/articles/2019/06/26/the_fdics_operation_chokepoint_settlement_doesnt_make_victims_whole_103798.html) (Exhibit A) *and see* *Consumer Fin. Prot. Bureau v. Nationwide Biweekly Admin., Inc.*, No. 15-cv-02106, 2017 U.S. Dist. LEXIS 145923, \*35 (N.D. Cal. Sept. 8, 2017) (implicating CFPB in the larger scheme led by the Justice Department) (Exhibit B).

19. Operation Choke Point's principal goal is "to 'choke out' companies the Administration considers a 'high risk' or otherwise objectionable, despite the fact that they are legal businesses." Staff of H. Comm. on Oversight & Gov't Reform, 113th Cong., Dep't of



Justice’s ‘Operation Choke Point’: Illegally Choking Off Legitimate Businesses? 1 (Comm. Print 2014) (“Oversight Report”) (Exhibit C).

20. The initial targets of Operation Choke Point were payday lenders. *Id.* at 5. The Operation leveraged banks by threatening them with investigations if they did not terminate relationships with payday lenders—even those payday lenders with whom the banks had a longstanding and profitable relationship. *Id.* at 9. The plan worked well, leaving many payday lenders without a financial system within which to operate—choking them off from the lending marketplace. *Id.* at 6-7.

21. Additionally, the House Committee on Oversight’s investigation found that the Operation “threatens *countless* legal businesses well outside consumer finance.” *Id.* at 7. Thus, “[t]he sheer breadth of industries affected ... has generated significant concern with the objectives and scope of Operation Choke Point.” *Id.* at 2.

22. Operation Choke Point tactics include, but are not limited to, four key ploys:

a. Use attrition-leveraging tactics such as process-is-the-punishment<sup>8</sup> to coerce targets into acquiescence, *see, e.g., id.* at 11;

b. evade judicial scrutiny to operate outside due process protections, *see, e.g.,* Michael P. Malloy, *Balancing Public Confidence and Confidentiality: Adjudication*

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<sup>8</sup> The “process-is-the-punishment” tactic is founded upon the notion that the judicial system can be manipulated by parties to make one party’s exercise of his or her due process rights more costly than confessing to an adverse judgment early in the litigation process. By gradually increasing these costs through investigation and litigation—civil or criminal—one party (typically the party less vulnerable to excessive costs) can gain sufficiently substantial leverage over another to coerce settlement or waiver of procedural due process protections. *See e.g.,* Malcolm M. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (2d ed., 1992). The danger of gamesmanship in this regard is even more pronounced when the federal government is a party because the government is “the most powerful of parties.” *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2425 (2019) (Gorsuch, J., concurring in judgment). The disparity between the government and private parties’ resources are even more pronounced where, as here, the government-party is wholly unaccountable to the political branches and is headed by “the single most powerful official in the entire U.S. Government, at least when measured in terms of unilateral power. That is not an overstatement.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 171 (D.C. Cir. 2018) (Kavanaugh, J., dissenting).

Practices and Procedures of the Federal Bank Regulatory Agencies, 61 Temp. L. Rev. 723, 725 (1988);

c. classify targets as “reputational risks”<sup>9</sup> with whom choke points should not conduct business, *see, e.g.*, FDIC, Managing Risks in Third-Party Payment Processor Relationships, Supervisory Insights at 9-10 (Summer 2011) (Exhibit D); and

d. intimidate choke points with threats of additional regulatory scrutiny and costs for continuing business activities with targets, *see, e.g., id.* at 9.

**ii. Operation Choke Point—or Its Functional Equivalent—Continues Under the Auspices of CFPB as a Tool to Punish Lawful Businesses for Asserting Their Constitutional Rights and Challenging CFPB’s Statutory Authority**

23. On information and belief, after the Department of Justice and the Federal Deposit Insurance Corporation terminated their participation in Operation Choke Point, CFPB filled the void. Ian Murray, Competitive Enter. Inst., Operation Choke Point: The CFPB Is Now in Charge (Apr. 9, 2015) *available at* <https://cei.org/blog/operation-choke-point-cfpb-now-charge> (Exhibit E). This shift should be of little surprise, given that neither the President nor Congress can restrain or even direct the agency due to its unconstitutionally independent structure and abundant, on-demand funding.

24. On information and belief, Defendants use Operation Choke Point’s strategies and tactics to deprive investigation targets of their right to work in their chosen profession when the targets assert their due process rights or challenge CFPB’s constitutional authority.

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<sup>9</sup> “Reputational risk” refers to the potential for a negative perception to be imputed to one business simply because it is doing business with another with a bad reputation. Sufficient reputational risk can trigger a federal investigation. *See* Oversight Report at 1.

**iii. Disregarding Plaintiff's Due Process Rights, Defendants Are Targeting Ms. Moroney's Law Firm for Elimination by Tactically Choking-off Her Clients**

25. Ms. Moroney's Law Firm's key choke points are her clients, who are typically creditors or other debt resolution firms. Debt resolution firms offer ample opportunity to leverage Operation Choke Point tactics because they are particularly vulnerable to CFPB intimidation.

26. Defendants' investigation of the Law Firm is unlawful because it is punitive, harassing, threatens to eliminate a lawful business, and is not related to Defendants' statutory mission.

**a) Phase One: Process-Is-the-Punishment**

27. On information and belief, Defendants pressured Ms. Moroney's Law Firm to disclose confidential and privileged client information and communications because they knew Plaintiff's ethical duties prohibited her compliance and that noncompliance with her ethical duties put her at risk of state bar censure or disbarment.

28. On information and belief, Defendants believed that Ms. Moroney's Law Firm would be susceptible to Operation Choke Point process-is-the-punishment tactics because it is a small firm that could be readily driven into insolvency. Defendants' cynical tactic is working.

a. Ms. Moroney's Law Firm incurred almost \$75,000 in fees and costs negotiating, complying with, and defending against CFPB's mooted First Demand.

b. Direct fees and costs are not the only factors driving Ms. Moroney's Law Firm toward insolvency. Between June and October 2017, Ms. Moroney spent seven hours each workday and three hours each weekend day reviewing the First CID, sorting responsive and nonresponsive documents, identifying privileged materials, conferring with attorneys, conferring with clients, conferring with her in-house IT manager,

coordinating with outside IT consultants, preparing answers to interrogatories, and other tasks necessary to respond to the First CID. In addition to the personal toll this took on Plaintiff, this was valuable time not spent engaged in running and building her business.

c. Between September and November 2019, this pattern repeated itself. She spent five hours each weekday and three hours each weekend day preparing for the Judicial Review Hearing—a hearing that would never take place because Defendants manufactured mootness to avoid a result that could impinge on CFPB’s ability to take Ms. Moroney’s Law Firm out of the debt resolution business.

d. Plaintiff reduced her own salary from \$155,000 per year at the time of the First CID, to \$127,000 in 2017, and then \$104,000 in 2018, as a direct consequence of Defendants’ intransigent demands for confidential and privileged documents. The salary reductions were necessary to keep up with mounting legal bills and to limit the number of employees that the Law Firm was forced to lay off as a result of Defendants’ Demand.

e. Plaintiff was not able to make real estate decisions (*e.g.*, after eight years under lease, she has been forced to rent month-to-month to avoid a long-term commitment), capital investments (*e.g.*, replacing aging technology would be pointless if forced out of practice), or develop new business, due to the uncertainty created by the serial CIDs. A law firm that resolves debts must constantly earn new business, or it will fail.

29. In other words, whether the Law Firm complies with demands for confidential and privileged information or not, Defendants’ tactics can drive it out of business entirely. If these tactics continue unabated, Ms. Moroney’s Law Firm will become insolvent.

30. Defendants knowingly used unjustifiable delays to leverage Ms. Moroney's Law Firm into an expensive and precarious limbo:

a. On January 9, 2018, CFPB informed the Law Firm that it intended to seek judicial enforcement of the First CID, but Defendants did not file their Petition to Enforce until February 25, 2019—more than *one year* later.

b. By the time Defendants filed their Petition to Enforce, on information and belief, they had not reviewed thousands of pages of documents and data already submitted in response to the First CID, demonstrating that they did not have one iota of concern about whether Ms. Moroney's Law Firm might be treating financial consumers unfairly.

c. Even upon filing to enforce the First Demand, Defendants chose not to serve the Petition on Ms. Moroney's Law Firm until ordered to do so by the Court. Plaintiff learned of the Petition to Enforce on September 10, 2019—nearly *seven months* after its filing and *more than a year and a half* after Defendants announced their intention to enforce the First CID.

**b) Phase Two: Evade Judicial Scrutiny**

31. Moreover, on information and belief, Defendants never intended to allow the Court to rule on enforcement of the First CID—they filed the Petition to Enforce for the sole purpose of pushing the Law Firm to the precipice of insolvency, or over it.

a. Defendants' malingering continued while the Petition was pending before the Court. CFPB filed a Motion for an Extension of Time to Reply to Ms. Moroney's Law Firm's Response on October 11, 2019. The Court granted the extension to

November 4, 2019, but on November 1, 2019, Defendants sought a second extension. The Court granted the extension but would only extend to November 5, 2019.

b. Defendants claimed that the first extension was necessary because the Petition for Writ of Certiorari pending before the United States Supreme Court in *Seila Law LLC v. CFPB* was “likely to inform the Bureau’s response to Respondent’s constitutionality arguments.” Pet’r’s Mot. for an Extension of Time to Reply, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, ¶ 3 (Oct. 11, 2019) (ECF No. 19) (Exhibit F).

c. Defendants claimed that the second extension was necessary because, certiorari having been granted to *Seila Law*, “senior Bureau leadership [needed] additional time to complete its review.” Pet’r’s Second Mot. for an Extension of Time to Reply, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, ¶ 7 (Nov. 1, 2019) (ECF No. 23) (Exhibit G).

d. Despite these two extensions, Defendants did not allow the Court to decide the controversy between the parties. Instead, Defendants filed a Suggestion of Mootness stating that “the Court *must* dismiss [the Judicial Review Hearing] for lack of subject-matter jurisdiction.” Not. of Pet. Withdrawal of the Civil Investigative Demand & Suggestion of Mootness, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, at 1 (Nov. 4, 2019) (ECF No. 26) (Exhibit H) (emphasis added).

e. The Suggestion of Mootness failed to disclose an important fact: that CFPB intended, immediately following dismissal of the proceedings, to file a second CID.

f. Defendants claimed that the purpose for mootng the First Demand was to correct an error that they had *two and a half years* to correct—the CID’s deficient Notice of Purpose. *See* Conf. Tr. at 7, *Law Offices of Crystal Moroney v. CFPB*, No. 19-CV-1732-NSR (Nov. 21, 2019) (Exhibit I). This *post hoc* rationalization is just not believable.

g. Defendants’ principal purpose for mootng the First Demand was not to make the Notice of Purpose compliant with the law. In fact, they consistently argued that the Notice of Purpose was statutorily sufficient. Defendants’ principal goal was to prevent the Court from staying the case while *RD Legal Funding* and *Seila Law* were pending before the Second Circuit and the Supreme Court, respectively:

[MR. FRIEDL:] In terms of the timing, I should say the Bureau’s position was and continues to be that this initial notification of purpose in the first CID was sufficient, did satisfy the statute, *but what changed* was the Supreme Court granted cert. in *Seila Law* at this time to address the constitutionality of the removal provision. So the plaintiff had already asked Judge Román to stay that case pending the Second Circuit’s resolution of the same question.

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So when the Supreme Court took the case, essentially the Bureau reasonably concluded that Judge Román -- you know, *the arguments for staying the case would – certainly that would be a reasonable course* for Judge Román to have pursued, so if the case was going to essentially be on ice until June, when the Supreme Court issues its decision, *we didn’t want to be in a position where we then get to that point*, the Supreme Court has either upheld the removal provision or severed it[.]

Hr’g Tr. at 30-31, *Law Offices of Crystal Moroney v. CFPB*, No. 19-cv-11594-KMK (Feb. 27, 2020) (emphasis added) (Exhibit J).

h. Thus, by their own admission, Defendants contrived mootness and successfully evaded judicial intervention that would have prohibited Defendants from

continuing their tactic of applying maximum financial pressure against Ms. Moroney's Law Firm.

32. On information and belief, Defendants' eleventh-hour Suggestion of Mootness intentionally and unnecessarily increased Ms. Moroney's Law Office's costs beyond what would have been necessary to simply pursue a good-faith regulatory enforcement action.

a. Within *hours* of this Court's canceling of the Judicial Review Hearing, CFPB announced its intention to serve the Second Demand, which Ms. Moroney's Law Firm received *one week* later. CFPB's November 7, 2019 e-mail announcement is attached as Exhibit K.

b. CFPB has candidly admitted that the Second CID is "seeking largely the same information" as the First Demand. Conf. Tr. at 7, *Law Offices of Crystal Moroney v. CFPB*, No. 19-CV-1732-NSR (Nov. 21, 2019).

c. Just *six days* after Defendants issued the Second Demand, Defendants issued CIDs to Ms. Moroney's Law Firm's client, FedChex Recovery, LLC.

d. On information and belief, Defendants have made demands of Plaintiff's other clients as well, seeking information protected from disclosure by applicable privileges and nondisclosure doctrines.

33. Successfully manipulating process to remove the Court from the picture had the operational benefit of maintaining maximum financial pressure on Ms. Moroney's Law Firm.

a. Serial CIDs have created even more uncertainty, making long-term business planning impossible.



b. The Second Demand has already cost Ms. Moroney's Law Firm nearly \$10,000 in direct defense costs to date, in addition to the \$75,000 she spent as a result of the First Demand. That does not count the indirect costs in time and attention.

c. To continue operations and in addition to accepting dramatic reductions to Ms. Moroney's personal salary, Ms. Moroney's Law Firm has made drastic reductions to her business. Seventeen employees had jobs with Ms. Moroney's Law Firm at the time of the First CID. Since then, and as a direct consequence of Defendants' lawless investigations, eight people have lost their jobs. The former Law Firm's employees are the collateral victims of Defendants' lawless investigatory rampage.

d. The dynamics of the business and the marketplace make it impossible for Plaintiff to reduce either her staff or her own compensation any further. The next step is insolvency.

**c) Phase Three: Classify Plaintiff as a "Reputational Risk" to Stigmatize Ms. Moroney's Law Firm**

34. Defendants have begun the next phase of Operation Choke Point, classifying Ms. Moroney's Law Firm—a lawful and suspicionless business—as a "reputational risk" to her choke points, stigmatizing the Law Firm in the view of her clients.

a. All lawyers' clients demand confidentiality and discretion regarding the communications and documents shared between them. Ms. Moroney's Law Firm's clients are no different.

b. In an attempt to comply with the First Demand, Plaintiff had sought waiver of privilege from her clients. Every client refused. Thus, on information and belief, her clients understood that the responsibility for protecting their privileged and sensitive information was the Law Firm's and the Law Firm's alone.

c. On information and belief, Ms. Moroney's Law Firm's clients were aware of the First CID and its withdrawal, but the clients were *not* aware of a second investigation until Defendants issued CIDs to the clients.

d. On information and belief, when the Law Firm's clients received CIDs from Defendants, her clients believed that their documents and communications were at risk of disclosure. This injured Plaintiff's standing with her clients and damaged her reputation.

e. On information and belief, Defendants are not investigating Ms. Moroney's Law Firm's clients out of any concern that Plaintiff has violated any consumer financial protection laws. Ms. Moroney's Law Firm is unaware of any allegations of unlawful acts against consumers, and CFPB has not informed her that documents disclosed in response to the First Demand revealed any wrongdoing or possibility of wrongdoing. Plaintiff is an attorney. She has been operating in accordance with the ethics of that profession. Her ethical duties are more demanding than those of an ordinary business. Because no individual complaint of illegal or unethical activity has been identified by Defendants, it stands to reason that Defendants are pursuing this investigation for other reasons.

f. On information and belief, Defendants issued CIDs to the Law Firm's clients to drive business away from the firm and raise doubts whether the Law Firm would be able to continue protecting its client confidences. Defendant's actions have resulted in, and will continue to cause, a stigma surrounding Ms. Moroney's Law Firm and have increased the perception of risk for clients working with her.

35. On information and belief, Defendants issued CIDs to the Law Firm's clients purposely to signal that doing business with Ms. Moroney's Law Firm carried with it the stigma of reputational risk to work with a firm that CFPB insinuates resolves debt in an unlawful or unethical manner.

36. On information and belief, Defendants are trying to stigmatize Ms. Moroney's Law Firm in the eyes of her future clients through insinuations of reputational risk.

**d) Phase Four: Intimidate Choke Points by Increasing Costs and Regulatory Scrutiny**

37. Having classified Ms. Moroney's Law Firm a "reputational risk," Defendants began the last phase of Operation Choke Point by increasing costs and regulatory burdens on Plaintiff's clients.

a. A lawyer who cannot keep client confidences or who has a reputation of not keeping client confidences will soon become a *former* lawyer.

b. A lawyer who is more expensive than his or her competitors, who does not offer greater quality or quantity of legal services in exchange for the additional cost, will not add marginal value for the clients he or she serves. He or she will soon become a *former* lawyer.

c. On information and belief, the Law Firm's clients now believe that their documents and communications are at risk of disclosure, making Ms. Moroney's Law Firm a much less attractive option for continued business relations.

d. On information and belief, the Law Firm's clients may question the Law Firm's prior excellent reputation for keeping client confidences based on their communications with CFPB, making Ms. Moroney's Law Firm a less attractive option for continued business relations.

e. On information and belief, Plaintiff's clients have expended considerable financial and human resources responding to and defending the third-party CIDs they received since November 2019.

f. On information and belief, by choosing to do business with Ms. Moroney's Law Firm, clients and future clients will fear that the stigma of associating with Ms. Moroney's Law Firm will draw additional and unwanted scrutiny from Defendants and regulatory compliance expenses.

38. On information and belief, Defendants' CIDs issued to the Law Firm's clients have purposely increased her clients' costs of doing business with Ms. Moroney's Law Firm above other less expensive and less "risky" options, making Ms. Moroney's Law Firm a much less attractive option for continued business relations. If these tactics continue unabated, Ms. Moroney's Law Office will lose clients and will not be able to find new ones.

### **C. Plaintiff Faces the Threat of Imminent Enforcement of Defendants' Demands**

39. Nearly three years ago, CFPB issued a Civil Investigative Demand to Ms. Moroney's Law Firm (the "First CID" or "First Demand").<sup>10</sup> CFPB's June 23, 2017 CID is attached as Exhibit L.

40. The First CID demanded three and a half years of documents, tangible things, written reports, and answers to questions. Ms. Moroney's Law Firm noted several objections to the First CID, including that the Demand lacked proportionality, imposed onerous deadlines, covered an excessive scope of time and materials requested, and included an insufficient Notice of Purpose.

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<sup>10</sup> CFPB issued the First CID under the leadership of Director Richard Cordray. It initiated enforcement under Director Kathy Kraninger.

41. But these issues paled in comparison with Ms. Moroney's Law Firm's principal concern: CFPB demanded documents and information protected from disclosure by nondisclosure privileges and doctrines, including the attorney-client communication privilege. Her inability to obtain a ruling on the lawfulness of these demands remains a Sword of Damocles over her and her clients.

42. The parties were able to negotiate mutually acceptable solutions to most of these contentions, but it became clear in August 2017 that CFPB was intractable when it came to its demand for privileged material. To break the impasse, Ms. Moroney's Law Firm engaged ethics counsel for independent advice on the privilege issue.

43. Ultimately, the Law Firm concluded that it was her Rule 1.6 ethical duty under the New York and New Jersey Codes of Professional Conduct to protect the confidentiality of attorney-client privileged material. But, in yet another effort to accommodate CFPB, she asked her clients if each would waive the privilege. Despite that the Law Firm's clients (owners of the privilege) each refused to waive their privilege, CFPB insisted that she violate her legal ethics and turn over the privileged documents.

44. In the end, Ms. Moroney's Law Firm substantially complied with the First CID by providing written responses and producing thousands of pages of documents and data. The only documents she refused to produce were those protected by attorney-client nondisclosure principles or those where nonprivileged and privileged materials were inextricably intertwined. Accordingly, Ms. Moroney's Law Firm withheld responses to Interrogatory No. 12, Written Reports Request Nos. 1-5 and 7, Document Request Nos. 2, 6, 12, and 14, and Tangible Things Request Nos. 1-4.

45. On January 9, 2018, CFPB informed Ms. Moroney’s Law Firm that it intended to seek judicial enforcement of the First CID unless she violated her Rule 1.6 duty of confidentiality. The Bureau then waited more than a year to file its Petition to Enforce Civil Investigative Demand in the United States District Court for the Southern District of New York (the “Petition to Enforce”). The Petition to Enforce is attached as Exhibit M.

46. Although CFPB initiated its Petition to obtain judicial review of its investigation on February 25, 2019, it chose to delay service of the Petition to Enforce on Ms. Moroney’s Law Firm. The Law Firm was not served until September 10, 2019, after the Honorable Nelson S. Román issued an Order to Show Cause, which set a hearing on the merits for November 8, 2019 (the “Judicial Review Hearing”), and ordered the Bureau to properly serve the Law Firm with the CFPB Petition.

47. Objecting to the Petition to Enforce, Ms. Moroney’s Law Firm asserted (among other things) that she substantially complied with the First CID and, perhaps more importantly, she identified fatal constitutional defects in CFPB’s enabling statute that rendered CFPB without legal authority to enforce the First Demand. Ms. Moroney’s Law Firm’s Response to Order to Show Cause is attached as Exhibit N.

48. After CFPB requested and received two filing extensions—and just three days prior to the Judicial Review Hearing—CFPB filed a Suggestion of Mootness. The Suggestion of Mootness voluntarily quashed the First CID.

49. Within hours of this Court’s canceling of the Judicial Review Hearing, CFPB announced its intention to serve another CID on Ms. Moroney’s Law Firm (the “Second CID” or “Second Demand”), which Ms. Moroney’s Law Firm received on November 18, 2019. The Second CID is attached as Exhibit O.

50. CFPB has candidly admitted that the Second CID is “seeking largely the same information” as the First Demand.<sup>11</sup> Conf. Tr. at 7, *CFPB v. Law Offices of Crystal Moroney*, No. 19-CV-1732 (NSR) (Nov. 21, 2019).

51. Just six days after Defendants issued the Second Demand, Defendants issued a CID to Ms. Moroney’s Law Firm’s client, FedChex Recovery, LLC. FedChex’s CID is attached as Exhibit P.

52. The third-party CID seeks, in part, the same confidential and privileged material Ms. Moroney’s Law Firm protected from disclosure in the First and Second Demands. For instance, the CID demands information regarding debt resolution efforts Ms. Moroney’s Law Firm has made on the client’s behalf, information regarding legal advice in connection with debt resolution, information regarding the lawsuits filed by Ms. Moroney’s Law Firm to resolve delinquent debt accounts, financial details of the relationship between Ms. Moroney’s Law Firm and the client, communications with Ms. Moroney’s Law Firm regarding resolution of debt complaints or disputes involving Plaintiff, written documents shared between Ms. Moroney’s Law Firm and the client, and the engagement agreement for Ms. Moroney’s Law Firm’s services. . *See, e.g.*, FedChex Recovery, LLC CID at 1-2 (Nov. 20, 2019).

53. On information and belief, Defendants have made similar demands of Plaintiff’s other clients as well, seeking information protected from disclosure by applicable privileges and nondisclosure doctrines.

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<sup>11</sup> Defendants have consistently admitted that the Second Demand is nearly identical to the First. *See, e.g.*, Defs.’ Opp’n to Mot. for Prelim. Inj. at 7 (Feb. 3, 2020) (“[The Second CID] differs primarily in that it provides Plaintiff with the additional detail about the scope and purpose of the Bureau’s investigation that Plaintiff claimed was lacking in the first CID.”). The only other difference is one of scope, not substance—the Second CID demands an additional two years of documents and information.

54. Ms. Moroney's Law Firm met and conferred with CFPB regarding the Second Demand. She filed a Petition to Set Aside Civil Investigative Demand Dated November 14, 2019 or in the Alternative to Modify Same (the "Petition to Set Aside") with CFPB as part of the administrative adjudication process. She did so to preserve her right to object to the substance of the CID, the constitutionality of CFPB's abuse of the CID process, and the constitutionality of the Bureau itself. The Petition to Set Aside is attached as Exhibit Q.

55. On February 11, 2020, Defendant Kraninger issued a Decision and Order denying Ms. Moroney's Law Firm's Petition to Set Aside (the "Decision and Order"). The Decision and Order is attached as Exhibit R.

56. The Decision and Order included four principal rulings:

a. It refused to consider the Law Firm's constitutional arguments, stating that "the administrative process set out in the Bureau's statute and regulations for petitioning to modify or set aside a CID is not the proper forum for raising and adjudicating challenges to the constitutionality of the Bureau's statute." Decision & Order on Pet. to Set Aside or Modify CID at 2 (Feb. 11, 2020).

b. It denied, on procedural grounds, the request to modify the Second Demand in a fashion consistent with the modifications made in the First CID. *Id.* at 3.

c. It commanded that Plaintiff respond to the Second Demand with electronically stored information (ESI) in a format consistent with CFPB standards. *Id.* at 3-4.

d. It refused to limit the scope of the Second CID's demands to the statute of limitations under the Fair Debt Collection Practices and Fair Credit Reporting Acts. *Id.* at 4.



57. Defendant Kraninger, as CFPB's sole Director, has unfettered discretion to adjudicate requests to modify CIDs, and there is no avenue for further administrative appeal of her Decision & Order. *See id.* at 4. The Decision and Order is a final agency action under the APA. *See* 5 U.S.C. § 704.

58. CFPB has not yet sought judicial enforcement of the Second CID. Nonetheless, on March 12, 2020, E. Vanessa Assae-Bille, Senior Litigation Counsel with CFPB's Office of Enforcement, confirmed that Plaintiff has been ordered "to comply in full with the [Second] CID[.]" E-mail from E. Vanessa Assae-Bille, CFPB Senior Lit. Counsel, to John Bedard, Esq., counsel to Ms. Moroney's Law Firm (Mar. 12, 2020 14:16 EST) (Exhibit S).

59. The threat of enforcement of the Second Demand is imminent because "past enforcement against the same conduct is good evidence that the threat of enforcement is not chimerical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (citing *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)) (internal quotations omitted).

60. Evidence that judicial enforcement is imminent includes: (1) the Second Demand is substantially identical to the First Demand, for which CFPB sought judicial enforcement in 2019; (2) Defendants have doubled-down on their investigation of Ms. Moroney's Law Firm by increasing the scope of their records demands and issuing third-party CIDs; (3) Defendant Kraninger has issued a final agency action denying the Petition to Set Aside; and (4) the lead enforcement attorney directed Plaintiff to comply with the Second CID.

#### **D. Defendants' Decision and Order Is a Final Agency Action from Which Legal Consequences Flow**

61. Defendants have represented that Ms. Moroney's Law Firm will not suffer harm if she simply ignores the Second Demand. *See, e.g.*, Defs.' Opp'n to Mot. for Prelim. Inj. Intro.,

ECF No. 19 (Feb. 3, 2020). This representation is not supported by the facts, and it misconstrues the law.

62. On March 6, 2020, CFPB issued Bulletin 2020-01, entitled “Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating” (the “Cooperation Bulletin”).<sup>12</sup> The Cooperation Bulletin is attached as Exhibit T. It is agency guidance—not a regulation—in part because CFPB did not promulgate the Cooperation Bulletin through Administrative Procedure Act notice-and-comment rulemaking. CFPB Bulletin 2020-01 at 7 (Mar. 6, 2020).

63. “Guidance” is a generic term for documents that clarify *existing* obligations that are purportedly non-binding on regulated parties or parties outside of the agency issuing the guidance.<sup>13</sup> Exec. Ord. No. 13891, 84 Fed. Reg. 55235, 55235 (Oct. 9, 2019) *accord* CFPB Bulletin 2020-01 at 2, 6 & 7. CFPB represents that the Cooperation Bulletin is just that—“a non-binding general statement of policy articulating considerations relevant to the Bureau’s exercise of its supervisory and enforcement authority.”<sup>14</sup> CFPB Bulletin 2020-01 at 7. Thus, it explains an internal CFPB policy and demarcates courses of conduct for CFPB staff in the execution of their regulatory duties.

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<sup>12</sup> In the interest of clarity, the Cooperation Bulletin is an update to CFPB Bulletin 2013-06 (June 25, 2013). CFPB Bulletin 2020-01 at 1 (Mar. 6, 2020) (“The Bureau is issuing this updated Bulletin to clarify its approach to responsible conduct and to reiterate the importance of such conduct.”). Defendants issued the updated Cooperation Bulletin eight days after Plaintiff’s counsel introduced the Bulletin it supersedes at the February 27, 2020 Preliminary Injunction hearing.

<sup>13</sup> Guidance comes in many forms, including memoranda, notices, letters, bulletins, circulars, directives, and even blog posts. *See* OMB Memo M-20-02 at 2 (Oct. 31, 2020) (Exhibit U).

<sup>14</sup> Plaintiff assumes for the purposes of this Amended Verified Complaint, *arguendo*, that the Cooperation Bulletin is lawful guidance. But it may not be lawful guidance exempt from the provisions of 5 U.S.C. § 553(b). At a minimum, the Cooperation Bulletin conflicts with Executive Order 13892, since the Cooperation Bulletin requires regulated parties to cooperate “above and beyond what is required by law” to reduce penalties, while the Executive Order prohibits “unfair surprise ... when [an agency] imposes penalties[.]”. *Compare* CFPB Bulletin 2020-01 at 1 *with* Exec. Ord. No. 13892, 84 Fed. Reg. 55239, 55241 (Oct. 15, 2019). Cooperation “above and beyond” statutory requirements also show “a lack of reasonable certainty or fair warning of what a legal standard administered by an agency requires.” *See* Exec. Ord. No. 13892, 84 Fed. Reg. at 55240. Plaintiff reserves the right to challenge the validity of the Cooperation Bulletin in the appropriate venue at a later date.

64. Under the Administrative Procedure Act, when an agency withholds relief from a regulated party, the agency sanctions that party. 5 U.S.C. § 551(10)(B). Relief is the “recognition of a claim, right, immunity, privilege, exemption, or exception[.]” 5 U.S.C. § 551(11)(B). It is also the “taking of other action on the application or petition of, and beneficial to, a person[.]” 5 U.S.C. § 551(11)(C).

65. The Cooperation Bulletin is unequivocal. If Ms. Moroney’s Law Firm chooses not to cooperate, she will suffer consequences:

*Credit* for cooperating in this context depends on the extent to which an entity takes steps *above and beyond what the law requires* in its interactions with the Bureau. Simply meeting those legal obligations is not a factor that the Bureau intends to give any *special consideration* in a supervisory review or enforcement investigation.

CFPB Bulletin 2020-01 at 5 (emphasis added).

66. According to the Cooperation Bulletin, just ignoring the Second Demand and the Decision and Order will cause the Law Firm to face punitive consequences if CFPB determines that it has inadequately responded. These potential sanctions include:

a. CFPB will not close the investigation early with no action. CFPB Bulletin 2020-01 at 2. Early termination of the Second CID would be beneficial to Plaintiff (5 U.S.C. § 551(11)(C)) and would confer an “immunity, privilege, exemption, or exception” (5 U.S.C. § 551(11)(B)) upon her.

b. CFPB will include a Matters Requiring Attention (“MRA”) section in its exam report or supervisory letter, if applicable. CFPB Bulletin 2020-01 at 2. Not having an MRA section<sup>15</sup> included would be beneficial to Plaintiff (5 U.S.C. § 551(11)(C)) and

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<sup>15</sup> MRAs are “corrective actions that result from examination findings that require the attention of a supervised institution’s board of directors or principals.” Office of Inspector General, Bd. of Govs. of the Fed. Reserve Sys., The Bureau Can Improve Its Follow-Up Process for Matters Requiring Attention at Supervised Institutions, Evaluation Report 2019-SR-C-001 (Jan. 28, 2019). CFPB may identify MRAs relating to “(1)

would confer an “immunity, privilege, exemption, or exception” (5 U.S.C. § 551(11)(B)) upon her.

c. CFPB will not resolve violations privately, if applicable. CFPB Bulletin 2020-01 at 2. Not having violation-resolution made public would be beneficial to Plaintiff (5 U.S.C. § 551(11)(C)) and would confer an “immunity, privilege, exemption, or exception” (5 U.S.C. § 551(11)(B)) upon her.

d. CFPB will not reduce the number of violations pursued by the agency, if applicable. CFPB Bulletin 2020-01 at 2. Reduction of the number of violations pursued would be beneficial to Plaintiff (5 U.S.C. § 551(11)(C)) and would confer an “immunity, privilege, exemption, or exception” (5 U.S.C. § 551(11)(B)) upon her.

e. CFPB will not reduce “sanctions or penalties” in public enforcement actions, if applicable. CFPB Bulletin 2020-01 at 2. Reduction in sanctions and penalties would be beneficial to Plaintiff (5 U.S.C. § 551(11)(C)) and would confer an “immunity, privilege, exemption, or exception” (5 U.S.C. § 551(11)(B)) upon her.

67. The February 11, 2020 Decision and Order has additional legal consequences. By summarily refusing to consider constitutional arguments in the administrative process, Ms. Moroney’s Law Firm will suffer the legal consequence of arbitrary and capricious actions, *ultra vires* actions in excess of CFPB’s statutory authority, and actions contrary to Plaintiff’s constitutional rights.

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violations of federal consumer financial laws or regulations, (2) compliance program deficiencies, or (3) control weaknesses[.]” and provide the supervised institution “with a time frame for completing and responding to the requirements of issued MRAs.” *Id.* CFPB then monitors and assesses the supervised entity’s progress through follow-up reviews and “may close the MRA or inform the supervised entity that additional validation testing is needed to determine whether the MRA can be closed.” *Id.*

68. Thus, having been denied her Petition to Set Aside and facing imminent enforcement of the Second Demand, Ms. Moroney's Law Firm cannot simply ignore the final agency action without suffering legal consequences that increase her potential liability.

**E. CFPB's Organizational Structure and Funding Mechanism Are Unconstitutional**

69. Moreover, CFPB is unconstitutionally structured and funded. Investigations and demands initiated by an agency that is unconstitutionally structured are the products of these constitutional defects, and thus are *ultra vires* and defective themselves.

70. Defendant Bureau of Consumer Financial Protection is an "independent bureau" within the Federal Reserve System. 12 U.S.C. § 5491(a). At least nominally, CFPB is an agency under the auspices of the executive branch of the federal government. 5 U.S.C. § 105.

71. CFPB's mission is to implement and enforce federal consumer financial law. 12 U.S.C. § 5511(a). CFPB accomplishes its mission by exercising executive authority (*e.g.*, initiating investigations and enforcement actions under 12 U.S.C. §§ 5562 & 5564), legislative authority (*e.g.*, issuing rules, orders, and guidance under 12 U.S.C. § 5512(b)), and judicial authority (*e.g.*, conducting hearings and adjudications under 12 U.S.C. § 5563(a)).

72. A single Director serves as head of CFPB. 12 U.S.C. § 5491(b)(1).

73. The President of the United States appoints the Director with the advice and consent of the United States Senate. 12 U.S.C. § 5491(b)(2). The Director's term is five years. 12 U.S.C. § 5491(c)(1).

74. Despite CFPB's being an executive agency, the President may remove the Director only for inefficiency, neglect of duty, or malfeasance in office. 12 U.S.C. § 5491(c)(3).

75. Despite CFPB's being an executive agency, the President may not control its legislative recommendations, testimony, or comments on legislation submitted to Congress. 12 U.S.C. § 5492(c)(4).

76. CFPB does not receive appropriations from Congress. Each year or each quarter, the Federal Reserve Board of Governors transfers funds from the combined earnings of the Federal Reserve System to finance CFPB's operations. 12 U.S.C. § 5497(a)(1).

77. Despite CFPB's being an executive agency, the President may not set its budget. The Director of CFPB determines the amount of CFPB's funding without oversight or input from the Board of Governors or the President. 12 U.S.C. § 5497(a)(1). Moreover, the Bureau's funding is not reviewable by Congress. 12 U.S.C. § 5497(a)(2). Even the Committees on Appropriations of the House of Representatives and the Senate are barred from exercising funding oversight. *Id.*

78. CFPB's insulation from control by either the President or Congress is unique to CFPB. It violates the President's duty to take care that the laws be faithfully executed, U.S. Const. art. II, § 3, and Congress' duty to appropriate funds through law, U.S. Const. art. I, § 9.

**F. Congress Designed CFPB to Be a Thoroughly Autonomous Agency Within the Executive Branch—No Court May Sever Constitutionally Defective Provisions from the Statute Without Altering that Deliberate Design**

79. Congress created an agency that was “completely independent, with an independently appointed director, an independent budget, and an autonomous rulemaking authority.” 156 Cong. Rec. H5239 (2010) (Rep. Maloney). The purpose of Title X was to “create a consumer bureau ... that is independent,” 156 Cong. Rec. S5871 (2010) (Sen. Cardin), in order to “improv[e] regulatory independence,” S. Rep. No. 111-176, at 24 (2010).

80. The statutory text further reflects Congress’s creation of “an independent bureau.” 12 U.S.C. § 5491(a).

81. Congress did not design CFPB to be governed in any manner other than through a completely independent Director with virtually unfettered access to Federal Reserve funds.

82. Severing the unconstitutional for-cause removal provision would cut the heart out of the statutory scheme that Congress designed.

83. Moreover, severing the for-cause removal provision would give the President complete control over the Federal Reserve’s receipts without congressional appropriations.

84. CFPB’s constitutional infirmities cannot be saved by judicial construction or interpretation.

**COUNT I: RIGHT TO DUE PROCESS**  
**SUBSTANTIVE & PROCEDURAL DUE PROCESS | U.S. CONST. AMEND. V**

85. Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 84, as if fully set forth herein.

86. “[T]he Due Process Clause protects one’s right to pursue a livelihood of one’s choice.” *Advance Am. v. FDIC*, 257 F. Supp. 3d 56, 61 (D.D.C. 2017).

87. The Due Process Clause prohibits unreasonable governmental interference with one’s chosen profession. *See Greene v. McElroy*, 360 U.S. 474, 492 (1959).

88. The Due Process Clause protects interests that a person has already acquired in specific benefits, defined by existing rules that stem from independent sources, such as state law. *LG Elecs. USA, Inc. v. Dep’t of Educ.*, 679 F. Supp. 2d 18, 33 (D.D.C. 2010).

89. Ms. Moroney’s Law Firm enjoys the benefits of New York and New Jersey State Bar licensure. Her chosen profession is the practice of law, and she has chosen to use her law licenses and New York-based Law Firm to resolve debt delinquencies on behalf of her clients.

90. Defendants have used a variety of tactics to deprive Plaintiff of her due process right to engage in her chosen profession. Defendants are using the process of never-ending investigations as a punishment to coerce her compliance, and they have manufactured mootness to evade judicial review of their activities. Defendants are also actively seeking to stigmatize Ms. Moroney's Law Firm in the eyes of her clients and potential future clients and to increase the costs to her clients of doing business with her.

91. By demanding disclosure of confidential and privileged materials from both Plaintiff and her clients, Defendants seek to drive a wedge between the Law Firm and the Law Firm's clients.

92. Defendants have engaged in these tactics to push Ms. Moroney's Law Firm into insolvency and she will become insolvent if Defendants' actions go unabated. This would deprive Plaintiff of her liberty interest in engaging in the profession of her choice.

93. Additionally, an opportunity "to be heard in one's defense" is essential to the due process of law. *Boddie v. Conn.*, 401 U.S. 371, 377-78 (1971) (quoting *Hovey v. Elliott*, 167 U.S. 409, 417 (1897)). *See also Int'l House v. NLRB*, 676 F.2d 906, 911 (2d Cir. 1982). Ms. Moroney's Law Firm stood ready to defend her withholding of documents for reason of attorney-client privilege and to assert that CFPB is unconstitutional and cannot exercise jurisdiction over her. By nearly simultaneously withdrawing the First CID and issuing a Second, Defendants denied Plaintiff her right to be heard on the same issues that are still in controversy today. If Defendants' tactics to push the Law Firm into insolvency go unabated, Plaintiff will be deprived of her due process right to be heard and to a fair trial.



94. Defendants' tactics represent unreasonable governmental interference with Plaintiff's business because they are efforts to destroy her business, not to regulate it. Defendants do not regulate the practice of law, they regulate the consumer financial industry.

95. It is of no matter that Plaintiff could choose another profession or legal specialty, as "[t]he ability to pursue a different livelihood is no substitute—*i.e.*, it would be of little consolation to an attorney, driven from his practice by improper governmental stigma, that McDonalds is still hiring." *Advance Am.*, 257 F. Supp. 3d at 66.

**COUNT II: RIGHT TO PETITION GOVERNMENT  
RETALIATION | U.S. CONST. AMEND. I**

96. Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 95, as if fully set forth herein.

97. The First Amendment guarantees Ms. Moroney's Law Firm a right to "petition the Government for a redress of grievances." U.S. Const. amend. I.

98. Defendants manipulated process to prevent Plaintiff from petitioning the court to rule on CFPB's constitutionality. Defendants accomplished this by mooted the first Judicial Review Hearing without disclosing to the Court or Ms. Moroney's Law Firm that the purpose of mooted was to avoid a stay so the Bureau could continue to investigate the Law Firm without the Court's interference. This strategy is apparent from the e-mail announcing the intention to reissue the CID, just hours after the Court dismissed the case.

99. Defendants' investigatory actions post-Judicial Review Hearing are retaliation for Ms. Moroney's Law Firm's challenges to CFPB's constitutionality in the first Judicial Review Hearing. Acts that will destroy the Law Firm's business are designed to prevent Plaintiff from ever petitioning to have her constitutional grievances redressed.

100. Agency actions that retaliate against Plaintiff for petitioning the government for a redress of her grievances or are designed to prevent Plaintiff from petitioning the government violate her First Amendment right.

**COUNT III: ADMINISTRATIVE PROCEDURE ACT**  
**SUBSTANTIVE & PROCEDURAL DUE PROCESS | 5 U.S.C. § 706(2)(B)**

101. Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 100, as if fully set forth herein.

102. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704. The Decision and Order is a final agency action because it marks the end of an agency’s decision-making process and it creates legal consequences for Ms. Moroney’s Law Firm. *See Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 138 (D.D.C. 2018).

103. The APA forbids agency action “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

104. As noted above, “the Due Process Clause protects one’s right to pursue a livelihood of one’s choice.” *Advance Am.*, 257 F. Supp. 3d at 61. The Due Process Clause prohibits unreasonable governmental interference with one’s chosen profession. *See Greene*, 360 U.S. at 492.

105. The Due Process Clause protects interests that a person has already acquired in specific benefits, defined by existing rules that stem from independent sources, such as state law. *LG Elecs. USA, Inc.*, 679 F. Supp. 2d at 33.

106. Ms. Moroney’s Law Firm enjoys the benefits of New York and New Jersey State Bar licensure. Her chosen profession is the practice of law, and she has chosen to use her law licenses and New York-based Law Firm to resolve debt delinquencies on behalf of her clients.

107. Defendants have used a variety of tactics to deprive Plaintiff of her due process right to engage in her chosen profession. Defendants are using the process of never-ending investigations as a punishment to coerce her compliance and they have manufactured mootness to evade judicial review of their activities. Defendants are also actively seeking to stigmatize Ms. Moroney's Law Firm in the eyes of her clients and potential future clients and to increase the costs to her clients of doing business with her.

108. By demanding disclosure of confidential and privileged materials from both Plaintiff and her clients, Defendants seek to drive a wedge between the Law Firm and the Law Firm's clients.

109. Defendants have engaged in these tactics to push Ms. Moroney's Law Firm into insolvency and she will become insolvent if Defendants' actions go unabated. This would deprive Plaintiff of her liberty interest in engaging in the profession of her choice.

110. Additionally, an opportunity "to be heard in one's defense" is essential to the due process of law. *Boddie v. Conn.*, 401 U.S. at 377-78 (quoting *Hovey*, 167 U.S. at 417). *See also Int'l House*, 676 F.2d at 911. Ms. Moroney's Law Firm stood ready to defend her withholding of documents for reason of attorney-client privilege and to assert that CFPB is unconstitutional and cannot exercise jurisdiction over her. By nearly simultaneously withdrawing the First CID and issuing a Second, Defendants denied Plaintiff her right to be heard on the same issues that are still in controversy today. If Defendants' tactics to push the Law Firm into insolvency go unabated, Plaintiff will be deprived of her due process right to be heard and to a fair trial.

111. Defendants' tactics represent unreasonable governmental interference with Plaintiff's business because they are efforts to destroy her business, not to regulate it. Defendants do not regulate the practice of law, they regulate the consumer financial industry.

112. Violating Plaintiff's due process right to engage in the profession of her choice is contrary to Plaintiff's constitutional right to due process and therefore prohibited under the APA.

**COUNT IV: ADMINISTRATIVE PROCEDURE ACT**  
**RETALIATION | 5 U.S.C. § 706(2)(B)**

113. Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 112, as if fully set forth herein.

114. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. The Decision and Order is a final agency action because it marks the end of an agency's decision-making process and it creates legal consequences for Ms. Moroney's Law Firm. *See Aracely R.*, 319 F. Supp. 3d at 138.

115. The APA forbids agency action "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

116. As noted above, the First Amendment guarantees Ms. Moroney's Law Firm a right to "petition the Government for a redress of grievances." U.S. Const. amend. I.

117. Defendants manipulated process to prevent Plaintiff from petitioning the court to rule on CFPB's constitutionality. Defendants accomplished this by mooted the first Judicial Review Hearing without disclosing to the Court or Ms. Moroney's Law Firm that the purpose of mooted was to avoid a stay so the Bureau could continue to investigate the Law Firm without the Court's interference. This strategy is apparent from the e-mail announcing the intention to reissue the CID, just hours after the Court dismissed the case.

118. Defendants' investigatory actions post-Judicial Review Hearing are retaliation for Ms. Moroney's Law Firm's challenges to CFPB's constitutionality in the first Judicial Review

Hearing. Acts that will destroy the Law Firm’s business are designed to prevent Plaintiff from ever petitioning to have her constitutional grievances redressed.

119. Agency actions that retaliate against Plaintiff for petitioning the government for a redress of her grievances or are designed to prevent Plaintiff from petitioning the government violate her First Amendment right and therefore prohibited under the APA.

**COUNT V: SEPARATION OF POWERS**  
**TAKE CARE CLAUSE | U.S. CONST. ART. II, § 3**

120. The Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 119, as if fully set forth herein.

121. “The principle of separation of powers is embedded in the Appointments Clause.” *Samuels, Kramer & Co. v. Comm’r*, 930 F.2d 975, 988 (2d Cir. 1991). Congress may distribute the power to appoint, but it may not reserve the power to appoint—or the power to remove—for itself. *Id.*

122. The President’s power to remove subordinate officers is a constitutional mechanism to hold executive department officials accountable. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 493 (2010).

123. Under CFPA Title X, the President may only remove the Director for cause. This precludes the President from controlling or supervising the Director’s and the Bureau’s budget, policy positions and enforcement activities. To the extent that the CFPB Director wields executive powers—and it is undisputed that she does—those executive powers must be subject to presidential control under the Take Care Clause of Article II.

124. Thus, CFPB violates the Take Care Clause of Article II, § 3 by unconstitutionally limiting the President’s ability to remove the Director at the President’s discretion. *See id.* at 484.

125. The Court should make a judicial determination regarding whether Title X of the Consumer Financial Protection Act unconstitutionally violates the Take Care Clause of Article II, § 3 and hence the Constitution's Separation of Powers.

**COUNT VI: NONDELEGATION DOCTRINE**  
**APPROPRIATIONS CLAUSE | U.S. CONST. ART. I § 9**

126. The Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 125, as if fully set forth herein.

127. Under the Vesting Clause of Article I, “*All* legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const. art. I, § 1 (emphasis added). Statutes that divest Congress of legislative power by conferring it upon another entity violate the Constitution. *See Loving v. United States*, 517 U.S. 748, 758 (1996).

128. The Constitution also commands that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9. Thus, since all appropriations must be made pursuant to law, and since Congress cannot convey its lawmaking power, the appropriations power is subject to the Vesting Clause and implicates the Nondelegation Doctrine.

129. Congress' power to appropriate, often called “the power of the purse,” serves the “fundamental and comprehensive purpose” of “assur[ing] that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good[.]” *Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414, 427-28 (1990).

130. Under Title X of the Consumer Financial Protection Act, Congress does not appropriate funds to operate CFPB. Instead, it ceded that authority to the Federal Reserve. This divestment of core legislative power precludes Congress from controlling or supervising the Director's and the Bureau's budget, policy priorities and enforcement activities.

131. Congress violated the Nondelegation Doctrine by unconstitutionally ceding its exclusive authority to make appropriations by law. CFPB, therefore, is unconstitutional as currently funded.

132. By ceding the power of the purse to the Federal Reserve and prohibiting congressional review, Congress almost hermetically sealed itself off from CFPB.

133. Since the defective funding mechanism for CFPB lies at the heart of the statute, Title X should be struck in its entirety.

134. The Court should make a judicial determination regarding whether Title X of the Consumer Financial Protection Act unconstitutionally violates the Appropriations Clause of Article I, § 9 and hence the Nondelegation Doctrine.

**COUNT VII: NONDELEGATION DOCTRINE**  
**APPROPRIATIONS CLAUSE | U.S. CONST. ART. I § 9**

135. Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 134, as if fully set forth herein.

136. In the alternative, if this Court agrees that CFPB's single-Director structure is unconstitutional, but finds the for-cause removal provision severable from the remainder of Title X, Title X will still fail in its entirety because it will then effectuate one of the most egregious violations of the Nondelegation Doctrine in American history.

137. Severing unconstitutional structure will result in a President of the United States having total control over a single Director and the power to demand Federal Reserve receipts that are not appropriated by Congress, not reviewable by Congress, and subject to the whims of the President's plenary authority.

138. Congress created an agency that was "completely independent, with an independently appointed director, an independent budget, and an autonomous rulemaking

authority.” 156 Cong. Rec. H5239 (2010) (Rep. Maloney). It did not give the President a blank check for pursuing any initiative he or she fancies with respect to consumer financial laws.

139. Congress cannot divest itself of its Article I, § 9 duty to make appropriations through law. In addition, this funding mechanism entails one Congress binding another, future Congress, which no Congress has the power to do.

140. If this Court finds the single Director’s for-cause removal protection unconstitutional but severable, the Court should make a judicial determination regarding whether Title X of the Consumer Financial Protection Act unconstitutionally violates the Appropriations Clause of Article I, § 9 and hence the Nondelegation Doctrine. If it is indeed unconstitutional, as the Plaintiff alleges, then Title X fails in its entirety and CFPB has no legal authority to act.

**COUNT VIII: ADMINISTRATIVE PROCEDURE ACT  
SEPARATION OF POWERS | 5 U.S.C. § 706(2)(B)**

141. The Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 140, as if fully set forth herein.

142. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704. The Decision and Order is a final agency action because it marks the end of an agency’s decision-making process and it creates legal consequences for Ms. Moroney’s Law Firm. *See Aracely R.*, 319 F. Supp. 3d at 138.

143. The APA forbids agency action “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

144. As noted above, “[t]he principle of separation of powers is embedded in the Appointments Clause.” *Samuels, Kramer & Co.*, 930 F.2d at 988. Congress may distribute the



power to appoint, but it may not reserve the power to appoint—or the power to remove—for itself. *Id.*

145. The President’s power to remove subordinate officers is a constitutional mechanism to hold executive department officials accountable. *See Free Enter. Fund*, 561 U.S. at 493.

146. Under CFPA Title X, the President may only remove the Director for cause. This precludes the President from controlling or supervising the Director’s and the Bureau’s budget, policy positions and enforcement activities. To the extent that the CFPB Director wields executive powers—and it is undisputed that she does—those executive powers must be subject to presidential control under the Take Care Clause of Article II.

147. Thus, CFPB violates the Take Care Clause of Article II, § 3 by unconstitutionally limiting the President’s ability to remove the Director at the President’s discretion. *See id.* at 484.

148. The Court should make a judicial determination regarding whether Title X of the Consumer Financial Protection Act unconstitutionally violates the Take Care Clause of Article II, § 3 and hence the Constitution’s Separation of Powers.

**COUNT IX: ADMINISTRATIVE PROCEDURE ACT  
NONDELEGATION DOCTRINE | 5 U.S.C. § 706(2)(B)**

149. The Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 148, as if fully set forth herein.

150. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704. The Decision and Order is a final agency action because it marks the end of an agency’s decision-

making process and it creates legal consequences for Ms. Moroney's Law Firm. *See Aracely R.*, 319 F. Supp. 3d at 138.

151. The APA forbids agency action "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

152. As noted above, under the Vesting Clause of Article I, "*All* legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, § 1 (emphasis added). Statutes that divest Congress of legislative power by conferring it upon another entity violate the Constitution. *See Loving*, 517 U.S. at 758.

153. The Constitution also commands that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9. Thus, since all appropriations must be made pursuant to law, and since Congress cannot convey its lawmaking power, the appropriations power is subject to the Vesting Clause and implicates the Nondelegation Doctrine.

154. Congress' power to appropriate, often called "the power of the purse," serves the "fundamental and comprehensive purpose" of "assur[ing] that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good[.]" *Office of Personnel Mgmt.*, 496 U.S. at 427-28.

155. Under Title X of the Consumer Financial Protection Act, Congress does not appropriate funds to operate CFPB. Instead, it ceded that authority to the Federal Reserve. This divestment of core legislative power precludes Congress from controlling or supervising the Director's and the Bureau's budget, policy priorities and enforcement activities.

156. Congress violated the Nondelegation Doctrine by unconstitutionally ceding its exclusive authority to make appropriations by law. CFPB, therefore, is unconstitutional as currently funded.

157. By ceding the power of the purse to the Federal Reserve and prohibiting congressional review, Congress almost hermetically sealed itself off from CFPB.

158. Since the defective funding mechanism for CFPB lies at the heart of the statute, Title X should be struck in its entirety.

159. The Court should make a judicial determination regarding whether Title X of the Consumer Financial Protection Act unconstitutionally violates the Appropriations Clause of Article I, § 9 and hence the Nondelegation Doctrine.

**COUNT X: ADMINISTRATIVE PROCEDURE ACT**  
**ACTIONS IN EXCESS OF STATUTORY AUTHORITY | 5 U.S.C. § 706(2)(A), (C) & (D)**

160. The Plaintiff realleges and incorporates by reference the allegations contained in her Introductory Statement and paragraphs 1 through 159, as if fully set forth herein.

161. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704. The Decision and Order is a final agency action because it marks the end of an agency’s decision-making process and it creates legal consequences for Ms. Moroney’s Law Firm. *See Aracely R.*, 319 F. Supp. 3d at 138.

162. This Court may find Defendants’ actions “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A), “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right[.]” 5 U.S.C. § 706(2)(C), and “without observance of procedure required by law[.]” 5 U.S.C. § 706(2)(D).

163. For the reasons stated above, CFPB is unconstitutionally structured and funded, and the constitutionally defective provisions cannot be severed from Title X, so all of Title X fails.

164. Title X of the Consumer Financial Protection Act is CFPB's enabling statute. If Title X fails, CFPB has no statutory authority to claim the mantle of federal power. Since CFPB lacks statutory authority, its actions are, by definition, arbitrary, capricious and not in accordance with law. All of its actions are without jurisdiction and outside the observance of procedure required by law. Presumably enforcement of the various statutes under CFPB's purview would revert back to the U.S. Department of Treasury and wherever else they resided before being transferred to CFPB.

165. An ineffectual grant of executive authority to administrative agencies renders all agency attempts to exercise power, void. *See FEC*, 6 F.3d at 828 (holding that where an agency's structure is unconstitutional, the party successfully challenging the constitutionality of the statute must be afforded relief).

166. The Court should make a judicial determination regarding whether Defendants' acts are *ultra vires* and void.

**COUNT XI: ENFORCEMENT OF COURT ORDER**  
**CIVIL CONTEMPT OF COURT | FED. R. CIV. P. 71**

167. The Plaintiff realleges and incorporates by reference the allegations contained in the Introductory Statement and paragraphs 1 through 166, as if fully set forth herein.

168. "When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party." Fed. R. Civ. P. 71.

169. The Second Circuit has explained that Fed. R. Civ. P. 71 is "intended to assure that process be made available to enforce court orders in favor of and against persons who are

properly affected by them, even if they are not parties to the action.” *Lasky v. Quinlan*, 558 F.2d 1133, 1137 (2d Cir. 1977). A non-party seeking to enforce such an order may do so in a separate action. *Lasky v. Quinlan*, 558 F.2d 1133, 1137 (2d Cir. 1977).

170. The *RD Legal Funding* Order is a valid, final order of the District Court. See *LeBoeuf, Lamb, Greene & MacRae, LLP v. Worsham*, 185 F.3d 61, 64 (2d Cir. 1999) (quoting *Shimer v. Fugazy*, 982 F.2d 769, 775 (2d Cir. 1992) (“[A] final order is one that conclusively determines the rights of the parties to the litigation, leaving nothing for the district court to do but execute the order[.]”)).

171. Finding that CFPB’s structure violates the separation of powers, the *RD Legal Funding* Order struck “Title X in its entirety.” *Consumer Fin. Prot. Bureau v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729, 784 (S.D.N.Y. 2018) (adopting Judge Henderson’s dissent in *PHH Corp.*, 881 F.3d at 163-64 (Henderson, J., dissenting)).

172. As it did while investigating the *RD Legal Funding* defendants, CFPB claims that it has the authority to demand that Ms. Moroney’s Law Firm produce documents, answer interrogatories, and testify regarding matters of consumer finance. Law Offices of Crystal Moroney, P.C. CID at 1 (Nov. 14, 2019). It claims that it can deny Plaintiff’s Petition to Set Aside the investigation. See Decision & Order at 4. It claims that it has the authority to grant Plaintiff special consideration in the event of Plaintiff’s cooperation above and beyond what the law requires, and to withhold that special consideration. See CFPB Bulletin 2020-1.

173. Ms. Moroney’s Law Firm is in the zone of interest of procedures articulated in CFPA Title X, CFPB regulations, and CFPB guidance for the issuance of CIDs and the conduct of investigations and adjudications. As this Court just confirmed, an agency’s regulations are indicative of which classes of persons fall within the zone of interest protected or regulated by a

particular statute. *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020) (citing *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 225 (2012)). The *RD Legal Funding* defendants made the same allegations made by Plaintiff in this case—that CFPB is unconstitutionally structured and funded, so its statutory authority is invalid.

174. *RD Legal Funding* Order’s zone of interest protects all regulated parties located in the jurisdiction of the Southern District of New York from Defendants’ unlawful actions taken without statutory authority.<sup>16</sup> See *RD Legal Funding, LLC*, 332 F. Supp. 3d at 785 (holding that CFPB “lacks authority to bring claims under the CFPA[.]”).

175. Defying a valid court order is not within the lawful discretion of Defendants.

176. Ms. Moroney’s Law Firm has a constitutionally protected interest in being free from arbitrary rule by entities without statutory authority to act. U.S. Const. amend V (procedural and substantive due process). Additionally, Ms. Moroney’s Law Firm has a statutorily protected interest in being free from arbitrary rule by entities without statutory authority to act. 5 U.S.C. § 706.

177. Defendants have issued a final Decision & Order “directing Law Offices of Crystal Moroney, P.C. to comply in full with the CID within 10 days of February 10, 2020.” E-mail from E. Vanessa Assae-Bille (Mar. 12, 2020 14:16 EST). Legal consequences flowing from Defendants’ unlawful assertion of governmental authority in willful violation of the *RD Legal Funding* Order include, but are not limited to, loss of a claim, right, immunity, privilege, exemption, or exception to penalties adjudicated and levied by Defendants against Plaintiff. See CFPB Bulletin 2020-1 (granting leniency on penalties and early termination of investigations if

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<sup>16</sup> Of course, another district court in the Southern District of New York could rule CFPB constitutionally structured, creating an intradistrict split, but such a ruling would not invalidate the *RD Legal Funding* Order.

an investigatory target “takes steps above and beyond what the law requires in its interactions with the Bureau.”).

178. This Court should enforce the *RD Legal Funding* Order to preserve the integrity of the judicial process by holding Defendants in civil contempt of court.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for the following relief against Defendants:

- A. Declaratory judgment that CFPB’s single-Director structure violates the United States Constitution’s Article II, § 3 Take Care Clause.
- B. Declaratory judgment that CFPB’s funding mechanism violates the United States Constitution’s Article I, § 9 Appropriations Clause.
- C. Declaratory judgment that CFPB’s unconstitutional structure cannot be severed from CFPA Title X, thus the entirety of Title X fails. In the alternative, if this Court severs CFPB’s unconstitutional structure, declaratory judgment that Title X fails in its entirety because the funding mechanism (which would give the President plenary authority over Federal Reserve receipts) violates the United States Constitution’s Article I, § 1 Vesting Clause and Article I, § 9 Appropriations Clause.
- D. Declaratory judgment that CFPB’s unconstitutional funding mechanism cannot be severed from CFPA Title X, thus the entirety of Title X fails.
- E. Injunctive relief permanently enjoining CFPB from exercising federal authority or claiming to have the statutory authority to act on behalf of the United States against Plaintiff.
- F. Declaratory judgment that all acts of Defendants against Plaintiff are *ultra vires* because Defendants do not have the statutory authority to act on behalf of the United States.

G. Vacate and set aside all Defendants' acts taken against Plaintiff pursuant to Defendants' purported authority under Title X of the Consumer Financial Protection Act.

H. Injunctive relief permanently enjoining CFPB from seeking or receiving funding from the Federal Reserve.

I. Declaratory judgment that Defendants' exercise of governmental authority violates Plaintiff's right to due process.

J. Declaratory judgment that Defendants' actions to deny Plaintiff her right to practice in her chosen profession violate Plaintiff's right to due process.

K. Declaratory judgment that Defendants' actions to deny Plaintiff her right to be heard and to a fair trial violate Plaintiff's right to due process.

L. Declaratory judgment that Defendants' actions to punish Plaintiff for exercising her constitutionally guaranteed rights violate Plaintiff's rights to due process and petition the government for a redress of grievances.

M. Declaratory judgment that Defendants are in contempt of court for willfully violating the *RD Legal Funding* Order by claiming jurisdiction over Plaintiff, who operates in the jurisdiction covered by the Order, the Southern District of New York.

N. For an award for all reasonable attorneys' fees incurred herein, as applicable.

O. For costs of this suit incurred herein, as applicable.

P. For such other relief as the Court deems just and proper.



**JURY DEMAND**

The Plaintiff hereby demands a trial by jury on all issues triable by a jury in the above-entitled action.

Respectfully submitted,



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Dated: April 30, 2020

*Counsel to Plaintiff*  
*Pro hac vice*

**VERIFICATION**

I, Crystal G. Moroney, am the majority shareholder of the Law Offices of Crystal Moroney, P.C., the Plaintiff in this proceeding. I have read this Complaint and hereby verify that the contents are true and correct to the best of my knowledge, information, and belief, this 30<sup>th</sup> day of April 2020.

  
\_\_\_\_\_  
Crystal G. Moroney

State of New York

County of Rockland

Signed and sworn before me on this 30<sup>th</sup> day of April 2020 by  
Crystal G. Moroney.

  
\_\_\_\_\_  
Notary Public

| SEAL |

My Commission Expires: \_\_\_\_\_  
TERESA FARIAS  
Notary Public, State of New York  
No. 01FA6130825  
Qualified in Rockland County  
Commission Expires July 25, 2021



**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system and by e-mail upon all counsel of record in the above-captioned case.



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Michael P. DeGrandis