

# 20-3471

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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BUREAU OF CONSUMER FINANCIAL PROTECTION,  
Petitioner-Appellee,

v.

LAW OFFICES OF CRYSTAL MORONEY, P.C.,  
Respondent-Appellant.

\_\_\_\_\_  
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
**JOINT APPENDIX**  
\_\_\_\_\_

**NEW CIVIL LIBERTIES ALLIANCE**  
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**U.S. District Court  
Southern District of New York (White Plains)  
CIVIL DOCKET FOR CASE #: 7:20-cv-03240-KMK**

Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, P.C. Date Filed: 04/24/2020  
Assigned to: Judge Kenneth M. Karas Jury Demand: None  
Related Case: [7:19-cv-11594-KMK](#) Nature of Suit: 890 Other Statutory Actions  
Cause: 15:1692 Fair Debt Collection Act Jurisdiction: U.S. Government Plaintiff

**Petitioner**

**Bureau of Consumer Financial Protection**

represented by **Jehan A. Patterson**  
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V.

**Respondent**

**Law Offices of Crystal Moroney, P.C.**

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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
04/24/2020	<a href="#">1</a>	PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND..Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> Memorandum in Support of Petition to Enforce Civil Investigative Demand, # <a href="#">2</a> Declaration of E. Vanessa Assae-Bille in Support of Petition to Enforce Civil Investigative Demand, # <a href="#">3</a> Exhibit A, # <a href="#">4</a> Exhibit B, # <a href="#">5</a> Exhibit C, # <a href="#">6</a> Exhibit D, # <a href="#">7</a> Exhibit E, # <a href="#">8</a> Exhibit F, # <a href="#">9</a> Text of Proposed Order to Show Cause).(Assae-Bille, Elisabeth) (Entered: 04/24/2020)
04/24/2020	<a href="#">2</a>	<b>FILING ERROR - PDF ERROR - CIVIL COVER SHEET</b> filed. (Attachments: # <a href="#">1</a> Related Case Statement).(Assae-Bille, Elisabeth) Modified on 4/27/2020 (jgo). (Entered: 04/24/2020)
04/24/2020	<a href="#">3</a>	MOTION for Elisabeth Vanessa Assae-Bille to Appear Pro Hac Vice . <b>Motion and supporting papers to be reviewed by Clerk's Office staff.</b> Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> Affidavit of E. Vanessa Assae-Bille for Admission Pro Hac Vice, # <a href="#">2</a> Certificate of Good Standing, # <a href="#">3</a> Text of Proposed Order for Admission Pro Hac Vice).(Assae-Bille, Elisabeth) (Entered: 04/24/2020)
04/24/2020	<a href="#">4</a>	NOTICE OF APPEARANCE by Jehan A. Patterson on behalf of Bureau of Consumer Financial Protection..(Patterson, Jehan) (Entered: 04/24/2020)
04/24/2020		<b>&gt;&gt;&gt;NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <a href="#">3</a> MOTION for Elisabeth Vanessa Assae-Bille to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (laq)</b> (Entered: 04/24/2020)
04/24/2020	<a href="#">5</a>	BRIEF re: <a href="#">1</a> Petition (Other), to Enforce Civil Investigative Demand (Memorandum in Support). Document filed by Bureau of Consumer Financial Protection..(Assae-Bille, Elisabeth) (Entered: 04/24/2020)
04/27/2020		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT CIVIL COVER SHEET. Notice to attorney Elisabeth Vanessa Assae-Bille to RE-FILE Document No. <a href="#">2</a> Civil Cover Sheet. The filing is deficient for the following reason(s): the PDF was not signed by the attorney;. Re-file the document using the event type Civil Cover Sheet found under the event list Other Documents and attach the correct PDF. Use civil cover sheet issued by S.D.N.Y. dated June 2017. The S.D.N.Y. Civil Cover Sheet dated June 2017 is located at <a href="http://nysd.uscourts.gov/file/forms/civil-cover-sheet..">http://nysd.uscourts.gov/file/forms/civil-cover-sheet..</a> (jgo)</b> (Entered: 04/27/2020)
04/27/2020		<b>***NOTICE TO ATTORNEY TO ELECTRONICALLY FILE RELATED CASE STATEMENT. Notice to Attorney Elisabeth Vanessa Assae-Bille, for non compliance with Local Rule 13 of the Division of Business Among Judges. Attorney must electronically file the Related Case Statement separately. Use the event type Statement of Relatedness found under the event list Other Documents. (jgo)</b> (Entered: 04/27/2020)
04/27/2020		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Unassigned. (jgo) (Entered: 04/27/2020)
04/27/2020		Case Designated ECF. (jgo) (Entered: 04/27/2020)
04/27/2020		CASE REFERRED TO Judge Kenneth M. Karas as possibly related to 19-cv-11594. (jgo) (Entered: 04/27/2020)
04/27/2020	<a href="#">6</a>	AMENDED PETITION amending <a href="#">1</a> Petition (Other), against Law Offices of Crystal Moroney, P.C..Document filed by Bureau of Consumer Financial Protection. Related document: <a href="#">1</a> Petition (Other),. (Attachments: # <a href="#">1</a> Memorandum in Support of Amended Petition to Enforce Civil Investigative Demand, # <a href="#">2</a> Declaration of E. Vanessa Assae-Bille

		in Support of Amended Petition to Enforce Civil Investigative Demand, # <a href="#">3</a> Exhibit A, # <a href="#">4</a> Exhibit B, # <a href="#">5</a> Exhibit C, # <a href="#">6</a> Exhibit D, # <a href="#">7</a> Exhibit E, # <a href="#">8</a> Exhibit F).(Assae-Bille, Elisabeth) (Entered: 04/27/2020)
04/27/2020	<a href="#">7</a>	PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Document filed by Bureau of Consumer Financial Protection. Related Document Number: [ECF 6]..(Assae-Bille, Elisabeth) <b>Proposed Order to Show Cause to be reviewed by Clerk's Office staff.</b> (Entered: 04/27/2020)
04/27/2020	<a href="#">8</a>	CIVIL COVER SHEET filed..(Assae-Bille, Elisabeth) (Entered: 04/27/2020)
04/27/2020	<a href="#">9</a>	STATEMENT OF RELATEDNESS re: that this action be filed as related to 7:19-cv-11594-KMK. Document filed by Bureau of Consumer Financial Protection..(Assae-Bille, Elisabeth) (Entered: 04/27/2020)
05/13/2020		CASE ACCEPTED AS RELATED. Create association to 7:19-cv-11594-KMK. Notice of Assignment to follow. (ad) (Entered: 05/13/2020)
05/13/2020		Magistrate Judge Lisa M. Smith is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: <a href="https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf">https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf</a> . (ad) (Entered: 05/13/2020)
05/13/2020		NOTICE OF CASE REASSIGNMENT to Judge Kenneth M. Karas. Judge Unassigned is no longer assigned to the case. (ad) (Entered: 05/13/2020)
05/13/2020		<b>***NOTICE TO COURT REGARDING PROPOSED ORDER TO SHOW CAUSE WITHOUT EMERGENCY RELIEF. Document No. <a href="#">7</a> Proposed Order to Show Cause Without Emergency Relief, was reviewed and approved as to form. (dt)</b> (Entered: 05/13/2020)
05/13/2020	<a href="#">10</a>	ORDER TO SHOW CAUSE: IT IS HEREBY ORDERED that on July 16, 2020, at 11:30 a.m. or as soon thereafter as the parties can be heard, the Respondent shall appear before the Honorable Kenneth M. Karas United States District Judge, in Courtroom 521, located at 300 Quarropas Street, White Plains, NY, to show cause, if there be any, why an Order Compelling Compliance with CID should not be granted in accordance with the Petition filed by the Bureau. IT IS FURTHER ORDERED that: A copy of this Order, together with the petition and its exhibits, shall be served in accordance with Rule 4.1(a) of the Federal Rules of Civil Procedure and 12 U.S.C. § 5562(e)(2) upon Respondent within 14 days of the date that this Order is served upon counsel for the Bureau. Proof of service must be made to the Court pursuant to Rule 4(l) unless Respondent has waived service. Pursuant to Rule 4.1(a), the Court hereby appoints E. Vanessa Assae-Bille, or any other person designated by the Bureau, to effect service in this case. Proof of service completed pursuant to paragraph 1, above, shall be filed with the Clerk as soon as practicable. (And as further set forth herein.) Show Cause Hearing set for 7/16/2020 at 11:30 AM in Courtroom 521, 300 Quarropas Street, White Plains, NY 10601 before Judge Kenneth M. Karas. (Signed by Judge Kenneth M. Karas on 5/13/2020) (jca) (Entered: 05/13/2020)
05/26/2020	<a href="#">11</a>	WAIVER OF SERVICE RETURNED EXECUTED. Law Offices of Crystal Moroney, P.C. waiver sent on 5/15/2020. Document filed by Bureau of Consumer Financial Protection.. (Patterson, Jehan) (Entered: 05/26/2020)
06/09/2020	<a href="#">12</a>	FIRST LETTER MOTION to Consolidate Cases 7:19-cv-11594, 7:20-cv-03240 addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020., FIRST LETTER MOTION to Stay addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020., FIRST LETTER MOTION to Expedite addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020. Document filed by Law Offices of Crystal Moroney,

		P.C.. (Attachments: # <a href="#">1</a> Exhibit Unreported 2020 SDNY Case, # <a href="#">2</a> Exhibit Unreported 2001 SDNY Case).(DeGrandis, Michael) (Entered: 06/09/2020)
06/09/2020	<a href="#">13</a>	ORDER with respect to <a href="#">12</a> Letter Motion to Consolidate Cases; with respect to <a href="#">12</a> Letter Motion to Stay; with respect to <a href="#">12</a> Letter Motion to Expedite. The Bureau is to respond to this letter by 6/11/20. In submitting its response, the Bureau should know that the Court is inclined to consolidate and stay this case along the lines suggested by Plaintiff. So Ordered. (Signed by Judge Kenneth M. Karas on 6/9/2020) (jca) (Entered: 06/09/2020)
06/09/2020		Set/Reset Deadlines: Responses due by 6/11/2020 (jca) (Entered: 06/09/2020)
06/10/2020	<a href="#">14</a>	MOTION for Kevin E. Friedl to Appear Pro Hac Vice . <b>Motion and supporting papers to be reviewed by Clerk's Office staff.</b> Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> Affidavit, # <a href="#">2</a> Text of Proposed Order, # <a href="#">3</a> Certificate of Good Standing).(Friedl, Kevin) (Entered: 06/10/2020)
06/10/2020		<b>&gt;&gt;&gt;NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. <a href="#">14</a> MOTION for Kevin E. Friedl to Appear Pro Hac Vice . Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (ad)</b> (Entered: 06/11/2020)
06/11/2020	<a href="#">15</a>	ORDER FOR ADMISSION PRO HAC VICE granting <a href="#">14</a> Motion for Kevin E. Friedl to Appear Pro Hac Vice. (Signed by Judge Kenneth M. Karas on 6/11/2020) (rj) (Entered: 06/11/2020)
06/11/2020	<a href="#">16</a>	LETTER RESPONSE to Motion addressed to Judge Kenneth M. Karas from Kevin E. Friedl dated June 11, 2020 re: <a href="#">12</a> FIRST LETTER MOTION to Consolidate Cases 7:19-cv-11594, 7:20-cv-03240 addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020.FIRST LETTER MOTION to Stay addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020.FIRST LETTER MOTION to Expedite addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020. . Document filed by Bureau of Consumer Financial Protection..(Friedl, Kevin) (Entered: 06/11/2020)
06/12/2020	<a href="#">17</a>	ORDER denying <a href="#">12</a> Letter Motion to Consolidate Cases; denying <a href="#">12</a> Letter Motion to Stay; denying <a href="#">12</a> Letter Motion to Expedite. The Court agrees with the Bureau that a stay in both cases, to be followed by a scheduling conference, is unnecessary. Instead, the Court will adjust the briefing schedule in the enforcement proceeding. Ms. Moroney's opposition is due by no later than July 15, 2020, and the CFPB's response is due by no later than July 29, 2020. Oral argument will be held on August 18, 2020 at 2:00 p.m. In the meantime, the Court will grant Ms. Moroney's request for a stay in her case (No. 19-CV-11594) until the Bureau's Petition is resolved to avoid any duplication of efforts, and because any decision on the CID may affect claims brought by Ms. Moroney. The Court will determine any renewed request for consolidation thereafter. SO ORDERED. (Signed by Judge Kenneth M. Karas on 6/12/2020) (jca) (Entered: 06/12/2020)
06/12/2020		Set/Reset Hearings: Oral Argument set for 8/18/2020 at 02:00 PM before Judge Kenneth M. Karas. (jca) (Entered: 06/12/2020)
07/02/2020	<a href="#">18</a>	NOTICE of Ratification. Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> Declaration of Ratification).(Friedl, Kevin) (Entered: 07/02/2020)
07/15/2020	<a href="#">19</a>	RESPONSE in Opposition to Motion re: <a href="#">12</a> FIRST LETTER MOTION to Consolidate Cases 7:19-cv-11594, 7:20-cv-03240 addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020.FIRST LETTER MOTION to Stay addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020.FIRST LETTER MOTION to Expedite addressed to Judge Kenneth M. Karas from DeGrandis dated 06/09/2020. <i>Response to Order to Show Cause.</i> Document filed by Law Offices of Crystal Moroney, P.C.. (Attachments: # <a href="#">1</a> Exhibit Seila Law LLC v. CFPB, # <a href="#">2</a> Exhibit Feb. 2, 2020



		Decision and Order (Second CID), # <a href="#">3</a> Exhibit Oct. 2, 2017 Schedule of Withheld Documents, # <a href="#">4</a> Exhibit Mar. 12, 2020 Follett CID Response, # <a href="#">5</a> Exhibit June 9, 2020 Petition to Enforce FedChex).(DeGrandis, Michael) (Entered: 07/15/2020)
07/16/2020	<a href="#">20</a>	MEMO ENDORSEMENT on re: <a href="#">19</a> Response in Opposition to Motion,,, filed by Law Offices of Crystal Moroney, P.C. ENDORSEMENT:This Opposition exceeds the 25-page limit set forth in the Court's individual rules, and is therefore rejected. It appears from the docket that Respondent has not submitted a prior request to exceed the 25-page limit. SO ORDERED. (Signed by Judge Kenneth M. Karas on 7/16/2020) (jca) (Entered: 07/16/2020)
07/16/2020	<a href="#">21</a>	FIRST LETTER MOTION for Leave to File Excess Pages addressed to Judge Kenneth M. Karas from Michael DeGrandis dated 07/16/2020. Document filed by Law Offices of Crystal Moroney, P.C...(DeGrandis, Michael) (Entered: 07/16/2020)
07/17/2020	<a href="#">22</a>	ORDER granting <a href="#">21</a> Letter Motion for Leave to File Excess Pages. Granted. SO ORDERED. (Signed by Judge Kenneth M. Karas on 7/16/2020) (jca) (Entered: 07/17/2020)
07/23/2020	<a href="#">23</a>	CONSENT LETTER MOTION for Leave to File Excess Pages addressed to Judge Kenneth M. Karas from Jehan A. Patterson dated 07/23/2020. Document filed by Bureau of Consumer Financial Protection..(Patterson, Jehan) (Entered: 07/23/2020)
07/23/2020	<a href="#">24</a>	ORDER granting <a href="#">23</a> Letter Motion for Leave to File Excess Pages. Granted. SO ORDERED. (Signed by Judge Kenneth M. Karas on 7/23/2020) (jca) (Entered: 07/23/2020)
07/29/2020	<a href="#">25</a>	REPLY re: <a href="#">19</a> Response in Opposition to Motion,,, . Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> Affidavit Second Assae-Bille Declaration).(Assae-Bille, Elisabeth) (Entered: 07/29/2020)
08/13/2020	<a href="#">26</a>	<b>FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - MOTION</b> for two attorneys to present argument on behalf of Petitioner at Order to Show Cause hearing . Document filed by Bureau of Consumer Financial Protection..(Patterson, Jehan) Modified on 8/18/2020 (lb). (Entered: 08/13/2020)
08/14/2020	<a href="#">27</a>	MEMO ENDORSEMENT granting <a href="#">26</a> MOTION for two attorneys to present argument on behalf of Petitioner at Order to Show Cause hearing. ENDORSEMENT: Granted. SO ORDERED. (Signed by Judge Kenneth M. Karas on 8/14/2020) (jca) (Entered: 08/14/2020)
08/14/2020	<a href="#">28</a>	NOTICE OF TELECONFERENCE INFORMATION: For the week of August 17, 2020, the Court will hold all civil conferences, hearings, and/or oral arguments by telephone. Counsel shall call the following number at the designated time: Meeting Dial-In Number (USA toll-free): (888) 363-4749 Access Code: 7702195. Please enter the conference as a guest by pressing the pound sign (#). Given that much of the Court is operating remotely and has limited mail capability, counsel involved in any pro se cases shall mail a copy of this Notice to or otherwise inform the pro se party of the above teleconference information. Counsel in any pro se inmate cases shall ensure that the pro se party is on the line before calling the above-referenced number. For initial conferences, counsel shall submit a proposed case management and discovery schedule via ECF by 5 p.m. on the evening before the initial conference. Any requests for adjournments should be filed as soon as possible and clearly explain why the conference should be adjourned. SO ORDERED. (Signed by Judge Kenneth M. Karas on 8/14/2020) (jca) (Entered: 08/14/2020)
08/14/2020		Set/Reset Hearings: Telephone Conference set for 8/18/2020 at 02:00 PM before Judge Kenneth M. Karas. (jca) (Entered: 08/14/2020)

08/18/2020		Minute Entry for proceedings held before Judge Kenneth M. Karas: Oral Argument held via teleconference on 8/18/2020. Kevin E. Friedl, Jehan A. Patterson, and E. Vanessa Assae-Bille appeared on behalf of Petitioner. Michael P. DeGrandis and Jared McLain appeared on behalf of Respondent. Angela O'Donnell served as court reporter. Oral arguments were made on Petitioner's Petition to Enforce the Civil Investigative Demand. (Dkt. No. 6.) The Petition is granted for the reasons stated on the record. (See Order.) The Parties may request a transcript of the record. (BKJ) (Entered: 08/19/2020)
08/19/2020	<a href="#">29</a>	ORDER: For the reasons stated on the record at the Oral Argument on August 18, 2020, the Court grants Petitioner's Petition to Enforce the Civil Investigative Demand, (Dkt. No. 6). SO ORDERED. (Signed by Judge Kenneth M. Karas on 8/19/2020) (jca) (Entered: 08/19/2020)
09/04/2020	<a href="#">30</a>	FIRST LETTER MOTION to Stay <i>Pending Appeal</i> addressed to Judge Kenneth M. Karas from DeGrandis dated 09/04/2020. Document filed by Law Offices of Crystal Moroney, P.C...(DeGrandis, Michael) (Entered: 09/04/2020)
09/08/2020	<a href="#">31</a>	LETTER RESPONSE in Opposition to Motion addressed to Judge Kenneth M. Karas from Kevin E. Friedl dated Sept. 8, 2020 re: <a href="#">30</a> FIRST LETTER MOTION to Stay <i>Pending Appeal</i> addressed to Judge Kenneth M. Karas from DeGrandis dated 09/04/2020. . Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> CFPB v Chou Team Realty LLC, No. 20-cv-00043 (C.D. Cal. Aug. 21, 2020)).(Friedl, Kevin) (Entered: 09/08/2020)
09/08/2020	<a href="#">32</a>	ORDER with respect to <a href="#">30</a> FIRST LETTER MOTION to Stay Pending Appeal. CFPB is to respond to this letter by 9/15/20. SO ORDERED. (Signed by Judge Kenneth M. Karas on 9/8/2020) (jca) (Entered: 09/08/2020)
09/08/2020		Set/Reset Deadlines: Responses due by 9/15/2020 (jca) (Entered: 09/08/2020)
09/11/2020	<a href="#">33</a>	ORDER terminating <a href="#">30</a> FIRST LETTER MOTION to Stay Pending Appeal. Respondent is to file the Motion To Stay by no later than September 18, 2020. The CFPB is to file a Response by no later than September 24, 2020. SO ORDERED. (Signed by Judge Kenneth M. Karas on 9/11/2020) (jca) (Entered: 09/11/2020)
09/11/2020		Set/Reset Deadlines: Motions due by 9/18/2020. Responses due by 9/24/2020 (jca) (Entered: 09/11/2020)
09/18/2020	<a href="#">34</a>	FIRST MOTION to Stay <i>Pending Appeal</i> . Document filed by Law Offices of Crystal Moroney, P.C.. (Attachments: # <a href="#">1</a> Supplement Memorandum in Support, # <a href="#">2</a> Exhibit Ex A   Affidavit, # <a href="#">3</a> Exhibit Ex B   8/24/20 Email, # <a href="#">4</a> Exhibit Ex C   Unpublished Opinion, # <a href="#">5</a> Exhibit Ex D   Show Cause Hearing Transcript, # <a href="#">6</a> Exhibit Ex E   2/11/20 Decision & Order, # <a href="#">7</a> Exhibit Ex F   Proposed Order to Stay).(DeGrandis, Michael) (Entered: 09/18/2020)
09/24/2020	<a href="#">35</a>	RESPONSE in Opposition to Motion re: <a href="#">34</a> FIRST MOTION to Stay <i>Pending Appeal</i> . . Document filed by Bureau of Consumer Financial Protection..(Friedl, Kevin) (Entered: 09/24/2020)
10/01/2020	<a href="#">36</a>	ORDER FOR ADMISSION PRO HAC VICE granting <a href="#">3</a> MOTION for Elisabeth Vanessa Assae-Bille to Appear Pro Hac Vice. (Signed by Judge Kenneth M. Karas on 10/1/2020) (jca) (Entered: 10/01/2020)
10/07/2020	<a href="#">37</a>	<b>FILING ERROR - NO ORDER SELECTED FOR APPEAL</b> - FIRST NOTICE OF APPEAL. Document filed by Law Offices of Crystal Moroney, P.C.. Filing fee \$ 505.00, receipt number ANYSDC-22018813. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit..(DeGrandis, Michael) Modified on 10/7/2020 (nd). (Entered: 10/07/2020)



10/07/2020		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT APPEAL. Notice to attorney DeGrandis, Michael to RE-FILE Document No. <a href="#">37</a> Notice of Appeal.. The filing is deficient for the following reason(s): the order/judgment being appealed was not selected;. Re-file the appeal using the event type Corrected Notice of Appeal found under the event list Appeal Documents - attach the correct signed PDF - select the correct named filer/filers - select the correct order/judgment being appealed. (nd)</b> (Entered: 10/07/2020)
10/07/2020	<a href="#">38</a>	FIRST NOTICE OF APPEAL from <a href="#">29</a> Order,. Document filed by Law Offices of Crystal Moroney, P.C.. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit..(DeGrandis, Michael) (Entered: 10/07/2020)
10/07/2020		Appeal Fee Paid electronically via Pay.gov: for <a href="#">38</a> Notice of Appeal. Filing fee \$ 505.00. Pay.gov receipt number ANYSDC-22018813, paid on 10/7/2020. (tp) (Entered: 10/07/2020)
10/07/2020		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">38</a> Notice of Appeal. (tp) (Entered: 10/07/2020)
10/07/2020		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">38</a> Notice of Appeal filed by Law Offices of Crystal Moroney, P.C. were transmitted to the U.S. Court of Appeals. (tp) (Entered: 10/07/2020)
10/20/2020		NOTICE OF REDESIGNATION TO ANOTHER MAGISTRATE JUDGE. The above entitled action has been redesignated to Magistrate Judge Andrew E. Krause. Please note that this is a reassignment of the designation only. (ad) (Entered: 10/20/2020)
10/22/2020	<a href="#">39</a>	CALENDAR NOTICE: Please take notice that the above captioned action has been scheduled for oral argument on Respondent's Motion to Stay Pending Appeal before the Honorable Kenneth M. Karas, United States District Judge, on Thursday, November 19, 2020 at 12:00 p.m. NOTICE OF TELECONFERENCE INFORMATION: The Court will hold all civil conferences, hearings, and/or oral arguments by telephone. Counsel shall call the following number at the designated time: Meeting Dial-In Number (USA toll-free): (888) 363-4749 Access Code: 7702195 Please enter the conference as a guest by pressing the pound sign (#). Given that much of the Court is operating remotely and has limited mail capability, counsel involved in any pro se cases shall mail a copy of this Notice to or otherwise inform the pro se party of the above teleconference information. Counsel in any pro se inmate cases shall ensure that the pro se party is on the line before calling the above-referenced number. Any requests for adjournments should be filed as soon as possible and clearly explain why the conference should be adjourned. SO ORDERED. (Telephone Conference set for 11/19/2020 at 12:00 PM before Judge Kenneth M. Karas.) (Signed by Judge Kenneth M. Karas on 10/22/2020) (jca) (Entered: 10/22/2020)
10/23/2020	<a href="#">40</a>	LETTER MOTION to Adjourn Conference <i>Scheduled for November 19, 2020</i> , addressed to Judge Kenneth M. Karas from Kevin E. Friedl dated October 23, 2020. Document filed by Bureau of Consumer Financial Protection..(Friedl, Kevin) (Entered: 10/23/2020)
10/26/2020	<a href="#">41</a>	LETTER RESPONSE to Motion addressed to Judge Kenneth M. Karas from Michael DeGrandis dated 10/26/2020 re: <a href="#">40</a> LETTER MOTION to Adjourn Conference <i>Scheduled for November 19, 2020</i> , addressed to Judge Kenneth M. Karas from Kevin E. Friedl dated October 23, 2020. . Document filed by Law Offices of Crystal Moroney, P.C...(DeGrandis, Michael) (Entered: 10/26/2020)
10/28/2020	<a href="#">42</a>	ORDER granting <a href="#">40</a> Letter Motion to Adjourn Conference. Granted. The Oral argument will go forward by teleconference on 12/16/2020 at 11:00 a.m. So Ordered. Oral Argument set for 12/16/2020 at 11:00 AM before Judge Kenneth M. Karas. Telephone Conference

		set for 12/16/2020 at 11:00 AM before Judge Kenneth M. Karas. (Signed by Judge Kenneth M. Karas on 10/28/2020) (js) (Entered: 10/28/2020)
12/03/2020	<a href="#">43</a>	NOTICE of Supplemental Authority re: <a href="#">34</a> FIRST MOTION to Stay <i>Pending Appeal</i> .. Document filed by Bureau of Consumer Financial Protection. (Attachments: # <a href="#">1</a> CFPB v. Citizens Bank, N.A., No. 1:20-cv-00044 (D.R.I. Dec. 1, 2020), # <a href="#">2</a> CFPB v. Fair Collections & Outsourcing, Inc., No. 8:19-cv-02817 (D. Md. Nov. 30, 2020), # <a href="#">3</a> CFPB v. RD Legal Funding, LLC, 828 F. App'x 68 (2d Cir. 2020)).(Friedl, Kevin) (Entered: 12/03/2020)
12/08/2020	<a href="#">44</a>	NOTICE of Response to Suppl. Letter-Notice re: <a href="#">43</a> Notice (Other),. Document filed by Law Offices of Crystal Moroney, P.C...(DeGrandis, Michael) (Entered: 12/08/2020)
12/14/2020	<a href="#">45</a>	NOTICE OF TELECONFERENCE INFORMATION: For the week of December 14, 2020, the Court will hold all civil conferences, hearings, and/or oral arguments by telephone. Counsel shall call the following number at the designated time: Meeting Dial-In Number (USA toll-free): (888) 363-4749 Access Code: 7702195 Please enter the conference as a guest by pressing the pound sign (#). Given that much of the Court is operating remotely and has limited mail capability, counsel involved in any pro se cases shall mail a copy of this Notice to or otherwise inform the pro se party of the above teleconference information. Counsel in any pro se inmate cases shall ensure that the pro se party is on the line before calling the above-referenced number. For initial conferences, counsel shall submit a proposed case management and discovery schedule via ECF by 5 p.m. on the evening before the initial conference. Any requests for adjournments should be filed as soon as possible and clearly explain why the conference should be adjourned. SO ORDERED. (Signed by Judge Kenneth M. Karas on 12/14/2020) (jca) (Entered: 12/14/2020)
12/30/2020	<a href="#">46</a>	ORDER denying <a href="#">34</a> Motion to Stay. The Court denies Respondent's Motion To Stay and the Clerk of the Court is respectfully directed to terminate the pending Motion. (Dkt. No. 34). SO ORDERED. (Signed by Judge Kenneth M. Karas on 12/30/20) (yv) (Entered: 12/30/2020)
01/04/2021		Minute Entry for proceedings held before Judge Kenneth M. Karas: Oral Argument held on 12/16/2020 re: <a href="#">34</a> Motion to Stay. Jehan A. Patterson and Kevin E. Friedl appeared on behalf of Petitioner. Michael P DeGrandis and Jared McLain appeared on behalf of Respondent. Angela O'Donnell served as court reporter. Oral arguments were made on Respondent's Motion to Stay. The Court denied the Motion for the reasons stated on the record. (See Order.) The Parties may request a transcript of the record. (ANR) (Entered: 01/04/2021)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
01/10/2021 15:26:14			
<b>PACER Login:</b>	degrandis_m	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	7:20-cv-03240-KMK
<b>Billable Pages:</b>	8	<b>Cost:</b>	0.80

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BUREAU OF CONSUMER FINANCIAL  
PROTECTION,

Petitioner,

v.

LAW OFFICES OF CRYSTAL MORONEY,  
P.C.,

Respondent.

Case No. 20-CV-3240 (KMK)

ORDER

KENNETH M. KARAS, United States District Judge:

For the reasons stated on the record at the Oral Argument on August 18, 2020, the Court grants Petitioner's Petition to Enforce the Civil Investigative Demand, (Dkt. No. 6).

SO ORDERED.

DATED: August 19, 2020  
White Plains, New York



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KENNETH M. KARAS  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

BUREAU OF CONSUMER  
FINANCIAL PROTECTION,

Petitioner-Appellee,

v.

LAW OFFICES OF CRYSTAL  
MORONEY, P.C.,

Respondent-Appellant.

Case No. 7:20-cv-03240-KMK

**NOTICE OF APPEAL**

Notice is hereby given that Respondent Law Offices of Crystal Moroney, P.C. appeals to the United States Court of Appeals for the Second Circuit from this Court's Order granting Petitioner's Petition to Enforce the Civil Investigative Demand, entered August 19, 2020 (ECF No. 29).

Respectfully submitted,



Dated: October 7, 2020

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Michael P. DeGrandis, *pro hac vice*  
NEW CIVIL LIBERTIES ALLIANCE  
1225 19<sup>th</sup> Street NW, Suite 450  
Washington, DC 20036  
tel.: (202) 869-5210  
mike.degrandis@ncla.legal

*Counsel to Respondent-Appellant  
Law Offices of Crystal Moroney, P.C.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system upon all counsel of record in the above-captioned case. A courtesy copy will also be e-mailed to the Petitioner-Appellee.



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Michael P. DeGrandis





Consumer Financial  
Protection Bureau

1700 G Street NW, Washington, DC 20552

June 23, 2017

Via USPS Certified Mail

Law Offices of Crystal Moroney, P.C.  
17 Squadron Blvd.  
Suite 303  
New City, NY 10956

Re: Civil Investigative Demand served on the Law Offices of Crystal Moroney, P.C.  
on June 23, 2017

Dear Ms. Moroney:

Attached is a civil investigative demand (CID) issued to the Law Offices of Crystal Moroney, P.C. by the Consumer Financial Protection Bureau (Bureau) under 12 C.F.R. § 1080.6 and section 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5562.

Rule 1080.6(c) of the Bureau's Rules Relating to Investigations requires that you contact me as soon as possible to schedule a meeting (by telephone or in person) to be held within ten (10) calendar days of receipt of this CID in order to discuss and attempt to resolve all issues regarding timely compliance with this demand. 12 C.F.R. § 1080.6(c); see also Instruction B. The rule requires that you make available at this meeting personnel with the knowledge necessary to resolve any such issues. Please be prepared to discuss your planned compliance schedule, and whether it is possible to tier your production by providing portions of the response prior to the due date.

Please contact me immediately to schedule a meeting, which must be held within ten (10) days of the date of issue of this CID. My telephone number is **202-435-7688**. I look forward to your call.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Assae-Bille'.

E. Vanessa Assae-Bille  
Enforcement Attorney

Attachment



United States of America  
 Consumer Financial Protection Bureau

# Civil Investigative Demand

**To** Law Offices of Crystal Moroney, P.C.  
 c/o Crystal Moroney  
 17 Squadron Blvd., Suite 303  
 New City, NY 10956

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Bureau of Consumer Financial Protection.

**Action Required** (choose all that apply)

**Appear and Provide Oral Testimony**

Location of Investigational Hearing	Date and Time of Investigational Hearing
	Bureau Investigators

**Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date** 07/21/2017

**Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date** 07/21/2017

**Notification of Purpose Pursuant to 12 C.F.R. § 1080.5**

The purpose of this investigation is to determine whether debt collectors, furnishers, or other persons in connection with collection of debt and furnishing of information have engaged or are engaging in unfair, deceptive, or abusive acts or practices in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; or have violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.; or the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. and its implementing regulation. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

**Custodian / Deputy Custodian**

Deborah Morris / Chelsea Peter  
 Consumer Financial Protection Bureau  
 1625 Eye St, NW  
 ATTN: Office of Enforcement  
 Washington, DC 20006

**Bureau Counsel**

E. Vanessa Assae-Bille / Jehan Patterson  
 Consumer Financial Protection Bureau  
 1625 Eye St, NW  
 ATTN: Office of Enforcement  
 Washington, DC 20006

**Date Issued**

06/23/2017

**Signature**

Deborah Morris

Digitally signed by Deborah Morris  
 Date: 2017.06.23 11:52:29 -0400'

**Name / Title**

Deborah Morris / Deputy Enforcement Director

**Service**

The delivery of this demand to you by any method prescribed by the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562, is legal service. If you fail to comply with this demand, the Bureau may seek a court order requiring your compliance.

**Travel Expenses**

Request a travel voucher to claim compensation to which you are entitled as a witness before the Bureau pursuant to Section 1052 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562.

**Right to Regulatory Enforcement Fairness**

The CFPB is committed to fair regulatory enforcement. If you are a small business under Small Business Administration standards, you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

**Paperwork Reduction Act**

This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CIVIL INVESTIGATIVE DEMAND FOR  
PRODUCTION OF DOCUMENTS, TANGIBLE THINGS, WRITTEN  
REPORTS, AND ANSWERS TO INTERROGATORIES**

**I. Requests.**

**Interrogatories**

1. Identify all Persons who participated in responding to this CID, describe the specific tasks performed by each Person, and identify the response for which they performed each task.
2. Describe the Company's organizational structure, including:
  - a. the Company's legal name and principal place of business;
  - b. the date and jurisdiction in which it was incorporated or organized;
  - c. all names under which the Company has done business;
  - d. the Company's leadership including the principals, directors, owners;
  - e. each state in which the Company has done business; and
  - f. the time period during which it did business in each state.
3. Describe each of the Company's business activities (e.g., debt collection, court filings, etc.) and provide the Company's annual revenue for each of those business activities.
4. Describe the Company's business model, including:
  - a. the type(s) of Debt the Company obtains (e.g., medical, utilities, schoolbook rentals, etc.);
  - b. the age range of Debt the Company obtains;
  - c. the method(s) by which the Company obtains Debt accounts (e.g., assignment, or portfolio purchase);
  - d. whether the Company obtains Debt accounts after the accounts become delinquent or are in default;
  - e. whether the Company collects Debts owed or asserted to be owed to another party;
  - f. the type(s) of data and records the Company receives with each Debt account it obtains; and
  - g. the method(s) by which the Company removes Debt accounts from its portfolio (e.g., settlements, referrals to law firms, conveyance to the creditor or third-party, or sale to Debt buyer(s)).
5. Identify each alternative name(s) or alias(es) the Company has used to identify itself when contacting consumers in connection with its Debt Collection Activities. Provide the date range during which the Company used the alternative name(s) or alias(es).

6. Describe the Company's compensation structure for its employees and agents performing Debt Collection Activities, including but not limited to the Company's wage structure, the Company's bonus structure, criteria considered and formulas applied to determine the award of bonuses and other rewards.
7. Provide the total number of:
  - a. employees or agents engaged in Debt Collection activities (excluding attorneys identified in response to Interrogatory 7(b)) working for the Company; and
  - b. licensed attorneys working for the Company.
8. For each licensed attorney who formerly worked for the Company, state:
  - a. their full legal name;
  - b. their title(s) held at the Company;
  - c. the month and year they began and ceased working for the Company; and
  - d. whether they were engaged in Debt Collection Activities.
9. For each year during the Applicable Period, provide:
  - a. the total number of lawsuits the Company filed in connection with its Debt Collection Activities; and
  - b. the total number of court judgments the Company obtained against Debtors.
10. Identify any former employees and agents (excluding attorneys identified in response to Interrogatory 7(b)) who worked for the Company for a minimum of 90 calendar days. For each, provide:
  - a. the former employee's or agent's official title at the Company;
  - b. the former employee's or agent's department at the Company;
  - c. the month and year the former employee or agent began and ceased working at or for the Company; and
  - d. the reason the former employee or agent separated from the Company.
11. Identify each Person (including the dates of employment and any titles or positions held) responsible for:
  - a. creating or implementing the Company's training and guidance materials (including telephone scripts) relating to Debt Collection Activities;
  - b. creating or implementing the Company's policies and procedures for complying with laws relating to Debt Collection Activities, including the FDCPA, FCRA, state and federal laws prohibiting unfair, deceptive, or

- abusive acts and practices, and any other Federal consumer financial law;  
and
  - c. creating or implementing the Company's policies and procedures for receiving, logging, investigating, and responding to complaints and disputes relating to Debt Collection Activities, including recording and responding to cease-and-desist requests.
12. Identify each creditor or third-party for which the Company has performed Debt Collection Activities. For each creditor or third-party, and for each year during the Applicable Period, specify:
- a. the Company's contact Person;
  - b. the period of the Company's services;
  - c. the services the Company provided;
  - d. the total number of Debt(s) the Company attempted to collect in any way;
  - e. the dollar amount of Debt the Company attempted to collect in any way;  
and
  - f. the Company's total revenue from Debt Collection Activities.
13. For each year during the Applicable Period, provide:
- a. the total number of oral consumer disputes of Debt received by the Company;
  - b. the total number of written consumer disputes of Debt received by the Company;
  - c. the number of written verification right notices the Company provided to consumers;
  - d. the number of written requests for verification of debt the Company received;
  - e. the number of oral requests for verification of debt the Company received;
  - f. the number of written and oral notifications the Company received from consumers, informing the Company that the consumer's alleged Debt was incurred as a result of identification theft; and
  - g. the number of written cease-and-desist requests the Company received from consumers.
14. Describe how the Company generated the information produced in response to each subsection of Interrogatory 13.
15. Identify all systems the Company has used to conduct Debt Collection Activities (whether the system is in-house, hosted, or used by a vendor) and provide system diagrams for each system identified, including:
- a. a data flow diagram;
  - b. a systems architecture diagram; and
  - c. a network diagram.



16. For each system identified in response to Interrogatory 15, identify or provide:
  - a. the operating system, hardware configuration;
  - b. the users with administrative access, and categories of users with general access;
  - c. the point of contact (e.g., the employee most knowledgeable about the system);
  - d. the backup plan for the full system's data; and
  - e. the software resident on the system (beyond standard software), including:
    - i. the name, vendor, and version; and
    - ii. if the software is custom, the language(s) used to build it and the source control methodology;
  - f. the time period during which the system was or is in use.
  
17. Identify all databases the Company has used—whether in-house, hosted, or by used by a vendor on the Company's behalf—to conduct Debt Collection Activities. For each database, identify or provide the following information:
  - a. the employee(s) most knowledgeable about the database;
  - b. the database system name, commercial software name (if different from the system name), version, technology platform, and computing model (e.g., client, server, or multi-tier);
  - c. the time period during which the database is or was in use;
  - d. the names and descriptions of the data fields contained in the database;
  - e. the data type (e.g., date, time, integer, or text) in each data field;
  - f. the business purpose for which it is used;
  - g. a description of the process by which or for which it is used;
  - h. a description of each category of Persons with access to any part(s) of the database, the identity of the part(s) to which each category of Persons has access, and for what purpose;
  - i. the timeframe for which information in each data field is stored or maintained;
  - j. a description of how the database is populated with data or information and by whom;
  - k. a description of how the database interacts with other Company systems, (e.g., file systems or other databases);
  - l. a description of any processes used to assure the accuracy of data in each database, including any internal controls, internal audits, or quality assurance programs performed on the database;
  - m. whether the database holds attachments (e.g., image, audio, or PDF files), and a description of those attachments;
  - n. a description of the reporting capabilities of the database;
  - o. a description of any regular or standard reports generated from the database, and the frequency with which such reports are generated;

- p. whether the data stored in the database can be exported to Microsoft Excel or other readily available spreadsheet or database programs; and
- q. a description of the frequency with which the database is archived or backed up, and the method by which it is archived or backed up.

18. For each database identified in response to Interrogatory 17, provide a data dictionary. For each data field, provide the following information:

<b>Data Element Terms</b>	<b>Data Element Definitions</b>
Field Name	Unique name
Definition	Description of the meaning of the data element
Data Type	Type of data (e.g., date, numeric, text, memo, floating point)
Data Size	Maximum field length that will be accepted
Data Format	Format of data (e.g., YYYYMMDD, MM/DD/YYYY)
Field Constraints: Data Element is a required field (Y/N)	Required fields (Y) must be populated
Enumeration (if applicable)	If a field can only take certain values or codes (e.g. A, B, or C), list those values and an explanation of their meaning
Special, Dummy, Test Values	Include a narrative description (e.g., for calls to 555-555-5555, describe that number as being used for internal testing, or for dates populated as 1/1/1900, specify what that value means)
Formula	If the field is calculated, provide the formula for the calculation.

19. For each Document the Company produces in response to Requests for Documents 1 through 11, provide the effective dates that each Document was in use, and a description of the purpose(s) for which it was used. Provide this information in the following table format:

<b>Document Request No.</b>	<b>Bates No.</b>	<b>Title</b>	<b>Purpose</b>	<b>Start Effective Date</b>	<b>End Effective Date</b>

20. If, for any Interrogatory that calls for identification of a Person, there is no identifiable Person for the Applicable Period, identify the most recent identifiable Person, including Persons no longer affiliated with or employed by the Company. For each, specify the dates of affiliation or employment and any titles or positions held.

21. If, for any request, there are Documents that would be responsive but that are now unavailable, identify each Document and its last known location or custodian, and explain why the Document cannot be produced.

### **Requests for Written Reports**

Produce the following data in tab-delimited text files, using double-quote-escaped text fields when necessary. Where data derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. This should comply with at least the first normal form (1NF). Include both the unique identifiers and foreign keys (as well as indicators of their function) in each file expressing the relationship between these files. When data is available for some records and not others, leave the unavailable data items blank. Omissions due to unavailability should be described in narrative with the production. Individual records should never contain a varying number of fields. Where information exists at the record level requested but is not included in the individual Written Report Request, include this information in additional columns in your response to the Written Report Request. Additionally, provide any code used to generate and validate each Written Report.

1. For each type of Debt in the Company's portfolio, and for each year during the Applicable Period, provide:
  - a. the unique identifier of Debt type;
  - b. the total number of Debts the Company attempted to collect in any way;
  - c. the total dollar amount of the Debts the Company attempted to collect in any way; and
  - d. the Company's total revenue.
  
2. For each consumer complaint or credit report dispute the Company received directly from a Consumer Reporting Agency during the Applicable Period, provide:
  - a. the name of the Consumer Reporting Agency that submitted the complaint or dispute;
  - b. the unique identifier by which the Company identifies the Debt account subject of the complaint or dispute;
  - c. the date that the Company received the complaint or dispute;
  - d. a brief description of the nature of the complaint or dispute (e.g., debt resulting from identification theft, debt paid off, debtor's mistaken identity, etc.);
  - e. the response code;
  - f. the dispute code(s) (in separate fields);
  - g. any notes, codes, or history associated with the investigation of the complaint or dispute;
  - h. the date of resolution; and

- i. the Company's reason for closing the complaint or dispute.
3. For each complaint or credit report dispute the Company received from all Persons other than Consumer Reporting Agencies (excluding cease-and-desist requests, and actions or proceedings identified in response to Requests for Written Reports 4 and 5) during the Applicable Period, provide:
  - a. the name of the Person who submitted the complaint or dispute, and their:
    - i. street address;
    - ii. city;
    - iii. state;
    - iv. zip code;
    - v. telephone number; and
    - vi. email address;
  - b. the unique identifier by which the Company identifies the Debt account subject of the Person's complaint or dispute;
  - c. the date that the Company received the complaint or dispute;
  - d. a brief description of the nature of the complaint or dispute (e.g., debt resulting from identification theft, debt paid off, debtor's mistaken identity, etc.);
  - e. any notes, codes, or history associated with the investigation of the complaint or dispute;
  - f. the response code;
  - g. the dispute code(s) (in separate fields);
  - h. the date of resolution; and
  - i. an explanation of the resolution of complaints or disputes related to identification theft.
4. For each cease-and-desist request the Company received during the Applicable Period, provide:
  - a. the name of the Person who submitted the request, and their:
    - i. street address;
    - ii. city;
    - iii. state;
    - iv. zip code;
    - v. telephone number; and
    - vi. email address;
  - b. the unique identifier by which the Company identifies the Debt account subject of the Person's cease-and-desist request;
  - c. any notes, codes, or history associated with the investigation of the complaint or dispute;
  - d. the date that the Company received the cease-and-desist request; and
  - e. the date(s) of any contact initiated by the Company with the Person subsequent to the Company's receipt of the cease-and-desist request.

5. For each legal action or administrative proceeding filed against the Company or its principals relating to the Company's Debt collection or Information Furnishing activities during the Applicable Period, provide:
  - a. the plaintiff(s) bringing the action or proceeding;
  - b. the defendant(s) in the action or proceeding;
  - c. the case number;
  - d. the name and location of the court or administrative body;
  - e. the date the action or proceeding was filed;
  - f. the date of disposition;
  - g. the final outcome of the action or proceeding; and
  - h. one copy of each unique complaint filed against the Company.
6. Identify each telephone number the Company has used to contact consumers in connection with its Debt Collection Activities. Provide the date range during which the Company used the phone number, and whether the telephone number is associated with a fixed landline, a cellular telephone, or switched/digital or other telephone type.
7. Identify all Debt Collection telephone calls during the Applicable Period, including all associated elements as stored in your or your providers' databases (e.g., Customer Relations Management systems and call recording systems) at a call level, including:
  - a. account number associated with the call;
  - b. unique identifier for the call;
  - c. file reference for call recording, .wav file or similar;
  - d. date and time of call;
  - e. telephone number called;
  - f. duration of call;
  - g. unique operator ID associated with call;
  - h. any call-type codes, disposition codes, resolution codes, product codes, or similar associated with the call (use separate columns);
  - i. notes or comments associated with the call; and
  - j. any other data unique to the call.

### **Requests for Documents**

1. One copy of each unique version of all your policies and procedures related to Debt Collection Activities, including but not limited to Debt Collection notices and calls, skip tracing, investigation, use of telephone line(s) or service(s) not controlled by the Company, the decision to file a lawsuit, and logging of complaints or disputes concerning identity theft submitted by consumers and Consumer Reporting Agencies.
2. One copy of each unique version of all your telephone scripts that the Company has used when attempting to collect a Debt.



3. One copy of each unique version of all your policies and procedures related to Information Furnishing Activities, including but not limited to providing an address for consumers to submit disputes, correcting and updating consumer information to be furnished, and logging of complaints or disputes concerning identity theft submitted by consumers and Consumer Reporting Agencies.
4. One copy of each unique version of all your policies and procedures for receiving, logging, investigating, and responding to consumers' complaints or disputes.
5. One copy of each unique version of all your policies and procedures for complying with laws relating to Debt Collection Activities and credit Information Furnishing Activities, including the FDCPA, FCRA, state and federal laws prohibiting unfair, deceptive, or abusive acts and practices, and any other Federal consumer financial law.
6. One copy of each unique version of all your technical and employee manuals, handbooks, guidance, and training materials relating to Debt Collection Activities.
7. One copy of each unique version of all your technical and employee manuals, handbooks, guidance, and training materials relating to credit Information Furnishing Activities.
8. One copy of each unique version of all templates, models, or form Documents that the Company has used to provide consumers notice of their Debt verification rights.
9. One copy of each unique version of all templates, models, or form Documents that the Company has used to respond to consumers' oral or written Debt validation requests.
10. One copy of each unique version of all templates, models, or form Documents that the Company has used to respond to consumer complaints or disputes, including cease-and-desist requests.
11. One copy of each unique version of all other templates, models, or form Documents or letters that the Company has used in Debt Collection.
12. One copy of each unique version of all service contracts, agreements, or retainers signed by the Company and Parties identified in response to Interrogatory 12.
13. One copy of each unique version of all documents indicating the outcome of all investigations of alleged or potential violations of the FDCPA, FCRA, state and federal laws prohibiting unfair, deceptive, or abusive acts and practices, or any other Federal consumer financial law, including but not limited to reports from

internal or external auditors, meeting minutes, presentations, and whistleblower complaints.

14. All audits relating to the Company's Debt Collection Activities, including but not limited to quality-assurance and compliance reviews of the Company's compliance with the Company's policies and procedures, the FDCPA, FCRA, state and federal laws prohibiting unfair, deceptive, or abusive acts and practices, or any other Federal consumer financial law.
15. Audited financial statements, including the corresponding footnote disclosures, balance sheets, income statements, statements of cash flows, and statements of changes in owners' equity for the Applicable Period through the latest month available for 2017. If no audited financial statements exist, unaudited financial statements along with the corresponding footnote disclosures.

### Requests for Tangible Things

1. Metadata from call systems and related systems, including call notes, for all telephone calls relating to the collection of a Debt.
2. Recordings of all telephone calls relating to the collection of a Debt between the Company and any Consumer.
3. Recordings of all telephone calls relating to the collection of a Debt between the Company and any third-party.
4. For each account for which the Company made a call responsive to Requests for Tangible Things 2 and 3, identify all phone numbers authorized for or associated with the account. Provide each phone number as a separate observation, with fields for the original account number associated with the phone number and any notes regarding the type of number (e.g., home, work, cell, or spouse work).

## II. Definitions.

- A. "**And**" and "**or**" must be construed both conjunctively and disjunctively.
- B. "**Any**" includes "**all**," and "**all**" includes "**any**."
- C. "**CID**" means the Civil Investigative Demand, including the Requests, Topics for Hearing, Definitions, and Instructions.
- D. "**CFPB**" or "**Bureau**" means the Bureau of Consumer Financial Protection.
- E. "**Company**" or "**you**" or "**your**" means the Law Offices of Crystal Moroney, P.C., and any successor in interest.

F. “**Consumer**” or “**Debtor**” means any natural person obligated or allegedly obligated to pay any Debt as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(3).

G. “**Consumer Reporting Agency**” means “consumer reporting agency” as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).

H. “**Debt**” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(5).

I. “**Debt Collection Activities**” means all activities related to efforts to collect a Debt, either directly or indirectly.

J. “**Demand Letter**” means any document sent to a Consumer in an effort to collect a Debt.

K. “**Deputy Enforcement Director**” refers to a Deputy Assistant Director of the Office of Enforcement.

L. “**Document**” means any written matter of every type and description, including electronically stored information. “Document” includes any non-identical copy (such as a draft or annotated copy) of another document.

M. “**Each**” includes “**every**,” and “**every**” includes “**each**.”

N. “**Electronically Stored Information**,” or “**ESI**,” means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information, including but not limited to e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, regardless of how or where the information is stored, including if it is on a mobile device.

O. “**Enforcement Director**” refers to the Assistant Director of the Office of Enforcement.

P. “**Fair Credit Reporting Act**” or “**FCRA**” means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

Q. “**Fair Debt Collection Practices Act**” or “**FDCPA**” means the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

R. **“Identify”** means to provide: (a) for natural persons, their name, title or position, present business affiliation, present business address, e-mail address, and telephone number, or if a present business affiliation or present business address is not known, the last known business address, home address, e-mail address, and telephone number; (b) for businesses or other organizations, the name, address, identities of officers, directors, or managers of the business or organization, and contact persons with e-mail addresses and telephone numbers, where applicable; and (c) for documents, the title, date, authors, recipients, Bates numbers, if applicable, type of document or some other means of identifying the document, and the present or last known location or custodian.

S. **“Information Furnishing Activities”** means all activities related to efforts to furnish consumer information to a Consumer Reporting Agency, either directly or indirectly.

T. **“Person”** means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

### III. **Instructions.**

A. **Sharing of Information:** This CID relates to a nonpublic, law-enforcement investigation being conducted by the Bureau. The Bureau may make its files available to other civil and criminal federal, state, or local law-enforcement agencies under 12 C.F.R. §§ 1070.43(b)(1) and 1070.45(a)(5). Information you provide may be used in any civil or criminal proceeding by the Bureau or other agencies. As stated in 12 C.F.R. § 1080.14, information you provide in response to this CID is subject to the requirements and procedures relating to the disclosure of records and information set forth in 12 C.F.R. pt. 1070.

B. **Meet and Confer:** As stated in 12 C.F.R. § 1080.6(c), you must contact Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688** as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from **January 1, 2014, until the date of this CID (“Applicable Period”)**.

D. **Privilege Claims:** If any material responsive to this CID is withheld on the grounds of privilege, you must make the privilege claim no later than the date set for the production of the material. As stated in 12 C.F.R. § 1080.8(a), any such claim must include a schedule of the documents, information, or tangible things withheld that

states, for each:

1. its type, specific subject matter, and date;
2. the names, addresses, positions, and organizations of all authors and direct or indirect recipients;
3. the specific grounds for claiming the privilege;
4. the request to which the privileged document, information, or thing is responsive; and
5. its Bates number or range.

In addition, the person who submits the schedule and the attorney stating the grounds for the privilege must sign it. A person withholding material solely based on a claim of privilege must comply with the requirements of 12 C.F.R. § 1080.8 rather than file a petition for an order modifying or setting aside a demand under 12 C.F.R. § 1080.6(e). Please follow the enclosed Document Submission Standards for further instructions about producing redacted privileged documents.

**E. Document Retention:** Until you are notified otherwise, you are required to retain all documents and other tangible things that you used or relied on in responding to this CID. In addition, you must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation, as described in the CID's Notification of Purpose. You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

**F. Modification Requests:** If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688**. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

**G. Petition for Order Modifying or Setting Aside Demand:** Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at [ExecSec@cfpb.gov](mailto:ExecSec@cfpb.gov), copying the Enforcement Director at [Enforcement@cfpb.gov](mailto:Enforcement@cfpb.gov), within **20** calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be



supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

H. **Certification:** The person to whom the CID is directed or, if it is directed to an entity, any person having knowledge of the facts and circumstances relating to the production, must certify that the response to this CID is true and complete. This certification must be made on the form declaration included with this CID.

I. **Scope of Search and Investigational Hearing:** This CID covers materials and information in your possession, custody, or control, including but not limited to documents in the possession, custody, or control of your attorneys, accountants, other agents or consultants, directors, officers, and employees.

J. **Procedures Governing Hearing:** This CID is issued under section 1052 of the Consumer Financial Protection Act, 12 U.S.C. § 5562. The taking of oral testimony pursuant to this CID will be conducted in conformity with that section and 12 C.F.R. §§ 1080.6(a)(4), 1080.7, and 1080.9.

K. **Designation of a Witness:** This CID requires oral testimony from an entity. Under 12 C.F.R. § 1080.6(a)(4)(ii), you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf. The individuals designated must testify about information known or reasonably available to you, and their testimony is binding on you. Your failure to designate a witness competent to testify about the topics described will be considered a failure to comply with this CID.

L. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards.

All productions sent by U.S. Postal Service should be addressed to:

Consumer Financial Protection Bureau  
1700 G Street, NW  
ATTN: Chelsea Peter, SEFL, Office of Enforcement, Seat 4059A  
Washington, DC 20552

All productions sent by FedEx, UPS, or other courier should be addressed to:

Consumer Financial Protection Bureau  
1625 Eye Street NW  
ATTN: Chelsea Peter, SEFL, Office of Enforcement, Seat 4059A  
Washington, DC 20006

Please provide your intended method of production and any tracking numbers by e-mail or telephone to Enforcement Attorney **E. Vanessa Assae-Bille** at **Elisabeth.Assae-**



**Bille@cfpb.gov and (202) 435-7688.**

**M. Document Identification:** Documents that may be responsive to more than one request of this CID need not be submitted more than once. All documents responsive to this CID must be accompanied by an index that identifies: (i) the name of each custodian of each responsive document; (ii) the corresponding Bates number or range used to identify that person's documents; and (iii) the request or requests to which each document responds.

**N. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, or sensitive health information of any individual, please contact Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688** before sending those materials to discuss ways to protect the information during production. You must encrypt electronic copies of such materials with encryption software acceptable to the Bureau. When submitting encrypted material, you must provide the encryption key, certificate, or passcode in a separate communication.

For purposes of this CID, sensitive personally identifiable information includes an individual's Social Security number alone or an individual's name, address, or phone number *in combination with* one or more of the following: date of birth, Social Security number, driver's-license number or other state-identification number, or a foreign country equivalent, passport number, financial-account number, credit-card number, or debit-card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**O. Information Identification:** Each request for a written report or interrogatory in this CID must be answered separately and fully in writing under oath. All information submitted must clearly and precisely identify the request or requests to which it is responsive.

**P. Declaration Certifying Records of Regularly Conducted Business Activity:** Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID. Please execute this Declaration and provide it with your response.

**Q.** All references to "**year**" or "**annual**" refer to the calendar year. Where information is requested "for each year," provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.

**R. Duty to Estimate:** If you are unable to answer any interrogatory fully, supply

such information as is available. Explain why such answer is incomplete, the efforts you made to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way to make an estimate, provide an explanation.

## CERTIFICATE OF COMPLIANCE WITH RFPA

The Right to Financial Privacy Act of 1978 (RFPA) does not apply to the disclosure of financial records or information to the Consumer Financial Protection Bureau (CFPB) “in the exercise of its authority with respect to a financial institution.” 12 U.S.C. § 3413(r). This civil investigative demand is also issued in connection with an investigation within the meaning of section 3413(h)(1)(A) of the RFPA. Therefore, in accordance with section 3403(b) of the RFPA, the undersigned certifies that, to the extent applicable, the provisions of the RFPA have been complied with as to the Civil Investigative Demand issued to the Law Offices of Crystal Moroney, P.C., to which this Certificate is attached.

The information obtained will be used to determine whether the persons named or referred to in the attached Civil Investigative Demand are in compliance with laws administered by the Consumer Financial Protection Bureau. The information may be transferred to another department or agency consistent with the RFPA.

Under the RFPA, good faith reliance on this certificate relieves the recipient and its employees and agents of any liability to customers in connection with the requested disclosures of financial records of these customers. *See* 12 U.S.C. § 3417(c).

Deborah Morris

Digitally signed by Deborah  
Morris  
Date: 2017.06.23 11:51:19 -04'00'

Deborah Morris  
Consumer Financial Protection Bureau  
Deputy Director, Office of Enforcement

**DECLARATION CERTIFYING RECORDS OF  
REGULARLY CONDUCTED BUSINESS ACTIVITY**  
**Pursuant to 28 U.S.C. § 1746**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by \_\_\_\_\_ as \_\_\_\_\_ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by the Law Offices of Crystal Moroney, P.C. and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by the Law Offices of Crystal Moroney, P.C. are true copies of records of regularly conducted activity that were:
  - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
  - b. kept in the course of the regularly conducted business activity; and
  - c. made by the regularly conducted business activity as a regular practice.

I certify under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Signature

**CERTIFICATE OF COMPLIANCE – DOCUMENTS**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746,

declare that:

1. I have confirmed that a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information in the possession, custody, or control of the Law Offices of Crystal Moroney, P.C.
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated June 23, 2017 that are within the possession, custody, or control of the Law Offices of Crystal Moroney, P.C. have been submitted to the Bureau custodian or deputy custodian identified in this Civil Investigative Demand.
3. If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_\_.

\_\_\_\_\_  
Signature

**CERTIFICATE OF COMPLIANCE – INTERROGATORY ANSWERS AND REPORTS**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. I have confirmed that, in preparation of all answers and reports in response to the enclosed Civil Investigative Demand, a diligent inquiry has been made of all persons who likely have possession of responsive documents and information, and I have confirmed that a diligent search has been made of all of the locations and files that likely contained responsive documents and information within the possession, custody, control, or knowledge of the Law Offices of Crystal Moroney, P.C.
2. Based on the information identified through the search described in paragraph 1 above, all answers and reports prepared in response to the enclosed required by the Civil Investigative Demand dated June 23, 2017 are true, correct, and complete.
3. If an interrogatory or a portion of an interrogatory has not been fully answered or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.

I certify under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_\_.

\_\_\_\_\_  
Signature



1700 G Street, NW  
Washington, DC 20552



November 14, 2019

Via U.S. Mail and Email

Law Offices of Crystal Moroney, P.C.  
17 Squadron Blvd.  
Suite 303  
New City, NY 10956

Re: Civil Investigative Demand served on the Law Offices of Crystal Moroney, P.C.  
on November 14, 2019

Dear Ms. Moroney:

Attached is a civil investigative demand (CID) issued to you by the Bureau of Consumer Financial Protection (Bureau) under 12 C.F.R. § 1080.6 and § 1052(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5562. The Bureau is currently seeking information for a non-public investigation, the purpose of which is explained on the attached CID cover sheet. Please note:

1. **Contact Bureau counsel, E. Vanessa Assae-Bille, as soon as possible to schedule an initial meeting that is required to be held within 10 calendar days of receipt of this CID.** During this meeting, you must discuss and attempt to resolve all issues regarding the CID, including timely compliance. The rules require that you make available at this meeting personnel with the knowledge necessary to resolve issues; such individuals may include, for example, information-technology professionals. Please be prepared to discuss your planned compliance schedule, including any proposed changes that might reduce your cost or burden while still giving the Bureau the information it needs.
2. **You must retain and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation, as described in the CID's Notification of Purpose.** You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

[consumerfinance.gov](http://consumerfinance.gov)

Please contact Bureau counsel as soon as possible to set up an initial meeting, which must be held within **10** calendar days of receipt of this CID. We appreciate your cooperation.

Sincerely,

/s/E. Vanessa Assae-Bille  
Enforcement Attorney

Attachment



Bureau of Consumer Financial Protection

# Civil Investigative Demand

To **Law Offices of Crystal Moroney, P.C.**  
17 Squadron Blvd.  
Suite 303  
New City, NY 10956

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Bureau of Consumer Financial Protection.

## Action Required (choose all that apply)

**Appear and Provide Oral Testimony**

Location of Investigational Hearing	Date and Time of Investigational Hearing
	Bureau Investigators

**Produce Documents and/or Tangible Things, as set forth in the attached document, by the following date** 12/16/2019

**Provide Written Reports and/or Answers to Questions, as set forth in the attached document, by the following date** 12/16/2019

## Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether debt collectors, furnishers, or associated persons, in connection with regularly collecting or attempting to collect consumer debt and furnishing consumer information to consumer-reporting agencies, have: (1) disregarded warnings that debts were the result of identity theft or otherwise disputed by consumers, in a manner that was unfair, deceptive, or abusive, in violation of §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536; (2) ignored cease-and-desist requests and engaged in other prohibited communications with consumers or third parties, or failed to provide required notices, or made false or misleading representations in a manner that violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692b, 1692c, 1692e, 1692g; or (3) failed to correct and update furnished information, or failed to maintain reasonable policies and procedures in a manner that violated the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2, or Regulation V, 12 C.F.R. § 1022.42. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

### Custodian / Deputy Custodian

Deborah Morris/Annais Ramirez  
The Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

### Bureau Counsel

E. Vanessa Assae-Bille  
The Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

### Date Issued

11/14/2019

### Signature

Deborah  
Morris

Digitally signed by  
Deborah Morris  
Date: 2019.11.14  
11:07:44 -05'00'

### Name / Title

Deborah Morris, Deputy Enforcement Director

### Service

The delivery of this demand to you by any method prescribed by the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562, is legal service. If you fail to comply with this demand, the Bureau may seek a court order requiring your compliance.

### Right to Regulatory Enforcement Fairness

The Bureau is committed to fair regulatory enforcement. If you are a small business under Small Business Administration standards, you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

### Travel Expenses

Request a travel voucher to claim compensation to which you are entitled as a witness before the Bureau pursuant to Section 1052 of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5562.

### Paperwork Reduction Act

This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CIVIL INVESTIGATIVE DEMAND FOR  
PRODUCTION OF DOCUMENTS, TANGIBLE THINGS, WRITTEN  
REPORTS, AND ANSWERS TO INTERROGATORIES**

**I. Requests.**

**Interrogatories**

1. Identify all Persons who participated in responding to this CID, describe the specific tasks performed by each Person, and identify the response for which they performed each task.
2. Describe the Company's organizational structure, including:
  - a. the Company's legal name and principal place of business;
  - b. the date and jurisdiction in which it was incorporated or organized;
  - c. all names under which the Company has done business;
  - d. the Company's leadership including the principals, directors, and owners;
  - e. each state in which the Company has done business; and
  - f. the time period during which it did business in each state.
3. Describe each of the Company's business activities (e.g., debt collection, furnishing information to Consumer Reporting Agencies, litigation, etc.). For each of those business activities, provide the Company's annual revenue.
4. Describe:
  - a. the type(s) of Debt the Company collects (e.g., medical, utilities, schoolbook rentals, etc.);
  - b. the age range of Debt the Company collects;
  - c. the method(s) by which the Company obtains Debt accounts (e.g., assignment, or portfolio purchase);
  - d. whether the Company obtains Debt accounts after the accounts become delinquent or are in default;
  - e. whether the Company collects Debts owed or asserted to be owed to another party;
  - f. the type(s) of data and records the Company receives with each Debt account it obtains; and
  - g. the method(s) by which the Company removes Debt accounts from its portfolio (e.g., settlements, referrals to law firms, conveyance to the creditor or third-party, or sale to Debt buyer(s)).
5. Identify each alternative name(s) or alias(es) the Company has used to identify itself when contacting consumers in connection with its Debt Collection Activities. Provide the date range during which the Company used the alternative name(s) or alias(es).

6. Describe the Company's compensation structure for its employees and agents performing Debt Collection Activities, including but not limited to the Company's wage structure, the Company's bonus structure, and the criteria considered and formulas applied to determine the award of bonuses and other rewards.
7. For each year during the Applicable Period, provide the highest total number of:
  - a. employees or agents engaged in Debt Collection activities (excluding attorneys identified in response to Interrogatory 7(b)) working for the Company; and
  - b. licensed attorneys working for the Company.
8. Identify each licensed attorney who formerly worked for the Company, including:
  - a. their full legal name;
  - b. their title(s) held at the Company;
  - c. the month and year they began and ceased working for the Company; and
  - d. whether they were engaged in Debt Collection Activities.
9. For each year during the Applicable Period, provide the total number of:
  - a. lawsuits the Company filed in connection with its Debt Collection Activities; and
  - b. court judgments the Company obtained against debtors.
10. Identify any former employees and agents (excluding attorneys identified in response to Interrogatory 7(b)) who have worked for the Company for a minimum of 90 calendar days. For each, include:
  - a. the former employee's or agent's official title at the Company;
  - b. the former employee's or agent's department at the Company;
  - c. the month and year the former employee or agent began and ceased working at or for the Company;
  - d. the reason the former employee or agent separated from the Company;
  - e. the former employee's current or last known home address;
  - f. the former employee's current or last known e-mail address; and
  - g. the former employee's current or last known telephone number.
11. Identify each Person (including the dates of employment and any titles or positions held) who has been responsible for:
  - a. creating or implementing the Company's training and guidance materials (including telephone scripts) relating to Debt Collection Activities;
  - b. creating or implementing the Company's policies and procedures for complying with laws relating to Debt Collection Activities, including the

- FDCPA, FCRA, and state and federal laws prohibiting unfair, deceptive, or abusive acts and practices; and
- c. creating or implementing the Company's policies and procedures for receiving, logging, investigating, and responding to complaints and disputes relating to Debt Collection Activities, including recording and responding to cease-and-desist requests.
12. Identify each creditor or third-party for which the Law Offices of Crystal Moroney, P.C. performed Debt Collection Activities. For each creditor or third-party, and for each year during the Applicable Period, specify:
    - a. the contact Person at Law Offices of Crystal Moroney, P.C.;
    - b. type of Debt in the portfolio of Law Offices of Crystal Moroney, P.C.;
    - c. the start date and end of date of the services that Law Offices of Crystal Moroney, P.C. provided;
    - d. a description of each service Law Offices of Crystal Moroney, P.C. provided;
  13. For each year during the Applicable Period, provide the number of:
    - a. oral consumer disputes of Debt the Company received;
    - b. written consumer disputes of Debt the Company received;
    - c. written verification right notices the Company provided to consumers;
    - d. written requests for verification of debt the Company received;
    - e. oral requests for verification of debt that the Company received;
    - f. written and oral notifications the Company received from consumers stating that their alleged Debt was incurred as a result of identity theft; and
    - g. written cease-and-desist requests the Company received from consumers.
  14. Describe how the Company generated the information produced in response to each subsection of Interrogatory 13.
  15. Identify each telephone number the Company has used to contact consumers in connection with its Debt Collection Activities. Provide the date range during which the Company used the phone number, and whether the telephone number is associated with a fixed landline, a cellular telephone, or switched/digital or other telephone type.
  16. Identify all databases the Company has used—whether in-house, hosted, or used by a vendor on the Company's behalf—to conduct Debt Collection Activities. For each database, identify or provide the following information:
    - a. the employee(s) most knowledgeable about the database;



- b. the database system name, commercial software name (if different from the system name), version, technology platform, and computing model (e.g., client, server, or multi-tier);
  - c. the time period during which the database is or was in use;
  - d. the names and descriptions of the data fields contained in the database;
  - e. the data type (e.g., date, time, integer, or text) in each data field;
  - f. any purposes beyond debt collection for which it is used;
  - g. a description of each category of Persons with access to any part(s) of the database, the identity of the part(s) to which each category of Persons has access, and for what purpose;
  - h. the timeframe for which information in each data field is stored or maintained;
  - i. a description of how the database is populated with data or information and by whom;
  - j. a description of how the database interacts with other Company systems, (e.g., file systems or other databases);
  - k. a description of any processes used to assure the accuracy of data in each database, including any internal controls, internal audits, or quality assurance programs performed on the database;
  - l. whether the database holds attachments (e.g., image, audio, or PDF files), and a description of those attachments;
  - m. a description of the reporting capabilities of the database;
  - n. a description of any regular or standard reports generated from the database, and the frequency with which such reports are generated;
  - o. whether the data stored in the database can be exported to Microsoft Excel or other readily available spreadsheet or database programs; and
  - p. a description of the frequency with which the database is archived or backed up, and the method by which it is archived or backed up.
17. For each database identified in response to Interrogatory 17, provide a data dictionary. For each data field, provide the following information:

<b>Data Element Terms</b>	<b>Data Element Definitions</b>
Field Name	Unique name
Definition	Description of the meaning of the data element
Data Type	Type of data (e.g., date, numeric, text, memo, floating point)
Data Size	Maximum field length that will be accepted
Data Format	Format of data (e.g., YYYYMMDD, MM/DD/YYYY)
Field Constraints: Data Element is a required field (Y/N)	Required fields (Y) must be populated
Enumeration (if applicable)	If a field can only take certain values or codes (e.g. A, B, or C), list those values and an explanation of their meaning
Special, Dummy, Test Values	Include a narrative description (e.g., for calls

	to 555-555-5555, describe that number as being used for internal testing, or for dates populated as 1/1/1900, specify what that value means)
Formula	If the field is calculated, provide the formula for the calculation.

18. For each Document the Company produces in response to Requests for Documents 1 through 13, provide the effective dates that each Document was in use. Provide this information in the following table format:

Document Request No.	Bates No.	Title	Start Effective Date	End Effective Date

19. If, for any Interrogatory that calls for identification of a Person, there is no identifiable Person for the Applicable Period, identify the most recent identifiable Person, including Persons no longer affiliated with or employed by the Company. For each, specify the dates of affiliation or employment and any titles or positions held.

20. If, for any request, there are Documents that would be responsive but that are now unavailable, identify each Document and its last known location or custodian, and explain why the Document cannot be produced.

**Requests for Written Reports**

Produce the following data in tab-delimited text files, using double-quote-escaped text fields when necessary. Where data derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. This should comply with at least the first normal form (1NF). Include both the unique identifiers and foreign keys (as well as indicators of their function) in each file expressing the relationship between these files. When data is available for some records and not others, leave the unavailable data items blank. Omissions due to unavailability should be described in narrative with the production. Individual records should never contain a varying number of fields. Where information exists at the record level requested but is not included in the individual Written Report Request, include this information in additional columns in your response to the Written Report Request. Additionally, provide any code used to generate and validate each Written Report.

1. For each Creditor or third-party with Debt in the Company’s portfolio, and for each year during the Applicable Period, provide:
  - a. the name of the Creditor or third-party;
  - b. the unique identifier of Debt type;

- c. the total number of Debts the Company attempted to collect in any way;
  - d. the total dollar amount of the Debts the Company attempted to collect in any way; and
  - e. the Company's total revenue.
2. For each year during the Applicable Period, provide a log of all consumer complaints or disputes that the Company has received, including:
  - a. the date on which the Company received the complaint or dispute;
  - b. the name of the Person who submitted the request, and their:
    - i. street address;
    - ii. city;
    - iii. state;
    - iv. zip code;
    - v. telephone number; and
    - vi. email address;
  - c. the unique identifier by which the Company identifies the Debt account related to the Person's complaint or dispute;
  - d. a brief description of the complaint or dispute (e.g., cease-and-desist, Debt validation, information furnishing to Consumer Reporting Agencies, etc.);
  - e. whether the complaint or dispute was written or oral;
  - f. the date that the Company initiated contact with the Person who submitted the complaint or dispute; and
  - g. any notes, codes, or history associated with the investigation of the complaint or dispute; and
  - h. an explanation of the resolution.
3. For each consumer complaint or credit report dispute the Company received directly from a Consumer Reporting Agency during the Applicable Period, provide:
  - a. the name of the Consumer Reporting Agency that submitted the complaint or dispute;
  - b. the unique identifier by which the Company identifies the Debt account related to the complaint or dispute;
  - c. the date that the Company received the complaint or dispute;
  - d. a brief description of the nature of the complaint or dispute (e.g., identification theft, debt paid off, debtor's mistaken identity, etc.);
  - e. the response code;
  - f. the dispute code(s) (in separate fields);
  - g. any notes, codes, or history associated with the investigation of the complaint or dispute;
  - h. the date of resolution; and
  - i. the Company's reason for closing the complaint or dispute.

4. Identify all telephone calls that the Company has made in attempt to collect a Debt on behalf of a Creditor or third-party, and provide all associated elements as stored in your or your providers' databases (e.g., Customer Relations Management systems and call recording systems) at a call level, including:
  - a. account number associated with the call;
  - b. unique identifier for the call;
  - c. file reference for call recording, .wav file or similar;
  - d. date and time of call;
  - e. telephone number called;
  - f. duration of call;
  - g. unique operator ID associated with call;
  - h. any call-type codes, disposition codes, resolution codes, product codes, or similar associated with the call (use separate columns);
  - i. notes or comments associated with the call; and
  - j. any other data unique to the call.

### **Requests for Documents**

1. One copy of all unique policies and procedures related to Debt Collection Activities, including but not limited to Debt Collection notices and calls, skip tracing, investigations, use of telephone line(s) or service(s) not controlled by the Company, and logging of complaints or disputes concerning identity theft submitted by consumers and Consumer Reporting Agencies.
2. One copy of all unique telephone scripts the Company has used while attempting to collect a Debt.
3. To the extent not already provided, one copy of all unique technical and employee manuals, handbooks, guidance documents, and training materials relating to Debt Collection Activities.
4. One copy of all unique policies and procedures related to Information Furnishing Activities, including but not limited to providing an address for consumers to submit disputes, correcting and updating consumer information to be furnished, and logging of complaints or disputes concerning identity theft submitted by consumers and Consumer Reporting Agencies.
5. To the extent not already provided, one copy of each unique technical and employee manuals, handbooks, guidance, and training materials relating to credit Information Furnishing Activities.
6. To the extent not already provided, one copy of all other unique policies and procedures for addressing consumers' complaints or disputes.
7. One copy of each unique policies and procedures for complying with laws relating to Debt Collection Activities and credit Information Furnishing Activities,

including the FDCPA, FCRA, and state and federal laws prohibiting unfair, deceptive, or abusive acts and practices.

8. One copy of all unique templates, models, or form Documents the Company has used to notify consumers of their Debt verification rights.
9. One copy of all unique templates, models, or form Documents the Company has used to respond to consumers' oral or written Debt validation requests.
10. One copy of all unique templates, models, or form Documents that the Company has used to respond to consumer complaints or disputes, including cease-and-desist requests.
11. One copy of all other unique templates, models, or form Documents or letters that the Company has used in the attempt to collect a Debt from a consumer.
12. All audits relating to the Company's Debt Collection Activities, including but not limited to quality-assurance and compliance reviews of the Company's compliance with the Company's policies and procedures, the FDCPA, FCRA, and state and federal laws prohibiting unfair, deceptive, or abusive acts and practices.
13. Audited financial statements, including the corresponding footnote disclosures, balance sheets, income statements, statements of cash flows, and statements of changes in owners' equity for the Applicable Period through the latest month available for 2019. If no audited financial statements exist, unaudited financial statements along with the corresponding footnote disclosures.

### **Requests for Tangible Things**

1. Metadata from call systems and related systems, including call notes, for all telephone calls made or received by the Company in an attempt to collect a Debt from a consumer.
2. Recordings of all telephone calls between the Company and any Consumer relating to the Company's attempt to collect on a consumer Debt in the Company's portfolio.
3. Recordings of all telephone calls between the Company and any third-party natural persons (excluding any Creditor or any third-party for which the Company is performing or had performed Debt Collection Activities) relating to the Company's attempt to collect on a consumer Debt in the Company's portfolio.
4. For each account for which the Company made a call responsive to Requests for Tangible Things 2 and 3, identify all phone numbers authorized associated with the account. Provide each phone number as a separate observation, with fields for

the original account number associated with the phone number and any notes regarding the type of number (e.g., home, work, cell, or spouse work).

## II. Definitions.

- A. “**And**” and “**or**” must be construed both conjunctively and disjunctively.
- B. “**Any**” includes “**all**,” and “**all**” includes “**any**.”
- C. “**CID**” means the Civil Investigative Demand, including the Requests, Topics for Hearing, Definitions, and Instructions.
- D. “**Bureau**” means the Bureau of Consumer Financial Protection.
- E. “**Company**” or “**you**” or “**your**” means the Law Offices of Crystal Moroney, P.C., and any successor in interest.
- F. “**Consumer**” or “**Debtor**” means any natural person obligated or allegedly obligated to pay any Debt as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(3).
- G. “**Consumer Reporting Agency**” means “consumer reporting agency” as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).
- H. “**Debt**” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment as defined in the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(5).
- I. “**Debt Collection Activities**” means all activities, including attempts, to collect a Debt either directly or indirectly (excluding the provision of legal services).
- J. “**Demand Letter**” means any document sent to a Consumer in an effort to collect a Debt.
- K. “**Deputy Enforcement Director**” refers to a Deputy Assistant Director of the Office of Enforcement.
- L. “**Document**” means any written matter of every type and description, including electronically stored information. “Document” includes any non-identical copy (such as a draft or annotated copy) of another document.
- M. “**Each**” includes “**every**,” and “**every**” includes “**each**.”
- N. “**Electronically Stored Information**,” or “**ESI**,” means the complete original



and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise) of any electronically created or stored information, including but not limited to e-mail, instant messaging, videoconferencing, SMS, MMS, or other text messaging, and other electronic correspondence (whether active, archived, unsent, or in a sent or deleted-items folder), word-processing files, spreadsheets, databases, unorganized data, document metadata, presentation files, and sound recordings, regardless of how or where the information is stored, including if it is on a mobile device.

O. **“Enforcement Director”** refers to the Assistant Director of the Office of Enforcement.

P. **“Fair Credit Reporting Act”** or **“FCRA”** means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

Q. **“Fair Debt Collection Practices Act”** or **“FDCPA”** means the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

R. **“Identify”** means to provide: (a) for natural persons, their name, title or position, present business affiliation, present business address, e-mail address, and telephone number, or if a present business affiliation or present business address is not known, the last known business address, home address, e-mail address, and telephone number; (b) for businesses or other organizations, the name, address, identities of officers, directors, or managers of the business or organization, and contact persons with e-mail addresses and telephone numbers, where applicable; and (c) for documents, the title, date, authors, recipients, Bates numbers, if applicable, type of document or some other means of identifying the document, and the present or last known location or custodian.

S. **“Information Furnishing Activities”** means all activities related to efforts to furnish consumer information to a Consumer Reporting Agency, either directly or indirectly.

T. **“Person”** means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

### III. Instructions.

A. **Sharing of Information:** This CID relates to a nonpublic, law-enforcement investigation being conducted by the Bureau. The Bureau may make its files available to other civil and criminal federal, state, or local law-enforcement agencies under 12 C.F.R. §§ 1070.43(b)(1) and 1070.45(a)(5). Information you provide may be used in any civil or criminal proceeding by the Bureau or other agencies. As stated in 12 C.F.R. § 1080.14, information you provide in response to this CID is subject to the requirements and procedures relating to the disclosure of records and information set forth in 12 C.F.R. pt.

1070.

B. **Meet and Confer:** As stated in 12 C.F.R. § 1080.6(c), you must contact Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688** as soon as possible to schedule a meeting (telephonic or in person) to discuss your response to the CID. The meeting must be held within **10** calendar days after you receive this CID or before the deadline for filing a petition to modify or set aside the CID, whichever is earlier.

C. **Applicable Period for Responsive Materials:** Unless otherwise directed, the applicable period for the request is from **January 1, 2014, until the date of this CID (“Applicable Period”)**.

D. **Privilege Claims:** If any material responsive to this CID is withheld on the grounds of privilege, you must make the privilege claim no later than the date set for the production of the material. As stated in 12 C.F.R. § 1080.8(a), any such claim must include a schedule of the documents, information, or tangible things withheld that states, for each:

1. its type, specific subject matter, and date;
2. the names, addresses, positions, and organizations of all authors and direct or indirect recipients;
3. the specific grounds for claiming the privilege;
4. the request to which the privileged document, information, or thing is responsive; and
5. its Bates number or range.

In addition, the person who submits the schedule and the attorney stating the grounds for the privilege must sign it. A person withholding material solely based on a claim of privilege must comply with the requirements of 12 C.F.R. § 1080.8 rather than file a petition for an order modifying or setting aside a demand under 12 C.F.R. § 1080.6(e). Please follow the enclosed Document Submission Standards for further instructions about producing redacted privileged documents.

E. **Document Retention:** Until you are notified otherwise, you are required to retain all documents and other tangible things that you used or relied on in responding to this CID. In addition, you must retain, and suspend any procedures that may result in the destruction of, documents, information, or tangible things that are in any way relevant to the investigation, as described in the CID’s Notification of Purpose. You are required to prevent the destruction of relevant material irrespective of whether you believe such material is protected from future disclosure or discovery by privilege or otherwise. *See* 18 U.S.C. §§ 1505, 1519.

F. **Modification Requests:** If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688**. Modifications must be agreed to in writing by the Enforcement Director or a Deputy Enforcement Director. 12 C.F.R. § 1080.6(d).

G. **Petition for Order Modifying or Setting Aside Demand:** Under 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), you may petition the Bureau for an order modifying or setting aside this CID. To file a petition, you must send it by e-mail to the Bureau's Executive Secretary at [ExecSec@cfpb.gov](mailto:ExecSec@cfpb.gov), copying the Enforcement Director at [Enforcement@cfpb.gov](mailto:Enforcement@cfpb.gov), within **20** calendar days of service of the CID or, if the return date is less than 20 calendar days after service, before the return date. The subject line of the e-mail must say "Petition to Modify or Set Aside Civil Investigative Demand." If a request for confidential treatment is filed, you must file a redacted public petition in addition to the unredacted petition. All requests for confidential treatment must be supported by a showing of good cause in light of applicable statutes, rules, Bureau orders, court orders, or other relevant authority.

H. **Certification:** The person to whom the CID is directed or, if it is directed to an entity, any person having knowledge of the facts and circumstances relating to the production, must certify that the response to this CID is true and complete. This certification must be made on the form declaration included with this CID.

I. **Scope of Search:** This CID covers materials and information in your possession, custody, or control, including but not limited to documents in the possession, custody, or control of your attorneys, accountants, other agents or consultants, directors, officers, and employees.

J. **Document Production:** The Bureau encourages the electronic production of all material responsive to this CID; please follow the enclosed Document Submission Standards.

All packages destined for Bureau offices should be addressed to:

Consumer Financial Protection Bureau  
1700 G Street, NW  
ATTN: Annais Ramirez-Velázquez, SEFL, Office of Enforcement, Seat 8125E.1  
Washington, DC 20552

Please provide your intended method of production and any tracking numbers by e-mail or telephone to Enforcement Attorney **E. Vanessa Assae-Bille** at **Elisabeth.Assae-Bille@cfpb.gov** and **(202) 435-7688**.

K. **Document Identification:** Documents that may be responsive to more than

one request of this CID need not be submitted more than once. All documents responsive to this CID must be accompanied by an index that identifies: (i) the name of each custodian of each responsive document; (ii) the corresponding Bates number or range used to identify that person's documents; and (iii) the request or requests to which each document responds.

**L. Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information, or sensitive health information of any individual, please contact Enforcement Attorney **E. Vanessa Assae-Bille** at **(202) 435-7688** before sending those materials to discuss ways to protect the information during production. You must encrypt electronic copies of such materials with encryption software acceptable to the Bureau. When submitting encrypted material, you must provide the encryption key, certificate, or passcode in a separate communication.

For purposes of this CID, sensitive personally identifiable information includes an individual's Social Security number alone or an individual's name, address, or phone number *in combination with* one or more of the following: date of birth, Social Security number, driver's-license number or other state-identification number, or a foreign country equivalent, passport number, financial-account number, credit-card number, or debit-card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**M. Information Identification:** Each request for a written report or interrogatory in this CID must be answered separately and fully in writing under oath. All information submitted must clearly and precisely identify the request or requests to which it is responsive.

**N. Submission of Documents in lieu of Reports or Answers:** Documents in existence before your receipt of this CID that contain the information requested in any interrogatory may be submitted as part of or in lieu of an answer to the interrogatory. If you submit documents as part of or in lieu of an answer, you must clearly indicate the specific request to which the documents are responsive, and you must clearly identify the specific portion of the documents that are responsive, including page, paragraph, and line numbers, as applicable.

**O. Declaration Certifying Records of Regularly Conducted Business Activity:** Attached is a Declaration Certifying Records of Regularly Conducted Business Activity, which may limit the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID. Please execute this Declaration and provide it with your response.

**P.** All references to "**year**" or "**annual**" refer to the calendar year. Where

information is requested “for each year,” provide it separately for each year; where yearly data is not available, provide responsive information for the calendar year to date, unless otherwise instructed.

**Q. Duty to Estimate:** If you are unable to answer any interrogatory fully, supply such information as is available. Explain why such answer is incomplete, the efforts you made to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation “est.” If there is no reasonable way to make an estimate, provide an explanation.

## CERTIFICATE OF COMPLIANCE WITH RFPA

The Right to Financial Privacy Act of 1978 (RFPA) does not apply to the disclosure of financial records or information to the Bureau of Consumer Financial Protection “in the exercise of its authority with respect to a financial institution.” 12 U.S.C. § 3413(r). This civil investigative demand is also issued in connection with an investigation within the meaning of section 3413(h)(1)(A) of the RFPA. Therefore, in accordance with section 3403(b) of the RFPA, the undersigned certifies that, to the extent applicable, the provisions of the RFPA have been complied with as to the Civil Investigative Demand issued to Law Offices of Crystal Moroney, P.C., to which this Certificate is attached.

The information obtained will be used to determine whether the persons named or referred to in the attached Civil Investigative Demand are in compliance with laws administered by the Bureau of Consumer Financial Protection. The information may be transferred to another department or agency consistent with the RFPA.

Under the RFPA, good faith reliance on this certificate relieves the recipient and its employees and agents of any liability to customers in connection with the requested disclosures of financial records of these customers. *See* 12 U.S.C. § 3417(c).

Deborah  
Morris

Digitally signed by Deborah  
Morris  
Date: 2019.11.14 11:10:04  
-05'00'

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Deborah Morris  
Bureau of Consumer Financial Protection  
Deputy Director, Office of Enforcement



**DECLARATION CERTIFYING RECORDS OF  
REGULARLY CONDUCTED BUSINESS ACTIVITY**  
**Pursuant to 28 U.S.C. § 1746**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by \_\_\_\_\_ as \_\_\_\_\_ and by reason of my position am authorized and qualified to certify the authenticity of the records produced by Law Offices of Crystal Moroney, P.C. and submitted with this Declaration.
2. The documents produced and submitted with this Declaration by Law Offices of Crystal Moroney, P.C. are true copies of records of regularly conducted activity that were:
  - a. made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
  - b. kept in the course of the regularly conducted business activity; and
  - c. made by the regularly conducted business activity as a regular practice.

I certify under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_.

\_\_\_\_\_  
Signature

**CERTIFICATE OF COMPLIANCE**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declare that:

1. I have confirmed that a diligent search has been made for all responsive documents and information in the possession, custody, or control of Law Offices of Crystal Moroney, P.C..
2. All of the documents and information identified through the search described in paragraph 1 above required by the Civil Investigative Demand dated November 14<sup>th</sup>, 2019 that are within the possession, custody, or control of Law Offices of Crystal Moroney, P.C. have been submitted to the Bureau custodian or deputy custodian identified in this Civil Investigative Demand.
3. If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, an interrogatory or a portion of an interrogatory has not been fully answered, or a report or a portion of a report has not been completed, a claim of privilege in compliance with 12 C.F.R. § 1080.8 has been submitted.
4. Law Offices of Crystal Moroney, P.C. has reviewed all responsive answers, reports, other documents and tangible things (collectively “Responses”), and has designated as confidential all those Responses, and only those Responses, the disclosure of which would cause substantial harm to the competitive position of Law Offices of Crystal Moroney, P.C., as that term is used for purposes of the Freedom of Information Act.

I certify under penalty of perjury that the foregoing is true and correct. Executed on

\_\_\_\_\_.

\_\_\_\_\_  
Signature

Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, D.C. 20552



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IN RE LAW OFFICES OF CRYSTAL )  
MORONEY, P.C., )  
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Crystal Moroney, P.C.-0001 )  
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**DECISION AND ORDER ON PETITION BY LAW OFFICES OF CRYSTAL MORONEY, P.C. TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND**

The Law Offices of Crystal Moroney, P.C. (“LOCM”) has petitioned the Consumer Financial Protection Bureau for an order to set aside or modify a civil investigative demand (CID) issued to it by the Bureau. For the reasons set forth below, the Petition is denied.

**FACTUAL BACKGROUND**

This Petition concerns the second of two CIDs the Bureau issued to LOCM, a debt-collection law firm, as part of an investigation into potential violations of the Consumer Financial Protection Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act and its implementing regulation.

The Bureau issued the first CID in June 2017. As provided for in the Bureau’s rules governing investigations, *see* 12 C.F.R. 1080.6(c), LOCM met and conferred with staff from the Bureau’s Office of Enforcement about the CID. Enforcement staff agreed to modify the CID in certain respects in response to LOCM’s requests and to extend the deadlines for compliance. LOCM made a partial production in response to the CID but then refused to provide any further information. After efforts to resolve the disagreement failed, the Bureau filed a petition to enforce the CID in federal district court in New York. *See Bureau of Consumer Financial Protection v. Law Offices of Crystal Moroney, PC*, No. 7:19-cv-1732 (S.D.N.Y.).

In that litigation, LOCM argued that the CID could not be enforced because, among other reasons, it failed to satisfy the statutory requirement that CIDs issued by the Bureau “shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” 12 U.S.C. § 5562(c)(2). The Bureau withdrew that CID and on November 14, 2019 sent LOCM a second, revised CID that provided additional information about the scope and purpose of the Bureau’s investigation. (The Bureau’s petition to enforce the first CID was properly denied as moot after the Bureau informed the district court

that the CID had been withdrawn.) The second CID seeks much the same information as the first one, but many of the specific requests in the CID have been amended for clarity or to narrow their scope, or simply renumbered.

After meeting with Enforcement staff about the second CID, LOCM filed this Petition to set aside or modify the CID on December 5, 2019.<sup>1</sup>

### LEGAL DETERMINATION

LOCM's central argument concerns the provision in the Consumer Financial Protection Act that purports to limit the grounds on which the President can remove the Bureau's Director to "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). LOCM contends that because this provision violates the constitutional separation of powers, and because the Supreme Court has granted certiorari in a case that raises that issue, *see Seila Law LLC v. CFPB*, No. 19-7 (U.S.), the CID should be set aside, or at least modified so that the response deadlines are stayed pending the Supreme Court's decision. LOCM also argues that the CID should be modified (1) to provide the same modifications that Enforcement staff previously agreed to with respect to the first CID, (2) to state that LOCM need not re-produce any material it submitted in response to the first CID, and (3) to limit the time period applicable to the requests in the CID to November 2017 through November 2019.

For the reasons set forth below, the Petition is denied.

**1. The administrative process for petitioning to modify or set aside CIDs is not the proper forum for raising and adjudicating challenges to the constitutionality of provisions of the Bureau's statute.** LOCM contends that I should set aside the CID because the removal restriction in Section 5491(c)(3) is unconstitutional and thus renders the CID invalid. Pet. at 5–13. In the alternative, LOCM asks that I defer the deadlines in the CID until after the Supreme Court has decided the constitutionality of the removal restriction in *Seila Law*. *Id.* at 14–16. The Bureau, however, has consistently taken the position 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. *See, e.g., In re Equitable Acceptance Corp.*, 2019-MISC-Equitable Acceptance Corp.-0001 (Dec. 26, 2019)<sup>2</sup>, at 2; *In re Kern-Fuller and Sutter*, 2019-MISC-Candy Kern-Fuller and Howard

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<sup>1</sup> It appears that LOCM did not timely file its Petition within 20 days of service of the CID, as required by statute and the Bureau's rules governing investigations. *See* 12 U.S.C. § 5562(f)(1); 12 C.F.R. § 1080.6(e); *see also* 12 U.S.C. § 5562(c)(8) (service of a CID may be made by "depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested"). Nevertheless, I will exercise my discretion in this matter and under the circumstances presented here to resolve the Petition on the merits.

<sup>2</sup> Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_equitable-acceptance-corp\\_\\_decision-and-order-on-petition.pdf](https://files.consumerfinance.gov/f/documents/cfpb_equitable-acceptance-corp__decision-and-order-on-petition.pdf).

E. Sutter III-0001 (Apr. 25, 2019)<sup>3</sup>, at 2; *In re Nexus Servs., Inc.*, 2017-MISC-Nexus Services, Inc. and Libre by Nexus, Inc.-0001 (Oct. 11, 2017)<sup>4</sup>, at 2. In the event that the Bureau determines at a later date that it is necessary to seek a court order compelling LOCM's compliance with this CID, *see* 12 U.S.C. § 5562(e), the firm can raise its constitutional objection as a defense to that proceeding in district court.<sup>5</sup>

**2. LOCM seeks modifications that it should have negotiated in the first instance with Enforcement staff.** LOCM next argues that the CID should be altered to provide the same modifications that Enforcement staff previously agreed to with respect to the first CID. Pet. at 16. Although this request is reasonable on its face, LOCM failed to meaningfully pursue it during the meet-and-confer process before filing its Petition and, even now, has not explained just how it believes the second CID—the language of which does not precisely track the language of the first CID—should be modified.

Petitioners who seek an order to modify or set aside a CID must certify that they first took part “in a good faith effort to resolve by agreement the issues raised by the petition.” 12 C.F.R. § 1080.6(e)(1). The Bureau “will consider only issues raised during the meet and confer process.” *Id.* § 1080.6(c)(3). Here, LOCM did raise the possibility of seeking modifications along these lines during the meet and confer. But it also agreed to memorialize its specific requests for modifications in a follow-up letter to Enforcement staff. Rather than sending that letter, LOCM filed this Petition. (LOCM did not seek an extension of time to file its Petition, as it could have under 12 C.F.R. § 1080.6(e)(2).) LOCM thus denied staff an opportunity to consider its requests for modifications in an efficient manner. It now seeks instead to raise those fact-specific determinations for my resolution in the first instance. That is not appropriate under the rules governing the Bureau's investigations. *See id.* § 1080.6(c)(3), (e)(1).

Nor am I in a position to grant Petitioner's request in any event because the Petition itself does not specify which requests should be modified and in what way. For these reasons, I must deny Petitioner's request. As noted below, however, LOCM is invited to properly present to Enforcement staff its requests to modify the second CID in order to bring it into line with the modified first CID. The Office of Enforcement should consider (and, as appropriate, adopt) these requests.

**3. LOCM must respond appropriately to this CID.** The Petition also argues that LOCM should be excused from producing any materials it previously submitted in its partial

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<sup>3</sup> Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_petition-to-modify\\_candy-kern-fuller-and-howard-e-sutter\\_decision-and-order.pdf](https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_candy-kern-fuller-and-howard-e-sutter_decision-and-order.pdf).

<sup>4</sup> Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_petition-to-modify\\_nexus\\_decision-and-order.pdf](https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_nexus_decision-and-order.pdf).

<sup>5</sup> The Bureau has adopted the view in its ongoing litigation that the removal restriction is unconstitutional but that its invalidity does not affect the remainder of the Bureau's statute, including the provisions authorizing the Bureau to issue and enforce CIDs. *See* Br. of Resp't, *Seila Law*, 2019 WL 4528136 (U.S.).



response to the first CID. Pet. at 17. This request must also be denied because LOCM failed to properly submit those documents in response to the first CID. Both the first and second CIDs set out instructions for complying with the Bureau's standards for submitting electronically stored information. See generally 12 C.F.R. § 1080.6(b) (electronic information must be produced "in accordance with the instructions provided by the Bureau regarding the manner and form of production"). Yet LOCM's production fell far short of these standards, as it acknowledged at the time. Nor did LOCM pursue offers by Enforcement staff to try to alleviate the potential burden of complying with the submission standards. Such standards exist not as mere formalities but to ensure that the Bureau receives the information necessary to carry out its statutory responsibility to investigate potential violations of federal consumer financial law. LOCM's failure to meet those standards, or in the alternative to try to negotiate a reasonable accommodation with Enforcement staff, forecloses its argument here. In accord with the Bureau's regulations, LOCM must provide information responsive to the CID in accordance with the instructions provided by the Bureau regarding the manner and form of production, or seek appropriate modifications from Enforcement staff.

**4. The CID seeks information relevant to potentially actionable violations of law.** Finally, LOCM asks that I modify the CID to seek information only from the period between November 2017 and November 2019, arguing that the Bureau is barred from seeking earlier material by the statutes of limitations in the FDCPA and FCRA. Pet. at 17–18. But in conducting an investigation of potential violations of federal consumer financial law, the Bureau is not limited to gathering information only from the time period in which conduct may be actionable. Instead, what matters is whether the information is relevant to conduct for which liability can be lawfully imposed. See, e.g., *CFPB v. Future Income Payments, LLC*, 252 F. Supp. 3d 961, 969 (C.D. Cal. 2017), order vacated in part on other grounds, 2018 WL 7502720 (C.D. Cal. Dec. 18, 2018); *CFPB v. Harbour Portfolio Advisors, LLC*, No. 16-14183, 2017 WL 631914, at \*5 (E.D. Mich. Feb. 16, 2017). Even assuming that the CID sought information regarding conduct outside the statute of limitations, such information may be essential to the Bureau's ability to develop a complete understanding of the relevant facts about violations that would be actionable.

## CONCLUSION

For the foregoing reasons, the petition to set aside or modify the CID is denied. LOCM is directed to comply in full with the CID within 10 days of this Order. LOCM is welcome to engage in discussions with Bureau staff about any specific suggestions for modifying the CID, which may be adopted, as appropriate, by the Assistant Director or Deputy Assistant Director of the Office of Enforcement.

  
Kathleen L. Kraninger, Director

February 10, 2020

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BUREAU OF CONSUMER FINANCIAL  
PROTECTION,

Petitioner,

v.

LAW OFFICES OF CRYSTAL  
MORONEY, P.C.,

Respondent.

Case No. 7:20-cv-03240

**DECLARATION OF E.  
VANESSA ASSAE-BILLE IN  
SUPPORT OF AMENDED  
PETITION TO ENFORCE  
CIVIL INVESTIGATIVE  
DEMAND**

I, E. Vanessa Assae-Bille, under 28 U.S.C. § 1746, declare as follows:

1. I am a Senior Litigation Counsel at the Bureau of Consumer Financial Protection (Bureau), Office of Enforcement, and the lead counsel on this matter.
2. I am over 18 years of age and authorized to execute this declaration verifying the facts set forth in the Bureau's Petition to Enforce the Civil Investigative Demand and accompanying memorandum.
3. The facts set forth in this declaration are based on my personal knowledge or information made known to me in the course of my official duties.
4. I am an attorney on an ongoing Bureau investigation to determine whether debt collectors, furnishers, or other persons in connection with collection of debt and furnishing of information violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.*, or the Fair Credit Reporting Act (FCRA) and its implementing regulation, 15 U.S.C. § 1681 *et seq.*

5. Law Offices of Crystal Moroney, P.C. (LOCM) is a law firm that collects on delinquent or defaulted consumer debts on behalf of various creditors. It also furnishes information to credit reporting agencies about consumers from whom it seeks to collect debt.

6. On November 14, 2019, a Deputy Assistant Director of the Office of Enforcement issued a civil investigative demand (2019 CID) to LOCM that was served via certified U.S. Mail, return receipt requested, duly addressed to LOCM at 17 Squadron Boulevard, New City, New York. As required by the CFPA, the 2019 CID contained a “Notification of Purpose” advising LOCM of the purpose of the Bureau’s investigation. The CID required LOCM to produce materials that may be relevant to the purpose of the Bureau’s investigation by December 16, 2019. Attached as Exhibit A to this declaration is a true and correct copy of the 2019 CID issued to LOCM.

7. The Bureau had previously issued a CID to LOCM on June 23, 2017 (2017 CID). The 2017 CID sought substantially similar information from LOCM, but is not identical to the 2019 CID. Attached as Exhibit B to this declaration is a true and correct copy of the 2017 CID.

8. LOCM produced partial responses to the 2017 CID, but withheld and clawed back a significant amount of material. To the extent LOCM responded to the 2017 CID’s requests for documents, none of its documents complied with the Bureau’s standards for submitting electronically stored information. Also, LOCM did not certify that its responses to the 2017 CID were true and complete, as required by Instruction H in the 2017 CID.

9. The Bureau withdrew the 2017 CID on November 4, 2019.

10. On December 2, 2019, Crystal Moroney, an owner of LOCM, and her counsel, John H. Bedard, met and conferred with Bureau counsel to discuss LOCM's compliance with the 2019 CID. During this meet-and-confer, LOCM indicated that it would seek modifications to the CID, including an extension of time to respond. Bureau counsel instructed LOCM that any modification requests must be submitted in writing to the Bureau's enforcement staff. LOCM indicated that it would send a written request to Bureau counsel, and that it would also file a petition to set aside or modify the 2019 CID.

11. LOCM did not submit to a written request for modifications to the CID to Bureau counsel.

12. On December 5, 2019, LOCM filed a petition to set aside the 2019 CID on various grounds. LOCM asked that, in the alternative, the Director of the Bureau modify the 2019 CID, including by extending the return date. Attached as Exhibit C to this declaration is a true and correct copy of LOCM's petition to set aside or modify the 2019 CID, dated December 5, 2019 (excluding the exhibits that LOCM filed with its petition).

13. On February 10, 2020, the Bureau Director denied LOCM's petition to set aside or modify the 2019 CID (Order), and directed LOCM to comply in full with the CID within 10 days of the Order. Attached as Exhibit D to this declaration is a true and correct copy of the Order dated February 10, 2020.

14. LOCM did not comply with the Decision and Order's deadline of February 20, 2020.

15. On March 12, 2020, I sent an email to LOCM's counsel to obtain an update on LOCM's intentions with respect to the 2019 CID, and to extend LOCM the

opportunity to request modifications. Attached as Exhibit E to this declaration is a true and correct copy of my email to John Bedard dated March 12, 2020.

16. On March 19, 2020, LOCM informed me it did not intend to respond to the 2019 CID. Attached as Exhibit F to this declaration is a true and correct copy of Mr. Bedard's email to me, dated March 19, 2020.

17. LOCM has not produced any materials in response to the 2019 CID.

18. LOCM has not submitted to the Bureau a schedule of any documents, information, or tangible things being withheld on the grounds of privilege, as required by 12 C.F.R. § 1080.8(a) and Instruction H in the 2019 CID.

19. LOCM is not in compliance with the 2019 CID.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: April 24, 2020

/s/ E. Vanessa Assae-Bille  
E. VANESSA ASSAE-BILLE

Senior Litigation Counsel  
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*Attorney for Petitioner  
Bureau of Consumer Financial Protection*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BUREAU OF CONSUMER FINANCIAL  
PROTECTION,

Petitioner,

v.

LAW OFFICES OF CRYSTAL MORONEY,  
P.C.,

Respondent.

Case No. 7:20-cv-03240

~~PROPOSED~~  
ORDER TO SHOW CAUSE

The Petitioner, the Bureau of Consumer Financial Protection (Bureau), having filed a Petition to Enforce Civil Investigative Demand (CID) against Respondent Law Offices of Crystal Moroney, P.C., the Court having considered the Petition and documents filed in support thereof, and good cause having been shown, the Court being fully advised in this matter, and there being no just cause for delay:

**IT IS HEREBY ORDERED** that on July 16, 2020, at 11:30 am. or as soon thereafter as the parties can be heard, the Respondent shall appear before the Honorable Kenneth M. Karas, United States District Judge, in Courtroom 521, located at 300 Quarropas Street, White Plains, NY, to show cause, if there be any, why an Order Compelling Compliance with CID should not be granted in accordance with the Petition filed by the Bureau.

**IT IS FURTHER ORDERED** that:



1. A copy of this Order, together with the petition and its exhibits, shall be served in accordance with Rule 4.1(a) of the Federal Rules of Civil Procedure and 12 U.S.C. § 5562(e)(2) upon Respondent within ~~21 days~~ <sup>14 days</sup> of the date that this Order is served upon counsel for the Bureau. Proof of service must be made to the Court pursuant to Rule 4(l) unless Respondent has waived service. Pursuant to Rule 4.1(a), the Court hereby appoints E. Vanessa Assae-Bille, or any other person designated by the Bureau, to effect service in this case.

2. Proof of service completed pursuant to paragraph 1, above, shall be filed with the Clerk as soon as practicable.

3. Because the file in this case reflects a *prima facie* showing that the investigation is being conducted for a legitimate purpose, that the inquiries may be relevant to that purpose, that the information sought is not already within the Bureau's possession, and that the administrative steps required by the Consumer Financial Protection Act of 2010 and its implementing regulations have been followed, the burden of coming forward to oppose enforcement of the CID has shifted to Respondent.

4. If Respondent has any defense to present or opposition to the petition, such defense or opposition shall be made in writing and filed with the Clerk and copies served on counsel for the Bureau 21 days after Respondent has been served with this Order pursuant to paragraph 1. The Bureau may file a reply memorandum to any opposition within 14 days after Respondent has filed any opposition.

5. At the show cause hearing, only those issues brought into controversy by the responsive pleadings and factual allegations supported by the Assae-Bille declaration will be considered. Any uncontested allegation in the petition will be considered admitted.

6. Respondent may notify the Court, in writing filed with the Clerk and served on counsel for the Bureau, at least 14 days prior to the date set for the show cause hearing, that Respondent has no objection to enforcement of the CID. Respondent's appearance at the hearing will then be excused.

Dated: May 13, 2020



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United States District Judge

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

BUREAU OF CONSUMER  
FINANCIAL PROTECTION,

Petitioner,

v.

LAW OFFICES OF  
CRYSTAL MORONEY, P.C.,

Respondent.

Case No. 7:20-cv-03240-KMK

**NOTICE OF RATIFICATION**

Petitioner Bureau of Consumer Financial Protection submits this notice to inform the Court of two developments relevant to an issue that Respondent Law Offices of Crystal Moroney (LOCM) has indicated will feature prominently in its forthcoming response to the Bureau’s petition to enforce the civil investigative demand (CID).

First, on June 29, the Supreme Court issued a decision in *Seila Law LLC v. CFPB*, No. 19-7, 2020 WL 3492641 (U.S.), which held, consistent with the Bureau’s position on this issue, that a provision of the Bureau’s statute permitting the President to remove the Bureau’s Director only for “inefficiency, neglect of duty, or malfeasance in office” was unconstitutional. The Court went on to hold, also consistent with the Bureau’s position, that the provision could be severed from the rest of the statute. In doing so, the Supreme Court made clear that, in light of its decision, “[t]he agency may ... continue to operate,” with a Director who is now “removable by the President at will.” *Id.* at \*5.

Second, in the wake of the decision in *Seila Law* rendering her removable at will, the Bureau’s Director has considered the basis for the decisions to issue the CID, to deny

LOCM's administrative petition seeking to modify or set aside the CID, and to file this petition to enforce the CID, and has ratified those decisions. The Director's declaration of ratification is attached.

Now that the Supreme Court has issued its decision, and the Bureau's Director issued her ratification, the Bureau may proceed with this CID-enforcement action under the leadership of a Director who is fully accountable to the President.

Dated: July 2, 2020

Respectfully submitted,

THOMAS WARD  
Enforcement Director

DEBORAH MORRIS  
Deputy Enforcement Director

ALUSHEYI WHEELER  
Assistant Deputy Enforcement Director

/s/ Kevin E. Friedl  
KEVIN E. FRIEDL (NY Bar #5240080)  
E. VANESSA ASSAE-BILLE (NY Bar  
#5165501)  
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*Attorneys for Petitioner*  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BUREAU OF CONSUMER  
FINANCIAL PROTECTION,

Petitioner,

v.

LAW OFFICES OF CRYSTAL  
MORONEY, P.C.,

Respondent.

Case No. 7:20-cv-03240-KMK

**DECLARATION OF KATHLEEN L. KRANINGER, DIRECTOR OF  
PETITIONER CONSUMER FINANCIAL PROTECTION BUREAU,  
REGARDING RATIFICATION**

I, Kathleen L. Kraninger, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Director of the Consumer Financial Protection Bureau. I have served in that capacity since December 11, 2018. I was nominated to this position by the President on June 20, 2018 and confirmed by the Senate on December 6, 2018.
2. In April 2020, the Bureau filed the above-captioned petition to enforce a civil investigative demand issued to Respondent Law Offices of Crystal Moroney, P.C.
3. On June 29, 2020, the Supreme Court issued a decision in *Seila Law LLC v. Consumer Financial Protection Bureau*, No. 19-7, 2020 WL 3492641 (U.S.). That decision held that a provision of the Bureau's organic statute that permitted the President to remove the Bureau's Director only for "inefficiency, neglect of duty, or malfeasance in office" was unconstitutional. The Court accordingly severed that

provision from the statute. In light of this decision, I understand that the President may now remove me with or without cause.

4. In my capacity as the Bureau's Director, I have considered the basis for the Bureau's decisions to issue the civil investigative demand to Respondent, to deny Respondent's request to modify or set aside the CID, and to file a petition requesting that the district court enforce the CID.

5. On behalf of the Bureau, I hereby ratify the decisions to issue the civil investigative demand to Respondent, to deny Respondent's request to modify or set aside the CID, and to file a petition requesting that the district court enforce the CID.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2020.



**Kathleen L. Kraninger**  
Director

**Consumer Financial Protection Bureau**



1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 BUREAU OF CONSUMER FINANCIAL,

4 Petitioner,

5 -against- 20 Civ. 3240 (KMK)

6 LAW OFFICES of CRYSTAL MORONEY,

7 Respondent.

8 -----x

9 United States Courthouse  
10 White Plains, New York

11 August 18, 2020

12  
13 HONORABLE KENNETH M. KARAS,  
14 District Court Judge

15  
16 CONSUMER FINANCIAL PROTECTION BUREAU  
Attorneys for Petitioner  
17 1700 G Street NW  
Washington, DC 20552

18 BY: E. VANESSA ASSAE-BILLE  
KEVIN E. FRIEDL  
19 JEHAN A. PATTERSON

20  
21 NEW CIVIL LIBERTIES ALLIANCE  
Attorneys for Respondent  
1225 19th Street NW Suite 450  
22 Washington, DC 20036

23 BY: MICHAEL P. DeGRANDIS  
JARED McCLAIN

24

25

1 THE CLERK: Consumer Financial Protection versus Law  
2 Offices of Crystal Moroney PC, 20CV3240.

3 Counsel, please state your appearances for the  
4 record.

5 MS. ASSAE-BILLE: E. Vanessa Assae-Bille for CFPB.

6 MS. PATTERSON: Jehan Patterson, also for the CFPB.

7 MR. FRIEDL: And Kevin Friedl, also for the CFPB.

8 MR. DeGRANDIS: Michael DeGrandis, for Law Offices of  
9 Crystal Moroney PC.

10 MR. McCLAIN: Jared McClain, also for the Law Offices  
11 of Crystal Moroney PC.

12 THE COURT: All right, so we are gathered here for  
13 the oral argument on the CFPB's petition to enforce its CID  
14 that was issued back in November. So I have read the papers,  
15 but I certainly don't want to deny anybody the opportunity to  
16 supplement them. So I'll let you, CFPB, go first.

17 MS. ASSAE-BILLE: Thank you, your Honor. On behalf  
18 of CFPB today I will address the issues that squarely relate to  
19 the enforceability of the CID; however, my colleague, Kevin  
20 Friedl, is available to answer any questions your Honor may  
21 have regarding the constitutionality or ratification argument.

22 The central question before this Court is whether the  
23 Bureau has met the four criteria that determine the  
24 enforceability of a CID. We contend that it has.

25 First and foremost, the Bureau has a legitimate

1 purpose for conducting this investigation. As described in the  
2 CFPB's notification of purpose, this investigation concerns  
3 whether the respondents violated provisions of the Consumer  
4 Financial Protection Act, the Fair Debt Collection Practices  
5 Act, and the Fair Credit Reporting Act.

6 The CID, which we submitted as Exhibit A, is narrowly  
7 focused on the company's performance of debt collection and  
8 credit recording activities. For instance, it requests  
9 information concerning the respondent's operations, names of  
10 companies for which it collects debt, consumer disputes and  
11 complaints, policies and procedures, debt-collection phone  
12 scripts, and importantly, recordings of debt-collection calls  
13 with consumers.

14 The CID does not, however, ask for information  
15 protected by the attorney-client privilege nor does the  
16 privilege automatically attach simply because the respondent is  
17 a law firm. As the Second Circuit has articulated, documents  
18 attain no special protection just because they are housed in a  
19 law firm. On the contrary, it attaches only once the party  
20 asserting it has shown that the communications at issue  
21 occurred between a lawyer and their client or potential client  
22 and that the communication was for the purpose of securing an  
23 opinion of law, legal services, or assistance in some legal  
24 proceeding. None of the Bureau's requests seek communications  
25 protected by the attorney-client privilege. And in fact, the

1 only communications sought by the CID are call recordings in  
2 which the respondent was collecting or attempting to collect  
3 debts from consumers.

4 Now, the Bureau is subject to Section 5517 of the  
5 Consumer Financial Protection Act which prohibits the Bureau  
6 from exercising its enforcement authority over the practice of  
7 law. We note here that the exclusion contains important  
8 qualifications that we believe take this CID out of danger, so  
9 to speak, but the Court need not even reach this qualification  
10 because Section 5517(n) authorizes the Bureau to issue a CID to  
11 any person exempted by the practice of law exclusion where the  
12 person is a service provider and the Bureau is carrying out its  
13 responsibilities and function under Section 5562 of the statute  
14 which applies to investigation and administrative discovery.  
15 That Section, 5562, authorizes the Bureau to issue a CID to any  
16 person that it has reason to believe may be in possession,  
17 custody, or control of evidence that is relevant to a violation  
18 of Federal Consumer Financial Law. So, here the respondent is  
19 a proper recipient of the CID because it is such a person.

20 Beyond demonstrating that its investigation has a  
21 legitimate purpose and that the inquiry is relevant to that  
22 purpose, for the CID to be enforceable, the Bureau must also  
23 not have the information sought in its possession. This is  
24 very much the case here. As the Court is aware, the Bureau  
25 issued a CID to the respondent in June 2017, but the

1 respondent's production in response to that CID was woefully  
2 deficient. For instance, as respondent concedes in its  
3 opposition, it's withheld information responsive to at least 15  
4 requests and some of their subparts. The privilege log that  
5 the respondent submitted in response to the 2017 CID asserts  
6 that the respondent withheld 569,862 phone recordings that were  
7 responsive to that first CID. And in addition, respondent  
8 withheld, by our count, at least 144 dispute letters from  
9 consumers in part because these letters allegedly identified  
10 the respondent's clients. And that's before we even get to the  
11 many pages that the respondent clawed back.

12 To the extent the respondent did produce documents,  
13 that production was overwhelmingly in an improper format. The  
14 Bureau's regulation at 12 C.F.R. 5562 requires that responses  
15 to the Bureau's CID be submitted in a medium requested by the  
16 Bureau. To that end, the first CID was issued with clear and  
17 detailed instructions regarding the formatting, including the  
18 requirement that information be produced to the Bureau in  
19 original or native files. All in all, the only document that  
20 the respondent produced in the correct format was a data  
21 dictionary in Excel format.

22 Furthermore, none of the 2017 production was  
23 certified, and so the Bureau has no guarantee that the answers  
24 or documents that were produced at the time were and continue  
25 to be true and accurate.

1           Lastly, we want to stress that the two CIDs are not  
2 identical. Crucially, the applicable period of the CID before  
3 this Court is longer and covers a more recent span of time. In  
4 other words, it seeks information that did not exist in 2017 or  
5 that changed in the years since. And so it is the Bureau's  
6 position that it is indeed requesting information that is not  
7 in its possession.

8           Lastly, your Honor, the Bureau has followed the  
9 administrative steps required to issue the CID. The CID  
10 contained the proper notification of purpose that informs the  
11 respondent of the purpose of the investigation, it was issued  
12 by a deputy assistant director in the Office of Enforcement,  
13 and it was served to the respondent by certified U.S. Mail.  
14 Therefore, the four elements of enforceability are met here,  
15 and the Bureau's CID should be upheld.

16           I also want to touch on the Federal Rule of Civil  
17 Procedure Rule 19 argument. We believe that Rule 19 does not  
18 require the joinder of FedChex in this matter. Respondent has  
19 provided no case law supporting the application of Rule 19 to a  
20 miscellaneous proceeding like this one to enforce an  
21 administrative CID, but even if the rule applied, joinder is  
22 not needed to protect FedChex's interests because, again, the  
23 CID does not seek communications between the respondent and  
24 FedChex or any other information protected by the  
25 attorney-client privilege. And even if it did, the Second



1 Circuit has made clear that the attorney-client privilege can  
2 be asserted by the client or by one authorized to do so on the  
3 client's behalf. There's no reason here that respondent could  
4 not assert the attorney-client privilege over communications  
5 they had with FedChex, and ostensibly respondent has attempted  
6 to do so, although, again, the Bureau believes that respondent  
7 has ultimately failed to meet its burden.

8 For these reasons, your Honor, the Bureau believes  
9 joinder is unnecessary and that this Court should enforce the  
10 CID.

11 THE COURT: All right, thank you. I know you had  
12 mentioned that Mr. Friedl is available to answer questions on  
13 the constitutional issues.

14 I don't know, Mr. Friedl, if you want to add anything  
15 to what was said in your papers on those issues or you just  
16 want to be reactive.

17 MR. FRIEDL: Kevin Friedl here, your Honor. I would  
18 just say something brief at the outset about the funding  
19 argument and the argument concerning the ratification, and I'll  
20 take them in that order, unless the Court would prefer a  
21 different approach.

22 With respect to funding, the Court is, of course,  
23 aware of this argument already having seen it in respondent's  
24 lawsuit against the Bureau where the respondent sought a  
25 preliminary injunction, essentially shutting down this

1 investigation. In denying that request, this Court  
2 specifically considered the argument that the Bureau's  
3 statutory method of funding somehow violated the Constitution  
4 and found that there was -- excuse me, the respondent had not  
5 shown any likelihood of success on the merits of that claim.

6 I would just highlight one thing which was the  
7 Court's observation of the "overwhelming weight of the case law  
8 which rejects plaintiff's claim." The Court cited district  
9 court decisions from Central District of California, Middle  
10 District of Pennsylvania, District of Montana, as well as the  
11 DC Circuit sitting *en banc*, all of which looked at the Bureau's  
12 funding specifically and rejected the argument that there was  
13 any constitutional problem there.

14 We also cite a Third Circuit decision in our reply  
15 which did not look specifically at the Bureau's statute but  
16 does speak to the broader issue of Congress' flexibility in  
17 exercising its power of the purse to fund in different ways  
18 federal initiatives or federal agencies.

19 We submit that nothing in respondent's opposition in  
20 this case warrants revisiting the Court's earlier, albeit  
21 preliminary, conclusion with respect to this claim.

22 I'm happy to say more about this argument now if your  
23 Honor has questions or potentially wait until after respondent  
24 has had a chance to --

25 THE COURT: Yes, I don't have any questions now, so

1 if you want to turn to ratification, you can.

2 MR. FRIEDL: Okay, and I'll try to be brief with this  
3 one as well. The ratification by Director Kraninger after the  
4 Supreme Court held invalid but severable this removal provision  
5 fully remediates any objection that respondent might have to  
6 the removal provision, the ratification really confirms that  
7 this removal provision has played no role in the Bureau's  
8 decision to issue and seek to enforce this CID.

9 I'd just say very briefly that ratification is a  
10 well-established remedy drawn from principles of agency law and  
11 it works retroactively to cure defects in an agency's initial  
12 action by rendering that action valid. Here, as I said,  
13 respondent's objection has been that the CID was issued without  
14 sufficient presidential oversight through an official who the  
15 President could fire at will. That objection has now been  
16 fully addressed by the director's affirmation while she was  
17 removable at will that the CID should be enforced.

18 Respondent objects in its opposition that while this  
19 would really leave it with no remedy at all, but that's just  
20 not the case. The Supreme Court has emphasized, including in  
21 the *Seila Law* decision itself where it was quoting its earlier  
22 removal provision case *Free Enterprise Fund*, that in these  
23 kinds of cases, the remedy has to be tailored to the  
24 constitutional problem, and that here you have really a very  
25 neat one-to-one match between the scope of the problem alleged

1 and the scope of the remedy. And that remedy I would point out  
2 is also one that is well tailored to take into account the  
3 other interests at stake here, including the interests of the  
4 Bureau in pursuing its legitimate law enforcement  
5 investigation, and the interests of those consumers who may  
6 have been harmed by the suspected violations of law under  
7 investigation here.

8 THE COURT: On that point though, that's just kind of  
9 an ends-justifies-the-means argument, but I think the  
10 counterargument is that what incentive is there for somebody to  
11 challenge something based on an unconstitutional structure is  
12 what the argument is here, respondent's argument here, as it  
13 was in *Seila Law*, and if ratification is this sort of the  
14 rubber-stamp exercise, then why would anybody bother.

15 MR. FRIEDL: Well, I think that, you know, the court  
16 in *Lucia* mentioned that in appointment clause cases it tries to  
17 craft remedies that do create an incentive for bringing these  
18 challenges. It's notable that the court in that case did not  
19 dismiss the enforcement action at issue. It remanded for  
20 another hearing before a properly appointed ALJ, the problem  
21 with the appointment, of the first ALJ who had heard the SEC's  
22 case. The court didn't think there that it was necessary to  
23 actually dismiss that action. It didn't think in *Seila Law*, it  
24 gave no indication in *Seila Law* that it thought dismissal or  
25 denial of that CID petition was necessary to incentivize to

1 bring such claims. It remanded for further proceedings.  
2 Surely it could have, if it thought it was necessary, simply  
3 denied the CID petition.

4           So it's true that the court has talked about creating  
5 incentives, but I think it has to also be read in light of the  
6 court's other statement that these remedies have to be  
7 tailored. And, again, the basis of the objection here is we  
8 shouldn't have to comply with the CID because we don't know  
9 that the Bureau would have wanted to pursue it if the director  
10 was under the President's plenary supervision. That's what  
11 makes the removal provision at all relevant to a CID proceeding  
12 in the first place, and that objection has been squarely  
13 answered by the director's confirmation after she became  
14 removable at will that the CID should be enforced and this case  
15 should move forward.

16           And, you know, I would also point out that the Bureau  
17 certainly wouldn't recognize this as sort of a legitimate  
18 incentive, but it is also the case that the respondent has won  
19 significant delay in this, in the prosecution of the CID just  
20 by raising this issue. *Seila Law* itself, that involved a CID  
21 that was issued in February 2017.

22           Clearly, I would submit that the on-the-ground  
23 experience suggests that there is some sort of incentive to  
24 raising these kinds of claims.

25           THE COURT: Okay. Anything else on this point?

1 MR. FRIEDL: I would leave it there, your Honor.

2 Thank you.

3 THE COURT: All right, anything else from the Bureau?

4 MS. ASSAE-BILLE: Nothing else, your Honor.

5 THE COURT: Thank you both very much.

6 Who wants to speak on behalf of the respondent?

7 MR. DeGRANDIS: I would like to, your Honor, Michael  
8 DeGrandis of the New Civil Liberties Alliance, appearing on  
9 behalf of the respondent.

10 THE COURT: (Indiscernible)

11 MR. DeGRANDIS: I'm sorry, you're breaking up, sir.

12 THE COURT: I just said good afternoon.

13 MR. DeGRANDIS: Oh, thank you, good afternoon.

14 I'm joined, too, by Crystal Moroney and my colleague  
15 at NCLA, Jared McClain.

16 Your Honor, the petition should be denied because the  
17 Bureau manifests a structural or constitutional defect that the  
18 Supreme Court in *Seila Law* didn't cure, and that's the funding  
19 mechanism. It violates Article I of the United States  
20 Constitution.

21 Now, the Bureau tries to downplay its funding  
22 structure as commonplace, but make no mistake, in the history  
23 of United States, Congress has never before divested itself of  
24 the power of the purse such that one agency can requisition  
25 on-demand funding outside the appropriations process from a



1 second agency. Moreover, the President has never had this  
2 plenary authority over an agency where the funding is not  
3 appropriated by Congress and not reviewed by Congress.

4 And so it's the respondent's position that this is a  
5 threshold issue upon which all the other issues in this case  
6 rely. The Court can't enforce a second CID if the Bureau  
7 doesn't have the authority to bring an enforcement action under  
8 the CFPA. So to be clear, this is a non-delegation doctrine  
9 issue. Because last year the Supreme Court explained that  
10 Congress can't transfer to another branch powers which are  
11 strictly and exclusively legislative. And that's their words,  
12 the *Gundy* case, strictly and exclusively legislative.

13 And so what we see with Title X is that Congress  
14 isn't seeking assistance from a federal agency with  
15 implementing law. That's not how it structured the funding.  
16 Congress is instead divesting itself of its strict and  
17 exclusive legislative duties to make appropriations through  
18 law. That's the issue here.

19 The whole point of the appropriations clause was  
20 directed for fear that the executive would possess unbounded  
21 power. That's decidedly what the founders did not want, and in  
22 fact, then Judge Kavanaugh raised that issue in I think it was  
23 *US Department of Navy versus FLRA*.

24 So today's Bureau embodies that fear though, the fear  
25 that an executive would have control not just over executing

1 the law but also over determining what his or her funding  
2 should be in executing the law.

3           What I really want to impart to the Court is this is  
4 a case of first impression. Contrary to the Bureau's  
5 assertion, *Seila Law* did not bless the CFPB'S funding  
6 structure. In fact, it made the nondelegation problem even  
7 worse. The President now exercises complete financial and  
8 strategic dominion over the Bureau. And I'll also note he  
9 exercises this power that he doesn't even enjoy with respect to  
10 his own agency, the Executive Office of President of the United  
11 States. That receives funding in review from Congress, but the  
12 CFPB does not.

13           So this issue of first impression is, of course, then  
14 one that no court has ever ruled on because every single case  
15 before this was one in which the director was not dependent on  
16 the President for authority, and now the President has this  
17 total control.

18           And in fact, I'd like to quote the *Seila Law* court  
19 here, this should raise some red flags. The *Seila Law* court  
20 said, "Perhaps the most telling indication of a severe  
21 constitutional problem with an executive and state is a lack of  
22 historical precedent to support it."

23           Contrary to the Bureau's brief in this case, CFPB's  
24 funding is not commonplace. While certainly in rare instances  
25 not applicable to the Bureau some courts have held that there

1 are appropriations clause exceptions of sorts for self-funding,  
2 self-funding is limited, and the Bureau is not self-funding.  
3 It doesn't collect fees. It doesn't collect assessments.  
4 Instead, it goes to another governmental entity and demands  
5 funding that that governmental entity can't even refuse.

6 Just one of the examples that the CFPB gives for what  
7 a similar, what it perceives to be similar agency, is the Fed  
8 itself. But the Fed gets assessments from large banks that are  
9 regulated by the Fed. There's a direct relationship there, and  
10 that's an entirely different circumstance than the Feds going  
11 somewhere else.

12 And I will also add, we noted this in our briefing,  
13 so unless you want to get into the details, we don't  
14 necessarily need to get into the details, but the self-funded  
15 agency examples that do exist out there don't have the broad  
16 investigative and enforcement authority as the CFPB does. And  
17 *Seila Law* made that clear just how extraordinary the CFPB is.  
18 It is unique. And I believe it called it, said that it had  
19 knee-buckling penalties that it could assess against private  
20 citizens. And on top of all that, Title X prohibits the  
21 appropriations committee to the House and Senate from reviewing  
22 CFPB funding.

23 Now, perhaps Congress can appropriate through a  
24 formula where an agency receives funding based upon receipts  
25 for the agency's operation, and those are typically user fees.

1 But what it certainly cannot do is allow an agency or the  
2 President to determine its own level of funding. That's rank  
3 divestment of Congress's strict and exclusive duty to  
4 appropriate funding. Congress has never done this before. And  
5 no court has ever reviewed this type of action before.

6 There's absolutely no historical analogue here. And  
7 I think that that should be a telling indication of a severe  
8 constitutional problem. And so I would say that with absolute  
9 control over the CFPB funding, the President has nearly doubled  
10 his funding resources just on top of the executive Office of  
11 President funds while Congress hasn't lifted a finger. But it  
12 could also go the other way around, couldn't it? I mean, the  
13 President could instead of seeking 690 plus million dollars for  
14 CFPB, couldn't the President just pick one dollar? Couldn't  
15 the President just end CFPB operations for the year or for the  
16 rest of his term or however that works out? He certainly  
17 could. That's the nature of this non-delegation problem.  
18 That's what happens when Congress divests itself of this  
19 funding authority, and I think that it's an important point to  
20 make.

21 One last thing that I would add to this is that we  
22 also see that most of the time when courts, when the Supreme  
23 Court is comfortable with a certain divergence from strict  
24 appropriations clause funding for agencies, I'm talking about  
25 usually a -- I shouldn't just say funding for agencies, any

1 sort of structural nuance to an agency, court tends to be less  
2 understanding of that when there's more than one layer. We see  
3 that in *Free Enterprise Fund*. *Free Enterprise Fund* was dealing  
4 with a different issue as in it was the vesting power of the  
5 President. Here we're dealing with the vesting power of  
6 Congress. I think those two points are related, and the *Free*  
7 *Enterprise* court was particularly disturbed by two levels of  
8 tenure protection. Here, we have two levels of appropriations  
9 protection. This instance, the Fed, who gives money, gives  
10 money when demanded by the CFPB, gives money to the CFPB, the  
11 Fed itself doesn't receive regular appropriation, it is  
12 appropriated through a funding formula that Congress has set up  
13 for its operations. So there's a double layer there as well.  
14 So I think that that's important.

15           So this unchecked authority is inconsistent with  
16 constitutional design and purpose. The founders, it was very  
17 important to them they vest control over spending and lawmaking  
18 with Congress. And again, just to quote *Seila Law*, quoting  
19 Federalist 58, they warn that "The power over the purse is the  
20 most complete and effectual weapon in representing the  
21 interests of the people." And so, Title X violates  
22 nondelegation doctrine, does not fund the CFPB through the  
23 constitutionally prescribed process of congressional enactment  
24 via bicameralism and presentment. I think those are important  
25 issues here. And I say that it is a threshold question because

1 we have to answer that question, is the CFPB constitutionally  
2 funded, before we can get to the vacation issue because the  
3 Supreme Court was clear in *Seila Law* explaining that, well, we  
4 can't answer the ratification problem because, first of all, it  
5 wasn't a question presented. Second of all, because it wasn't  
6 a question presented, it was not thoroughly briefed.

7           Moreover, the court said, and you know what,  
8 ratification turns on case-specific factual and legal  
9 questions, so this is a better question to ask lower courts.  
10 Well, this Court won't be able to get to the factual and legal  
11 question surrounding the nuances of this particular case  
12 without first determining whether the CFPB is, in fact, a valid  
13 entity as it is currently funded. And so, when we look, if we  
14 get to that point where we can look at ratification, I think  
15 this also highlights why this is important, I believe the CFPB  
16 and the law office agree on the baseline principle upon which  
17 agency law is founded. I think Judge Preska said it well in  
18 the *RD Legal Funding* case, I'll quote her here, "Ratification  
19 addresses situations in which an agent was without authority at  
20 the time he or she acted and the principal later approved the  
21 agent's prior unauthorized acts."

22           So to the extent that ratification is ever available,  
23 the ratifier must be able to do the act at the time the  
24 ratification is made. The Supreme Court has talked about this  
25 in *FEC versus NRA Political Fund*. This is black letter agency

1 law, if the Bureau's funding is unconstitutional, Director  
2 Kraninger can't ratify anything, so that the Court won't be  
3 able to reach the factual or legal issues.

4 The Supreme Court has explained that remedies for  
5 separation of powers violations must advance the Constitution's  
6 structure and purpose, but also create incentives to bring such  
7 challenges.

8 And one thing that I would like to highlight here, I  
9 don't think we should forget where we came from. I don't think  
10 we should forget what Ms. Moroney has gone through to get to  
11 this point with respect to the stress and strain of close to  
12 \$80,000 worth of attorneys fees in defending, but also in  
13 compliance fees in attempting to comply with the CFPB's first  
14 CID. This isn't nothing. This is real harm to her, her  
15 inability -- she's the only lawyer in her law firm. The  
16 inability of her to expand her firm, even engage in projecting  
17 for her business, being able to develop new business, being  
18 able to control costs, and so on and so forth. I won't belabor  
19 that point. We discussed that in greater detail during the  
20 preliminary injunction hearing. I do think it's important that  
21 we keep in mind where we've come from. And that if the CFPB  
22 can just come back and say, never mind, I know we were  
23 unconstitutionally structured before, we're just going to  
24 ratify it, you were conducting that investigation, and  
25 Ms. Moroney suffered all of those costs, all of those harms

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1 while you were unconstitutional. That is hardly fair.

2           And I'll also add that the cases that the Bureau  
3 cites here to support its position regarding ratification  
4 involve appointments clause violations. So there is a  
5 difference between say Director Cordray, who is invalidly  
6 appointed, then becoming validly appointed, and then ratifying  
7 his prior act. There's a difference between that and Director  
8 Kraninger who was validly appointed. No one questions her  
9 appointment. What we question, actually, we don't question,  
10 what *Seila Law* told us was that she was unauthorized in the  
11 first place, she lacked the authority because she's  
12 unconstitutionally insulated from presidential control. She  
13 lacked the very authority to make the decisions in the first  
14 place. I think that's a very important point here. And to  
15 rule otherwise, to rule that the separation of powers violation  
16 of the CFPB, of the director's position with the CFPB, I should  
17 say, that it can simply be ratified by the very director who  
18 was unauthorized to act in the first place, would render the  
19 Supreme Court's *Seila Law* decision merely advisory and really  
20 enable Director Kraninger to perpetuate the separation of  
21 powers violation. There must be a remedy here, and that remedy  
22 should be dismissal. She can't ratify this.

23           I will add that ratification is an actionable remedy,  
24 the purpose of which is to convert unlawful acts, such as the  
25 director's in this case, into lawful ones. But there's also a

1 doctrine of unclean hands. You can't benefit from an equitable  
2 defense. If the party has acted in a way that's unfair, has  
3 gained an advantage, and I think that would certainly be the  
4 case here, because at all relevant times, Director Kraninger  
5 knew that her position was unconstitutionally empowered. She  
6 told Congress that in September 2019. This CID was issued in  
7 November 2019. This is a blatant exercise of power that she  
8 knew she did not have. So this is not a good faith mistake.  
9 This a deliberate constitutional violation.

10 To the extent the Court finds any of the citations  
11 that the CFPB brings forth to suggest that the ratification is  
12 valid, none of those apply because none of those are  
13 circumstances in which the governmental agent that acted  
14 unconstitutionally knew it was acting unconstitutionally at the  
15 time, and that's the case here.

16 So the funding defect must be resolved before  
17 reaching the issue of whether Director Kraninger can ratify the  
18 this enforcement action because she has to make a showing, and  
19 she hasn't made a showing, that the CID, that when issuing the  
20 CID in the first instance, that she had the power to do so.  
21 And it seems that she's already admitted, that she admitted in  
22 September she didn't have the power to do so, and that the  
23 Supreme Court has agreed that she did not have the power to do  
24 so.

25 Now, I will say that, if we get past the

1 constitutional issue, and if the Court disagrees with the  
2 respondent, if the Court believes that the CFPB is  
3 constitutionally funded and then the Court says, you know what,  
4 Director Kraninger can ratify her own prior bad action, then we  
5 get to the issue of enforcing the second CID.

6 THE COURT: Before we get to that, just one quick  
7 question.

8 MR. DeGRANDIS: Sure.

9 THE COURT: What if the CFPB decided, what if the  
10 director decided, okay, ratification is a tricky issue for us,  
11 so withdraw the CID and I'm just going to issue a new one. Is  
12 there anything that could stop the director from doing that?

13 MR. DeGRANDIS: Assuming that the CFPB is  
14 constitutional, I think the only --

15 THE COURT: Obviously, right. Right, right. You're  
16 right, that question assumes, and I understand the argument  
17 that that may very well be a prerequisite determination that  
18 has to be made, but just with respect to the ratification  
19 issue, and in particular, addressing your argument regarding  
20 the stripping your client of a remedy here, what would stop the  
21 director from doing that?

22 MR. DeGRANDIS: Nothing would stop the director from  
23 doing that. The director could -- the director is now validly  
24 in charge of the CFPB. Again, assuming all of the other  
25 assumptions here. So, yes, she could say, you know what, let's

1 just go ahead and take a look at this issue again and reissue  
2 the CID, which would be the next discussion, there would be  
3 certain limitations there based on the facts of this case, I  
4 believe.

5 Ms. Moroney isn't here to say to the CFPB, were it  
6 the constitutional, cannot demand certain documents from her.  
7 That's not her position.

8 So with respect to those limitations, there are  
9 problems with the CID in whole or in part that prohibit the  
10 CFPB from seeking its full enforcement here. And as I say, I  
11 said before, I think the parties are in agreement regarding the  
12 four elements that the CFPB must meet, but the CFPB has failed  
13 to meet these four elements. So first and foremost, the  
14 demands are not for a legitimate purpose.

15 So going back to your question, your Honor, if  
16 Director Kraninger said, never mind, I'm just going to go ahead  
17 and issue a third CID, that would be fine, but the third CID  
18 must be for a legitimate purpose. There are legitimate reasons  
19 why the CFPB may want information from a law firm that collects  
20 debt, but it can't impact the practice of law. The CFPB itself  
21 says, and I'm going to quote here, "The Bureau may not exercise  
22 any supervisory or enforcement authority with respect to the  
23 activity engaged in by an attorney as part of the practice of  
24 law under the laws of the state in which the attorney is  
25 licensed to practice law." And that's exactly what's happening

1 here. Ms. Moroney bent over backwards to comply with all  
2 demands for documents and information related to a third-party  
3 contact regarding debt collection. She drew the line at client  
4 confidences and privileged information as required by New York  
5 and New Jersey State bars.

6 THE COURT: Why not do a privilege log?

7 MR. DeGRANDIS: They have done a privilege log, and  
8 we did attach it to our brief. Mr. Canter had provided an  
9 extensive list of the documents provided and not provided and  
10 explained why those documents weren't provided. To the extent  
11 that the privilege log, the CFPB finds the privilege log  
12 insufficient, I'll say, we need at some point a mediator to  
13 help out with that. The impasse was over this information.  
14 And when Ms. Moroney said I'm not going to provide you with  
15 client confidences or privileged material, the CFPB -- I should  
16 say after that she said I will try to get waivers from my  
17 client, and the client said something to the effect of, oh,  
18 heck no. And so she couldn't do that. She was duty-bound not  
19 to turn that over. The CFPB told her, well, then we're going  
20 to enforce. And so at that point there was nothing more to  
21 negotiate with the CFPB on this issue and that -- to the extent  
22 that the privilege log provided is in any way insufficient,  
23 that should have been litigated at the November 2019 show cause  
24 hearing, but the CFPB chose not to do that.

25 And I'll say, this is also related to CFPB's argument

1 that, hey, gee, we don't have documents in our possession. Not  
2 true. You have the documents in your possession. They make  
3 these feeble process arguments. It's not in the format that we  
4 requested. Well, okay, it's not in the format that you  
5 requested, but it's perfectly readable, and if you had any sort  
6 of formatting objection, you waived that as soon as you mooted  
7 the first show cause hearing.

8           So now that you issue a second CID it was incumbent  
9 upon you to review those documents, narrowly tailor your second  
10 CID for those documents you don't have.

11           It at least appears to Ms. Moroney that they haven't  
12 looked at those documents. You think if they were really  
13 interested in -- and I think Mr. Friedl was saying that there  
14 are suspected violations of law under investigation. Well, if  
15 they're suspected violations of law, my goodness, I certainly  
16 would hope that the CFPB would have gone through the  
17 information that it had in its possession. It just seems  
18 strange that they wouldn't do that.

19           I also take issue with how narrowly the CFPB is  
20 viewing an attorney's responsibility to his or her client.  
21 It's not just about privileged documents, and I appreciate CFPB  
22 isn't specifically asking for privileged documents. It's also  
23 about confidentiality. Attorneys have an equally important  
24 responsibility in protecting privilege as it does in protecting  
25 confidentiality. That is a very important issue here that

1 implicates Ms. Moroney's license to practice law in New York  
2 and New Jersey. And the requests do implicate confidential  
3 information that the attorney has that she received from her  
4 client which is why we're now, I guess we're moving on three  
5 plus years, we've been saying to the CFPB, I have and  
6 Ms. Moroney's other attorneys have been saying, if you need  
7 this information, go ahead and go to the client and seek that  
8 information. And we know the CFPB knows how to do this, and we  
9 know that because they've got a case in California against one  
10 of her clients, against FedChex. That is the appropriate path,  
11 not going through the attorney because going through the  
12 attorney ends up interfering with the attorney-client  
13 relationship.

14           So I will say this, too, I think the Supreme Court  
15 case of *Endicott Johnson Corp. versus Perkins* really lays out  
16 the question that the Court should ask of itself when trying to  
17 determine whether the scope of an administrative subpoena like  
18 a CID is reasonable, whether the CFPB is stepping outside its  
19 statutory authority in trying to regulate the practice of law.  
20 I'm slightly restating this for our purpose here, but the  
21 Supreme Court essentially said the question is can the CFPB  
22 fully perform its statutory duty without the attorney-client  
23 confidences and privileged materials that it's demanding from  
24 the law firm? And I think the question has to be yes. To the  
25 extent that there are client confidences, there's no reason,



1 it's plainly irrelevant because the client confidences can be  
2 discovered, can be acquired from the clients themselves. And I  
3 think that's an important point here.

4           And another thing, the CFPB glosses over all of the  
5 interrogatories that Ms. Moroney's law firm answered. There  
6 are over 80 interrogatories that she answered. There's no  
7 explanation as to why she would have to reanswer those  
8 questions, why even the format was something that the CFPB  
9 didn't like. It's just not clear why the CFPB is issuing a  
10 second CID that doesn't take into account the information it  
11 already has.

12           And I think the second point here though, and I think  
13 I've probably have covered the issue a little bit, so I won't  
14 belabor the point, is that the CFPB hasn't followed a lot of  
15 the required administrative steps. Again, some of this is  
16 related more to the ratification argument. There is a question  
17 regarding the timing of ratification, of regulations, and  
18 guidance, along with when this particular enforcement action  
19 was ratified, but I want to highlight the Bureau is being a bit  
20 disingenuous here. They claim that the authority to issue and  
21 enforce CID comes directly from the Consumer Financial  
22 Protection Act rather than any Bureau regulation. An element  
23 of that is true, but that's not the complete truth. In fact,  
24 the amended petition to enforce the CID and the memorandum in  
25 support cite to Code of Federal Regulations not fewer than nine

1 times, and the attachments not fewer than 18 additional times.  
2 There's a whole host of implementing regulations and the CFPB  
3 gives the CFPB the authority to implement those regulations  
4 regarding investigations and CID enforcement and so on and so  
5 forth.

6 So I think I would like to just reiterate one point,  
7 and that is objections to the formalities, the extent CFPB is  
8 claiming they don't have these documents. I think those are  
9 waived when it voluntarily dismissed the 2019 enforcement  
10 action. And I think for that reason the CFPB needs to go back  
11 to the drawing board regarding its CID if it has the authority  
12 to issue one in the first place.

13 The only last point I'd like to make here is related  
14 to Rule 19. I think the one thing, and I'm sure the Court is  
15 aware of this but I think I should say it here, non-joinder  
16 isn't a defense to an enforcement action. The respondent is  
17 not seeking relief here. She merely asserts that if this Court  
18 finds, obviously, the Bureau's funding structure doesn't  
19 violate nondelegation doctrine, that the Bureau properly  
20 ratified its unlawful acts, that in order to -- to the extent  
21 that the CID implicates FedChex's interests, and only to that  
22 extent, that FedChex must be joined to that portion so that  
23 they can defend their interests, or the CFPB should amend the  
24 petition to enforce to specifically exclude documents related  
25 to FedChex.

1           Again, this implicates Ms. Moroney's ethical  
2 obligations, and the concern is, what if California denies a  
3 petition to enforce against FedChex? Ms. Moroney already asked  
4 FedChex if they would waive confidential privilege here, and  
5 they said no. So she's under instructions from her client,  
6 don't provide those documents. What if the California court  
7 says, that's right, you don't have to provide those documents,  
8 but this Court is free to say, yes, Ms. Moroney, you do have to  
9 provide those documents. Well, that puts Ms. Moroney in a very  
10 awkward spot. It also, as a practical matter, impedes  
11 FedChex's ability to protect its interests. There are  
12 inconsistent obligations here for Ms. Moroney with respect to  
13 what she is supposed to do in protecting her client's  
14 confidential and privileged information.

15           So I think that's really all I have, and obviously  
16 I'm happy to answer any questions you have, your Honor.

17           THE COURT: You've covered a great deal of material,  
18 and as I said, I've read the papers which were quite  
19 comprehensive, so I very much appreciate your efforts, and I'm  
20 sure your client does as well.

21           Thank you very much, Mr. DeGrandis.

22           MR. DeGRANDIS: Thank you.

23           THE COURT: All right, does anybody else from the  
24 Bureau want to reply?

25           MS. ASSAE-BILLE: Yes, your Honor. I'd like to

1 respond to a few points that are not related to the  
2 constitutionality or ratification points.

3 THE COURT: Okay.

4 MS. ASSAE-BILLE: So, first, the respondent brings up  
5 *Endicott Johnson Corporation v. Perkins*. Respondent cites this  
6 1943 Supreme Court case and states on its brief on page 30 that  
7 in that case the court concluded that the government could  
8 issue an administrative subpoena because the evidence sought  
9 was not plainly incompetent or irrelevant to any lawful  
10 purpose. Confusingly, however, the respondent then concludes  
11 that the essential question is whether the Bureau can fully  
12 perform its statutory duty without the information demanded.  
13 That interpretation distorts the very standard that respondent  
14 quotes in its own brief. The central question is simply  
15 whether the evidence sought is not plainly incompetent or  
16 irrelevant, and that standard is certainly part of what is one  
17 of the elements that is articulated in *United States*  
18 *Construction Products*, which is the case that outlines the four  
19 criteria for enforcing a CID. We believe that distinction to  
20 be meaningful because it is typical in these investigations for  
21 the government to collect a number of documents that are  
22 certainly plainly relevant and not incompetent but that the  
23 government may not necessarily rely upon to prove its case down  
24 the line. We doubt that the *Endicott* court intended to tie the  
25 Bureau's hands in the way that the respondent attempts to do

1 now. What matters here is relevance. And as I said earlier,  
2 nothing the Bureau has requested is irrelevant.

3 I also want to touch on the privilege log question.  
4 We are fairly confused here because the respondent asserts that  
5 they have provided a privilege log. The CID before this Court  
6 was issued on November 14, 2019. The respondent has produced  
7 nothing since that date. They have not produced documents,  
8 they have not produced answers. And certainly they have not  
9 produced a privilege log as required by -- and as is their  
10 right under 12 C.F.R. 1080.8, which provides that if a  
11 respondent is withholding information on the basis of  
12 attorney-client privilege, then they must produce the privilege  
13 log.

14 Again, respondent has not done so here, nor do they  
15 identify any request to which they believe the attorney-client  
16 privilege should attach in their opposition brief. Instead,  
17 they vaguely reference that there are concerns about -- that  
18 the Bureau has sought information relating to their  
19 representation of their client and that we have sought  
20 information regarding their contacts with their clients, but  
21 those allusions do not meet the burden in the legal standard.  
22 And in the Second Circuit case of *United States versus*  
23 *Construction Products Research* where an administrative subpoena  
24 was challenged based on the attorney-client privilege, failure  
25 to provide an adequate privilege log was sufficient for the

1 court to uphold the subpoena.

2 In this, the respondent suggests that perhaps a  
3 mediator could help us resolve the issues down the line, but in  
4 our view, your Honor, the respondents have had plenty of  
5 opportunity to provide a privilege log, not only in response to  
6 the CID, but after the director denied its petition to set  
7 aside or modify the CID, the respondent could have provided a  
8 privilege log and did not do so. They could have attempted to  
9 provide a privilege log while opposing this very petition and  
10 they have not done so. So in our view, the time to submit a  
11 log has passed, and respondent's failure to do so weighs in  
12 favor of upholding and enforcing the CID.

13 I also want to touch on this confidentiality argument  
14 that the respondent has referred to in, again, fairly vague  
15 terms in their brief and again today in this hearing. What  
16 they're referring to is New York of Professional -- New York  
17 Rule of Professional Conduct 1.6. We contend that that rule  
18 does not render the purpose of the CID illegitimate, nor does  
19 it preclude enforcement of the CID. We underscore again that  
20 we are not seeking information related to the practice of law,  
21 as is plain from the CID that is attached as Exhibit A. And  
22 Rule 1.6 applies to legal clients.

23 Here, any information the Bureau seeks about the  
24 respondent's relationship to its client is limited to the  
25 debt-collection services and credit-furnishing services that

1 the respondent provide. So we contend that Rule 1.6 is not  
2 triggered, but even if it were, a number of courts have  
3 recognized that Rule 1.6 does not prevent a government agency  
4 from obtaining certain client information through an  
5 administrative subpoena.

6 In any event, the respondent appears to concede that  
7 an order from this Court would fall under the exception to Rule  
8 1.6 which permits disclosures of confidential information to  
9 comply with other law or a court order. The Bureau's position  
10 is that this subpoena already brings, already triggers this  
11 exception, but certainly a court order from the Court would  
12 absolutely remove any Rule 1.6 concerns.

13 I also want to go back to this argument about what  
14 the Bureau has in its possession. The respondent characterizes  
15 its production as perfectly reasonable. While that may be  
16 their view, that is not the standard that applies here. Again,  
17 the Bureau's regulation at 12 C.F.R. 5562(c)(1)(A) require that  
18 responses to our CID be submitted in the medium requested by  
19 the Bureau, pardon me, and that's also 12 U.S.C. (c)(10). So  
20 both the statute and the regulation permit us to ask for  
21 information in a certain format, and that is not a cosmetic  
22 concern. A client's production would contain metadata that  
23 provides additional information about documents such as their  
24 source, their dates of creation, their custodian, and so forth,  
25 things that you cannot simply get from taking a look at a



1 document and seeing it as readable. But, of course, all of  
2 that is secondary to the fact that, again, the Bureau's statute  
3 and regulation are fairly clear on what the respondent's  
4 obligations were here. And we also do not follow the argument,  
5 nor has the respondent provided any legal authority to support  
6 its argument, its contention, pardon me, that in withdrawing  
7 its first petition the Bureau somehow waived its objections to  
8 the production's format. That is certainly not our position.  
9 We have never conceded such a thing, and we continue to  
10 maintain that the production was improper and that we should  
11 not have to rely on it in response to the second CID.

12 Now, the respondent with respect to Rule 19 has  
13 brought up that the Bureau could simply obtain the information  
14 that it seeks from Moroney, from the respondent from its  
15 client. Even if FedChex -- even if the Bureau has issued a CID  
16 to FedChex, and they had, and FedChex were to comply, the  
17 respondent would still have to produce information in response  
18 to each of the other -- to each of the requests in the CID  
19 which asks for information relating to services that it offers  
20 to other clients. And, again, information that is not in the  
21 Bureau's possession and information that is solely in the  
22 custody or control of the respondent.

23 We also want to note that, as the respondent has  
24 refused to comply with the CID, the Bureau does not have in its  
25 possession information, complete information about who the

1 respondent's clients are. So perhaps FedChex complies, but the  
2 Bureau is interested in having a sense of the identity of those  
3 other clients on whose behalf the respondent performed  
4 debt-collection and credit-furnishing activities. So that  
5 argument to us again really does not -- should not exempt the  
6 respondent from having to comply with the CID.

7 And I also want to add on that point that, again,  
8 suggesting that the Bureau can obtain some of the information  
9 from another party isn't -- it's not -- it doesn't resolve the  
10 fact, it doesn't contradict the fact that the respondent is a  
11 person under, as defined in the Bureau's organic statute, is a  
12 person from which the Bureau can seek information.

13 So we just don't believe that it makes any difference  
14 that the Bureau could hypothetically obtain a modicum of  
15 information from other parties.

16 And the last thing I'll say here is I just want to go  
17 back to the practice of law exclusion that is in Section 5517  
18 of the Consumer Financial Protection Bureau. It's certainly  
19 true that the Bureau cannot exercise supervisory and  
20 enforcement authority over the practice of law, but as I  
21 mentioned at the outset of this hearing, the exclusion contains  
22 an important qualification, and we did not, for space-related  
23 reasons, we did not outline those qualifications in our reply,  
24 but I'll do so here to clarify this issue for the Court.

25 First, the law exclusion provision permits the Bureau

1 to bring lawsuits against any law firm engaged in the provision  
2 of consumer financial services where the services are not part  
3 of the legal representation. And that's codified in 12 U.S.C.  
4 5517(e)(2)(A). This is in line with case law that says that  
5 where an attorney acts as a collection agent, the  
6 communications between him and his client are not protected by  
7 the privilege.

8           Second, the limitation does not apply to a consumer  
9 financial service that is offered or provided by an attorney to  
10 any consumer who is not receiving legal advice or services from  
11 the attorney in connection with such a financial service. And  
12 that's under (e)(2)(B) of the same statute.

13           So this exemption, for instance, clearly entitles the  
14 Bureau to those debt-collection calls between the respondent  
15 and consumers, presuming that the respondent is not providing  
16 legal advice or opinions of law to the same consumers from whom  
17 it is collecting facts.

18           And third, third and lastly, the limitation, the  
19 statute says that the limitation is not to be construed to  
20 limit the Bureau's authority with respect to any attorney to  
21 the extent the attorney is otherwise subjected to any of the  
22 enumerated consumer laws. And here we want to point out that  
23 the Federal Debt Collection Practices Act and the Fair Credit  
24 Reporting Act are enumerated consumer laws.

25           So, again, we firmly believe that the practice-of-law

1 exclusion does not foreclose the enforcement of the CID before  
2 this Court.

3 THE COURT: All right. Thank you very much,  
4 Ms. Assae-Bille.

5 Mr. Friedl, did you want to address the  
6 constitutional issues? Again, I've read all the papers, but if  
7 there's anything in particular that was said by Mr. DeGrandis,  
8 feel free.

9 MR. FRIEDL: Absolutely, your Honor. I think  
10 Mr. DeGrandis did cover a lot of ground. It won't surprise you  
11 to hear we disagree with it, but I will stand on the papers and  
12 just highlight a few brief points out of respect for the  
13 Court's time, which I recognize the Court has already been very  
14 generous with this afternoon.

15 With respect to funding, Mr. DeGrandis said that this  
16 is a nondelegation doctrine issue, but in all these filings and  
17 in the presentation today, it's never -- it's such a challenge,  
18 it has never actually articulated that doctrine requires  
19 certain delegations of congressional authority to be guided by  
20 an intelligible principle. And so long as they are, there's  
21 not a constitutional problem.

22 It's not even clear here exactly what the delegation  
23 is that's under attack. I presume it's the -- really the main  
24 funding provision in 12 U.S.C. 5497(a) and (b), but that just  
25 authorizes the transfer of a certain amount up to a capped

1 amount of funds from the combined earnings of the Federal  
2 Reserve System as determined by the director to be reasonably  
3 necessary to carry out the authorities of the Bureau under the  
4 federal consumer financial law, and it actually goes on, I  
5 won't read the whole thing. But these provisions include, you  
6 know, actually a far clearer and more definite principle to  
7 guide the director's decision-making on that point as compared  
8 to others that the Supreme Court has upheld against  
9 nondelegation challenges.

10           The respondent also highlights that the Bureau draws  
11 funds from the combined earnings of the Federal Reserve System,  
12 such as one agency taking money from another as a factual  
13 matter. I don't know if this was in our brief, I want to be  
14 clear that the Bureau is formally part of the Federal Reserve  
15 System. That's in 12 U.S.C. 5481(a). But more to the point,  
16 the factual distinction that respondent wants to draw between  
17 the Bureau and other agencies really don't make a difference  
18 under either the nondelegation doctrine or other framing of  
19 this challenge under the appropriations clause. That clause  
20 requires that payment of money from the Treasury must be  
21 authorized by statute. That was the Supreme Court's holding in  
22 the *Office of Personnel Management* case we cite and, of course,  
23 that is the case here. The Bureau's method of funding is  
24 authorized by its organic statute and Congress remains free at  
25 any time to amend that statute to do so.

1           And so the comparison to *Free Enterprise Fund* where  
2 there were sort of two stacked removal restrictions really is  
3 completely inapposite. The problem there was that double  
4 layers of removal provision made a difference for the  
5 President's ability to oversee the members of the accounting  
6 board that was at issue there. He couldn't remove those  
7 officials even for cause, he had to work through the FEC  
8 commissioners who the court assumed for purpose of that case  
9 were removable only for cause. So there was a double layer  
10 that made a difference.

11           The Bureau's funding, whether it is drawing money  
12 from Federal Reserve System, from its own imposition of fees or  
13 from some other method, it really doesn't make any difference,  
14 it's an appropriation made by statute and it is something that  
15 Congress could revisit at any time if it sees fit.

16           Unless your Honor has questions on this, I would just  
17 turn to ratification and address two or three points quickly.

18           The respondent says the cases we cite on ratification  
19 involve appointments clause violations. That's not true. We  
20 cite a case from the DC Circuit, *FEC v Legi-Tech*, which  
21 involves what the court called a structural separation of  
22 powers problem where there were potentially congressional  
23 appointees were part of that commission at that point in a  
24 nonvoting capacity but were appointments clause issue. Nor is  
25 there any reason that this Court should ignore the cases that

1 approved ratification in the appointments clause context such  
2 as the just a Ninth Circuit's decision in *Gordon*. In this  
3 case, as in cases like *Gordon*, the initial problem is with the  
4 exercise of authority by an agent, the head of the agency. In  
5 *Gordon*, the problem is that official had not been properly  
6 appointed. Here the problem was that official is not  
7 properly -- was not properly removable. But in both cases that  
8 initial defect in the agent's authority is cured by subsequent  
9 ratification once the problem is solved. There's no reason to  
10 discount those cases just because they involve the appointments  
11 clause.

12 Respondent also invokes the doctrine of unclean hands  
13 and suggests the Bureau couldn't ratify any bad actions. But  
14 what bad action? The Bureau hasn't done anything in this case  
15 beyond come to this Court seeking a judicial resolution of the  
16 dispute over the CID in an attempt to carry out its  
17 congressionally mandated mission. And nothing in the *Seila Law*  
18 decision suggests that -- undermines that or suggests that the  
19 Bureau was engaged in some sort of bad conduct requiring overly  
20 broad remedy to deter that conduct going forward. It was the  
21 Bureau's position that prevailed in *Seila Law*, that the removal  
22 provision is unconstitutional but severable. So I had to  
23 address that point. And the final -- I'll just rest there,  
24 unless your Honor has any other questions, we would just stand  
25 on our briefs.



1 THE COURT: I have no other questions. Thank you for  
2 making those points.

3 All right, we've been at this for a while, but I  
4 don't want to deny respondent a chance. If there's anything  
5 else you want to say, by all means.

6 MR. DeGRANDIS: Thank you, your Honor, very quickly  
7 then. What I'd like to point out regarding the constitutional  
8 issue is that the delegation problem is Congress divesting  
9 itself trying to delegate its authority to make appropriations  
10 through law. So I would like to sort of answer or address that  
11 concern that the CFPB stated there. And regardless of its  
12 place, the CFPB's place in federal agency hierarchy of things,  
13 it's still deciding some funding. It doesn't matter what its  
14 relationship is to the Federal Reserve, what matters is that  
15 the President or the director can demand of the Federal Reserve  
16 payment instead of going to Congress and getting Congress to  
17 appropriate those funds.

18 The next point I'd like to make with respect to  
19 ratification is only that when I use the word bad, this wasn't  
20 a moral argument. I am not saying that the director is a bad  
21 person or anyone at the CFPB is bad. The bad acts are the  
22 unconstitutional acts, and the director at all relevant times  
23 knew that what she was doing was unconstitutional. She knew  
24 that she didn't have the constitutional authority, she  
25 previously admitted that, and the *Seila Law* court confirmed

1 that for us.

2 I have two points that I'd like to close with which  
3 are related to the CID itself.

4 First of all, with respect to waiver of any  
5 formatting objection, my grounds for saying that are the same  
6 reasons that I would think the CFPB is saying that it didn't  
7 receive a privilege log with the second CID. They're  
8 100 percent correct, there is no privilege log with the second  
9 CID. Ms. Moroney has not complied with the second CID in any  
10 way, shape, or form, so there is no privilege log. But there  
11 is also -- they still have documents in their possession from  
12 the first CID. So if they wanted, if the CFPB wanted to make  
13 those objections, the right time to make those objections would  
14 have been at the November show cause hearing, not now. And I'm  
15 a little confused by the CFPB's statement that the time to  
16 submit a privilege log in this particular case has passed.  
17 CFPB has jumped up and down and all around promising that there  
18 is absolutely no harm in ignoring a CID until it comes time for  
19 a court to order enforcement. So it surprises me that they  
20 would suggest the time has passed. But we will admit that  
21 there has not been a privilege log to this point for the second  
22 CID.

23 And lastly, regarding the *Endicott* case, I would  
24 agree the *Endicott* case doesn't tie the CFPB's hand. I don't  
25 think that's the right way to look at it. The *Endicott* case

1 does deal with plainly incompetent or irrelevant information.  
2 What makes information plainly incompetent or irrelevant is  
3 where that information isn't targeted toward a legitimate  
4 purpose, doesn't advance the exploration of issues related to  
5 the CFPB's statutory duty, and that's our position here with  
6 respect to the client confidences and names of clients and so  
7 on and so forth.

8           So that's really the issue and why we think that  
9 while we are subject certainly to CFPB inquiries regarding just  
10 the collection of debt we'll say, that inquiry is limited to  
11 third-party documents, it is limited to those sorts of things.  
12 And Ms. Moroney, while she has turned over the vast majority of  
13 that information, to the extent that there is more that's  
14 required because the second CID has an additional two-year  
15 timeframe roughly thereabouts, that would be an adjustment that  
16 would have to be made if this Court decides to enforce a second  
17 CID. She's objecting to those legitimate portions of the CID.

18           That's all I have to say.

19           THE COURT: All right.

20           Anything else from anybody? Okay.

21           Well, what's the band say, a long strange trip it's  
22 been. So here we are.

23           Seila Law comes down which provides some  
24 illumination, but what I want to do is give you a ruling now,  
25 because if you wait for me to write an opinion, I think this

1 will not be in anybody's interest. So I'm going to go through  
2 some factual background. Obviously what I relate to you here  
3 is taken from submissions from both respondent and the Bureau.

4 Now, according to the Bureau, respondent is a law  
5 firm that collects on delinquent or defaulted consumer debt on  
6 behalf of various creditors. Respondent also provides  
7 information to credit reporting agencies about consumers from  
8 whom it is seeking to collect debt, but respondent does clarify  
9 and consistent themes throughout its position here in this case  
10 that it is a law firm that provide legal advice and services to  
11 clients. Indeed, there's no disputing that, nor is there any  
12 disputing the fact that Ms. Moroney is licensed to practice law  
13 in this state and in New Jersey, and that her firm is regulated  
14 by the New York and New Jersey Rules of Professional Conduct,  
15 and of course her continued ability to practice as a licensed  
16 attorney is conditioned upon strict adherence to those rules.

17 We all know the first CID was issued to respondent  
18 back in June of 2017. According to the Bureau, this CID sought  
19 "substantially similar" information to the 2019 CID but it's  
20 not identical. What's more, the Bureau claims that respondent  
21 produced a partial response to the 2017 CID but it withheld and  
22 "clawed back a significant amount of material." And there's  
23 also a claim that some of the documents were not produced in  
24 compliance with the Bureau's standards regarding electronically  
25 stored information, that there was no certification, that their

1 responses to the 2017 CID were true and complete.

2           Now respondent counters by noting that it did provide  
3 written responses to the interrogatories, produced thousands of  
4 pages of documents and other data, and to the extent that there  
5 was a decision to not produce certain documents, that was based  
6 on the attorney-client privilege and other nondisclosure  
7 principles, or because the material, the responsive materials  
8 might have been inextricably intertwined with privileged  
9 material. But in particular what the Bureau contends is that  
10 respondent originally identified about 1793 pages of responsive  
11 material, along with 1150 pages of which was comprised of data  
12 dictionary tables that were duplicative of Excel spreadsheets  
13 that the respondent also produced, and that the respondent also  
14 withheld responses to at least 15 of the Bureau's requests,  
15 including 144 letters of dispute that it deemed to be  
16 responsive to the Bureau's request for legal actions and  
17 administrative proceedings filed against respondent or its  
18 principals relating to the company's debt or information  
19 furnishing activities.

20           Now respondent does claim that, well, first of all,  
21 respondent has made the point that it retained ethics counsel  
22 for independent advice, and relied on that advice in evaluating  
23 its duty under Rule 1.6 of the New Jersey and New York Codes of  
24 Professional Conduct to protect the information it deemed to be  
25 covered by attorney-client privilege. There was a request for

1 waiver from clients, which was declined. And so from  
2 respondent's perspective, the Bureau was putting respondent in  
3 a position to violate ethical obligations regarding asserted  
4 confidences.

5           There was correspondence that explained some of these  
6 points and then ultimately what happened was is that in  
7 November of 2019 the Bureau withdrew the 2017 CID. That was on  
8 November 4.

9           On November 14, the Bureau had issued the 2019 CID,  
10 and all of what was requested is spelled out in the petition at  
11 paragraph 1. It's also Exhibit A to Ms. Assae-Bille's  
12 declaration. The respondent takes the view that the two CIDs  
13 are not initiated due to any consumer complaints regarding any  
14 of the purposes listed in the Notice of Purpose because  
15 otherwise the Bureau would have indicated as such.

16           The CID was issued by a deputy assistant director of  
17 the Office of Enforcement and was served on respondent by way  
18 of certified U.S. Mail, return receipt requested. The  
19 materials were due by December 16 of 2019. On December 2,  
20 respondent and counsel for the Bureau met and conferred in  
21 accordance with 12 C.F.R. 1080.6(c).

22           There was some discussion about modification, but  
23 that was never forthcoming. Instead, respondent filed a  
24 petition requesting that the director set aside or modify the  
25 CID which stayed the deadline for respondent to actually answer

1 the CID. And this request is made both on constitutional and  
2 statutory grounds and sought a modification to excuse  
3 respondent from producing any material that had previously been  
4 submitted in connection with the 2017 CID.

5 That petition was denied. There was a request to  
6 have respondent fully comply with the 2019 CID within ten days.  
7 Also, the director determined that the respondent's petition  
8 was untimely.

9 The bottom line here is that by March 19 of 2020,  
10 counsel for respondent indicated that respondent did not intend  
11 to comply with the 2019 -- not comply, respond to the 2019 CID.

12 So there's been no production of materials in  
13 response to the CID, and as has been acknowledged, there's been  
14 no privilege log with respect to the 2019 CID, but respondent  
15 does aver that the only documents that have been withheld from  
16 its response to the 2017 CID were those related to the practice  
17 of law, not documents exclusively related to third-party debt  
18 collection, and that respondent has produced all policies and  
19 procedures that the Bureau had requested in the 2017 CID.

20 There's also, I mean I'll note this because  
21 respondent makes this point in its papers, there is a pending  
22 petition to enforce a CID against FedChex Recovery, which I'll  
23 just call FedChex today, which is another one of respondent's  
24 clients, which is out in the Central District of California.  
25 From respondent's perspective, that CID seeks the same



1 information sought in the CID at issue here regarding  
2 respondent's contacts with that client.

3           So the 2019 CID does contain notification of purpose.  
4 According to the Bureau, the CID sought from respondent  
5 materials that may be relevant to the Bureau's investigation  
6 that were not already in its possession, including certain  
7 interrogatories, written reports, documents, et cetera.

8           The requests in the CID include, among other things,  
9 respondent's organizational structure, its employees, business  
10 activities, debt-collection activity, identities of creditors  
11 or third parties for whom respondent performed debt-collection  
12 activities, information on consumer complaints and disputes,  
13 policies and procedures, handbooks, guidance, and training  
14 materials, and recordings and calls between respondent and  
15 consumers or third parties related to debt-collection attempts.

16           All right, so just for the record, in terms of some  
17 background of CFPB, it was created in 2010 by Congress as an  
18 "independent financial regulator within the Federal Reserve  
19 System." The statute that enables the Bureau is the CFPA, or  
20 Title X, of the 2010 Dodd-Frank Wall Street Reform and Consumer  
21 Protection Act.

22           The Bureau is tasked with implementing and enforcing  
23 financial consumer protection laws. This is all laid out, of  
24 course, in *Seila Law*.

25           Now, upon its creation, Congress transferred the

1 administration of 18 federal statutes to the Bureau and enacted  
2 a new prohibition on any unfair, deceptive, or abusive act or  
3 practice by certain participants in a consumer finance sector.  
4 Also, the Bureau is able to implement this standard and the  
5 statutes under its purview through binding regulations.

6 Also, along with its rule-making authority, the  
7 Bureau also has adjudicatory authority, as it's allowed to  
8 conduct certain administrative proceedings.

9 Congress vested the Bureau with certain enforcement  
10 powers which allows it to conduct investigations, issue  
11 subpoenas, and CIDs, initiate administrative adjudications, and  
12 prosecute civil actions in federal court.

13 The Bureau is authorized to seek restitution,  
14 disgorgement, injunction, and civil penalties up to \$1 million  
15 for each day that a violation occurs.

16 As part of its enforcement authority, the Bureau can  
17 issue CIDs, which are a type of investigative administrative  
18 subpoena. In fact, the CFPB provides the Bureau with its  
19 authority to issue the CIDs and enforce them in federal court.  
20 For that I'm citing 12 U.S.C., Section 5562(c)(1) and (e)(1).

21 So under the CFPB the Bureau can issue a CID when "it  
22 has reason to believe that any person...may have information  
23 relevant to violation of federal consumer financial law."  
24 That's from 5562(c)(1).

25 The Bureau can initiate a proceeding to enforce the

1 CID in federal court by filing a petition, which is what we're  
2 dealing with here.

3 The director has the five-year term. The director is  
4 appointed by the President and does require Senate approval.

5 Until the Supreme Court's decision in *Seila Law*, the  
6 President was able to remove the director only for  
7 "inefficiency, neglect of duty, or malfeasance in office." But  
8 in *Seila Law*, the Supreme Court determined that the Bureau's  
9 leadership by a single independent director violated separation  
10 of powers, as it vested "significant governmental power in the  
11 hand of a single individual accountable to no one," and that  
12 the director's "insulation from removal by an accountable  
13 President...rendered the agency's structure unconstitutional."  
14 That's from 140 Supreme Court at pages 2203-4. But the Supreme  
15 Court did determine the removal restriction was severable from  
16 the other provision of the law that established the Bureau. So  
17 the Court ruled that the agency may continue to operate, but  
18 its director must be removable by the President at will. Page  
19 2192.

20 In terms of funding, the Bureau does not receive  
21 direct appropriations from Congress. Instead, each quarter the  
22 Bureau receives funding directly from the Federal Reserve,  
23 which transfers funds to finance the Bureau from "combined  
24 earnings from the Federal Reserve System." That's from Section  
25 5497(a). The Federal Reserve itself is funded outside the

1 appropriations process through bank assessment, as noted in  
2 *Seila Law* at page 2194.

3           Each year the Bureau's director determines the amount  
4 of funding "reasonably necessary to carry out" the duties of  
5 the Bureau up to a cap of 12 percent of the combined earnings  
6 annually adjusted for inflation. In recent years, that budget  
7 has exceeded a half a billion dollars.

8           To exceed the cap, the Bureau has to obtain  
9 additional funding in the ordinary appropriations process.

10           The funding is not reviewable by Congress, including  
11 the committees on appropriations in both the House and the  
12 Senate, but the director does report annually to the House and  
13 Senate appropriations Committee about the Bureau's "financial  
14 operating plans and use of funds." And that's spelled out in  
15 5497(e) (4).

16           All right, so we got here because of the petition,  
17 but also it's worth noting that the respondent brought an  
18 action against the Bureau and against the director in her  
19 official capacity seeking declaratory judgment and injunctive  
20 relief against the bureau.

21           On January 22nd of this year, the Court did issue an  
22 order to show cause. Oral argument was held on February 27  
23 where the Court from the bench denied the motion. And then an  
24 amended complaint was filed on April 30th.

25           The instant petition was filed April 24, which was

1 accepted by this Court as related, and then we've had really  
2 very thorough and comprehensive briefing through the early part  
3 of the summer and here we are.

4 In terms of legal standard, it is well established  
5 "that an agency can conduct an investigation even though it has  
6 no probable cause to believe that any particular statute is  
7 being violated." That's what the Second Circuit said in *US*  
8 *versus Construction Products Research Inc.*, 73 F.3d 464, 470.  
9 For example, administrative agencies can investigate merely on  
10 suspicion that the law is being violated.

11 The Court's role in a proceeding to enforce an  
12 administrative subpoena, which is basically what we're dealing  
13 with here, is very limited, what the Second Circuit noted in  
14 *NLRB versus American Medical Response, Inc.*, but of course the  
15 agency's efforts have to be reasonable. Whatever information  
16 they're seeking by way of the compulsory process has to be  
17 reasonable, which is satisfied if an agency demonstrates that  
18 the investigation is being conducted for a legitimate purpose,  
19 that the inquiry may be relevant to that purpose, that the  
20 information sought is not already in the administrative  
21 agency's possession, and that the administrative steps required  
22 have been followed. That's all from *American Medical Response*  
23 at page 192.

24 If a subpoena satisfies these requirements it's  
25 typically enforced unless the party opposing it demonstrates

1 that the subpoena is unreasonable or issued in bad faith or for  
2 some other improper purpose, or that compliance would be  
3 unnecessarily burdensome.

4           In terms of the respondent's attacks on the subpoena,  
5 I'll start with the funding structure, and respondent argued  
6 that the Bureau itself is unconstitutional because it doesn't  
7 receive appropriations from Congress, instead ceding Congress's  
8 funding authority to the Bureau itself and to the President,  
9 which violates, in respondent's view, the appropriations clause  
10 and the vesting clause. And this is all spelled in pages 14  
11 through 19 of respondent's memorandum of law. And what  
12 respondent specifically argues is that in the wake of *Seila*  
13 *Law*, that *Seila Law* ostensibly rendered the Bureau's funding  
14 structure "inconsistent with the congressional statutory design  
15 and purpose," and also is inconsistent with the constitutional  
16 design and purpose given that it permits the President to  
17 determine and direct the Bureau's funding and budget. Of  
18 course, the Bureau disagrees, and even goes so far as to say  
19 that *Seila Law* resolved the issue of the CFPB's  
20 constitutionality.

21           Article I, sections 1 and 9, provides that "no money  
22 shall be drawn from the treasury, but in consequence of  
23 appropriations made by law," and that "all legislative powers  
24 herein granted shall be vested in a Congress of the United  
25 States."

1           So with respect to the Appropriations Clause, the  
2 Supreme Court has underscored its straightforward and explicit  
3 command, "it simply means that no money can be paid out of the  
4 Treasury unless it has been appropriated by an act of  
5 Congress." That's from *Office of Personnel Management versus*  
6 *Richmond*, 496 U.S. 414, 424.

7           Here, the Bureau is funded from the earnings of the  
8 Federal Reserve which Congress has, in fact, authorized by  
9 statute. I've already discussed 5497. And that's important  
10 here because the Appropriations Clause "does not in any way  
11 circumscribe Congress from creating self-financing programs  
12 without first appropriating the funds as it does in typical  
13 appropriation and supplement appropriation acts," which is, in  
14 the Court's view, exactly what Congress has done here. That's  
15 a quote from *AINS Inc. versus United States*, 56 Federal Court  
16 of Claims 522, 539, I'll note a case that was affirmed by the  
17 Federal Circuit but abrogated on other grounds by the Federal  
18 Circuit. Other cases that have addressed this issue is *CFPB*  
19 *versus Think Finance, LLC*, 2018 WL 3707919 at \*2, the District  
20 of Montana there determined that the CFPB's funding does not  
21 violate the Appropriations Clause; ditto the Central District  
22 of California in two cases, *CFPB versus D&D Marketing*, 2016 WL  
23 8849698, and *CFPB versus Morgan Drexen, Inc.*, 60 F.Supp. 3d  
24 1082, 1089. Indeed, although the Supreme Court referenced the  
25 Bureau's funding structure in *Seila Law*, it did so to point to



1 the level of power vested in a director removable only for  
2 cause not to independently suggest that the funding mechanisms  
3 were somehow unconstitutional. For example, on page 2203, the  
4 Supreme Court noted "the CFPB's single-director structure  
5 contravenes this carefully calibrated system by vesting  
6 significant governmental power in the hands of a single  
7 individual accountable to no one. The director does not even  
8 depend on Congress for annual appropriations." So I think it's  
9 fair to say that although the Bureau's funding structure was  
10 not directly at issue in *Seila Law*, in deciding to sever the  
11 for-cause removal provision of the CFPA, the Supreme Court did  
12 note "the only constitutional defect we have identified in the  
13 CFPB structure is the director's insulation from removal," and  
14 that that constitutional defect "disappear[ed]" with a director  
15 removable at will by the President.

16 It's also important to note that the courts have held  
17 that Congress may "choose to loosen its own reins on public  
18 expenditure. Congress may also decide not to finance a federal  
19 entity with appropriations." This was noted in the *Morgan*  
20 *Drexen* case at 1089. Indeed, as the Bureau points out,  
21 Congress has provided similar independence to other financial  
22 regulators, like the Federal Reserve, the FDIC, the OCC, the  
23 National Credit Union Administration, and the Federal Housing  
24 Finance Agency. And this was all discussed in *PHH Corp. versus*  
25 *CFPB*, 881 F.3d 75, 81. Also, *CFPB versus Navient Corp.*, 2017

1 WL 3380530 at \*16, which lists these and some other agencies as  
2 independent agencies that operate completely outside the normal  
3 appropriations process. Indeed, these other agencies have been  
4 deemed to have complete, uncapped budgetary autonomy, as noted  
5 in *PHH II*, 881 at page 81. Indeed, the Federal Reserve has  
6 been around for over 100 years, and like the CFPB, has broad  
7 investigative and enforcement authority, including the power to  
8 conduct on-site examinations of banks under its purview and to  
9 impose certainly monetary penalties.

10           Also, I just find it unconvincing, although it's  
11 certainly stridently argued that this is a narrow exception  
12 limited to agencies that receive funding from fees and the  
13 like. There's really no authority to support this narrow  
14 exception theory of the self-funded governmental entities. I  
15 think *PHH II*, the case, in fact, respondent cites for the  
16 proposition, the DC Circuit found "the way the CFPB is funded  
17 fits within the tradition of independent financial regulators"  
18 and does not violate the Constitution. In fact, the DC Circuit  
19 totally *en banc* found that "the requirement that the CFPB seek  
20 congressional approval for funding beyond the statutory cap  
21 makes it more constrained in this regard than other financial  
22 regulators."

23           Plus, Congress hasn't relinquished control over all  
24 the agency's funding, so although the CFPB restricts the House  
25 and Senate Appropriations Committees from reviewing the

1 Bureau's primary funding source, it doesn't strip Congress as a  
2 whole of its power to modify appropriations as it sees fit.  
3 That's from *CFPB versus ITT Educational Services, Inc.*, 219  
4 F.Supp. 3d 878, 896, that's A Southern District of Indiana  
5 decision from 2015. In fact, the *CFPB* has a formula-based  
6 spending cap on the amount that the Bureau's director can  
7 derive from the Fed, and the *CFPA* further "imposes a number of  
8 other conditions on the director's use of the funds so  
9 derived." And that's from the *ITT* case page 896 n.12.

10 What's more, Congress "might not have exempted the  
11 *CFPB* from congressional oversight via the appropriations  
12 process if it had known the *CFPB* would come under executive  
13 control." But it "remains free to change how the *CFPB* is  
14 funded at any time." That's noted by *Navient Corp.*, 2017 WL  
15 3380530 at \*16. And in fact, the *PHH I* case, which is *PHH*  
16 *Corp. versus CFPB*, reported at 839 F.3d 1, at page 36 n.16,  
17 "Congress can always alter the *CFPB*'S funding in any  
18 appropriations cycle or at any other time. Section 5497 is not  
19 an entrenched statute shielded from future congressional  
20 alteration, nor could it be."

21 And to the extent that the argument is that the  
22 nondelegation doctrine applies because Congress has transferred  
23 its authority to another branch of government, which in fact is  
24 the argument that's made at page 15, the Supreme Court has  
25 indicated that "in our increasingly complex society replete

1 with ever changing and more technical problems...Congress  
2 simply cannot do its job absent an ability to delegate power  
3 under broad general directives." That's from *Gundy versus*  
4 *United States*, 139 Supreme Court at 2123. Thus, "a statutory  
5 delegation is constitutional as long as Congress lays down by  
6 legislative act an intelligible principle to which the person  
7 or body authorized to exercise the delegated authority is  
8 directed to conform." And that's from the same page. As such,  
9 "the constitutional question is whether a Congress has supplied  
10 an intelligible principle to guide the delegee's use of  
11 discretion," and there's really been no explanation of what  
12 aspect of the funding structure lacks that intelligible  
13 principle. In fact, by limiting the funding that the director  
14 may request from the Fed, with a formula-based spending cap on  
15 the amount, it seems clear that the CFPB does not lack for a  
16 principle or have some sort of unguided or unchecked authority  
17 granted to the CFPB. So the Court finds that Title X does not  
18 violate the appropriations and vesting clauses in the  
19 Constitution.

20 Turning to the ratification issue, on July 2nd, the  
21 Bureau filed a notice of ratification issued by the director.  
22 She noted that "in her capacity as the director, she considered  
23 the basis for the CFPB's decision to issue the CID to  
24 respondent, to deny respondent's request to modify or set aside  
25 the CID, and to file a petition requesting that the District

1 Court enforce the CID." She also noted that she ratified this  
2 decision on behalf of the Bureau and that she understood that  
3 the President may now remove her with or without cause." And  
4 that's from paragraph three, four and five of her declaration.

5 The argument is that the 2019 CID is invalid because  
6 it's the product of an unconstitutionally structured federal  
7 agency, and when Director Kraninger acted prior to *Seila Law*,  
8 she was an invalid agent acting without any authority, thus,  
9 any actions taken by her were basically null and void and can't  
10 be saved by ratification. The second point is that even if  
11 Director Kraninger was able to ratify her previous actions as  
12 an unconstitutionally insulated director, the 2019 CID would  
13 still be unenforceable because the ratification does not cure  
14 the structural constitutional defect identified by the Supreme  
15 Court, only the President himself can ratify the director's  
16 prior acts. The third argument is that even if a director had  
17 validated her prior acts, she did not purport to ratify the  
18 regs until the week after she ratified the enforcement action.  
19 And finally, that the director failed to perform a detached and  
20 considered judgment of the act that she ratified.

21 Now, *Seila Law* left open the question of validity of  
22 a ratification by the director, but of course, the  
23 circumstances there were different, as the CID had been issued  
24 by a different director, Director Cordray, the first director,  
25 and was subsequently ratified by Acting Director Mulvaney, who

1 the CFPB argued could be removed at will by the President  
2 because of his status as an acting director. The Supreme Court  
3 found that the question of whether the alleged ratification, in  
4 fact, occurred and whether it is legally sufficient to cure the  
5 constitutional defect, the original demand...turned on  
6 case-specific factual and legal questions not addressed below  
7 and not briefed before the court. So the court remanded that  
8 question finding the appropriate course was for the lower court  
9 to consider those questions in the first instance. Of course,  
10 the Court recognizes that Justice Thomas had a different view,  
11 and it speaks for itself. I'm sure you all have read it.

12 All right, so addressing sort of the arguments in  
13 turn. The first argument is, as I mentioned, that the actions  
14 taken by the Bureau prior to *Seila Law* are nullities that  
15 cannot be ratified. And because the court's severance of the  
16 removal provision in Title X was prospective, respondent argues  
17 that when the director acted, she was an invalid agent, as  
18 such, her acts are void *ab initio*. And there's the other  
19 argument, the related argument, that the ratification would  
20 deprive the respondent of any remedy for the constitutional  
21 violation, the separation of power violation, and vindication  
22 for her claim that the Bureau was unconstitutionality ratified  
23 to begin with.

24 And as I said, the other argument is that even if the  
25 earlier actions could be ratified, only the President can do

1 ration, because the President was the Bureau's only lawfully  
2 acting principal prior to severing the for-cause removal  
3 provision.

4 Now, I think we all agree, and I think it was said so  
5 during the argument, that the Supreme Court has made clear that  
6 on the question of authorization or ratification, that this is  
7 something that's typically governed by principles of agency  
8 law. And this is discussed in the *Political Victory Fund* case,  
9 513 U.S. 88, 98, and lower cases precisely dealing with  
10 challenges to the CFPB structure have noted such, among others,  
11 the *Gordon* case, which is a Ninth Circuit case, reported 819  
12 F.3d 1179, 1191, and then *RD Legal Funding*, 332 F.Supp. 3d 729,  
13 785.

14 In *political Victory Fund* the Supreme Court has  
15 looked to the restatement of agency to determine whether an  
16 after-the-fact authorization by the Solicitor General related  
17 back to the date of an unauthorized filing by the FEC such that  
18 the authorization would make the filing timely. The court  
19 found that it didn't because under the restatement, "if an act  
20 to be effective in creating a right against another or to  
21 deprive him of a right must be performed before a specific  
22 time, an affirmance is not effective against the other unless  
23 made before such time." That's at page 98. The Court stated  
24 that the rationale behind the rule was that it was "essential  
25 that the party ratifying should be able not merely to do the



1 act ratified at the time the act was done, but also at time the  
2 ratification was made." The emphasis is on the but-also  
3 phrase, same page. Thus, because the filing deadline would  
4 have already passed at the time the Solicitor General  
5 authorized the act, the authorization in that case was invalid.

6 Now, courts have interpreted this as really amounting  
7 to addressing a timing issue. So, for example, *Advance*  
8 *Disposal Services Eastern, Inc. versus NLRB*, 820 F.3d 592, 603,  
9 and they utilized the principles of agency law to determine  
10 whether a later ratification authorizes an earlier action by an  
11 agent particularly with respect to appropriations clause  
12 violations. So what the Third Circuit said in the *Advance*  
13 *Disposal* case is that the timing problem in *Political Victory*  
14 *Fund* has since been read to require that the ratifier had the  
15 power to reconsider the earlier decision at the time of  
16 ratification. And so there the Third Circuit considered three  
17 general requirements for ratification in determining whether a  
18 properly constituted NLRB and its regional director could  
19 ratify an action taken by the regional director at a time where  
20 the board lacked a valid quorum given invalid recess  
21 appointments of several members. So the three requirement are:  
22 "First, the ratifier must, at time of ratification, still have  
23 the authority to take the action to be ratified; second, the  
24 ratifier must have full knowledge of the decision to be  
25 ratified; third, the ratifier must make a detached and

1 considered affirmation of the earlier decision." So there the  
2 Third Circuit ultimately found that the requirements were  
3 satisfied, and that's the bottom line.

4 Now in *Gordon*, which is the Ninth Circuit case, the  
5 parties agreed that although Director Cordray's initial recess  
6 appointment was invalid and did not satisfy the requirements of  
7 the appointments clause, later renomination and confirmation  
8 was valid. So based on that, the Ninth Circuit determined that  
9 a ratification issued by Director Cordray with respect to  
10 enforcement action at issue in that case, paired with a  
11 subsequent valid appointment, cured any initial Article II  
12 deficiencies. In reaching that conclusion, the Ninth Circuit  
13 reasoned that "under the second restatement, if the principal,  
14 [the] (CFPB), had authority to bring the action in question,  
15 then the subsequent ratification of the decision to bring the  
16 case is sufficient." That's from 1191. It bears noting that  
17 the Ninth Circuit did cite the "less stringent" third  
18 restatement of agency, Section 4.04 comment B., which "advises  
19 that a ratification is valid even if principal did not have  
20 capacity to act at the time, so long as the person ratifying  
21 had capacity to act at the time of ratification." So the Ninth  
22 Circuit found that because Congress statutorily authorized the  
23 Bureau to bring the action in question through the CFPA, the  
24 Bureau had authority to bring the action at the time the  
25 enforcement action was initiated, and thus, the director's

1 ratification, Director Cordray's ratification, after his proper  
2 appointment resolved any appointment clause deficiencies.

3           So, as in *Advance Disposal* here, the Court's view is  
4 that there appears to be no limitation that would prevent  
5 Director Kraninger from bringing an enforcement action against  
6 respondent at the time, given that she is now removable at will  
7 by the President. Indeed, I think that was conceded during  
8 argument. Furthermore, if the director is considered to be  
9 both the agent and the principal, like the regional director in  
10 *Advance Disposal*, she better than anyone else had full  
11 knowledge of her earlier action. And, as in *Gordon*, here, if  
12 the CFPB, if the Bureau is to be considered the principal, and  
13 Congress authorized the Bureau to issue CIDs and bring the  
14 actions in federal court to enforce consumer protection  
15 statutes and regulations.

16           Now, it's true that some courts have distinguished  
17 between ratification and cases involving appointments clause  
18 violations and those involving structural defects. So this is,  
19 of course, discussed and argued in *RD Legal Funding* by Judge  
20 Preska where she thought the distinction was dispositive. But  
21 unlike in the *RD Legal Funding* case, here the for-cause removal  
22 provision has been severed and the structure of the Bureau is  
23 no longer in contravention of the Constitution. So the  
24 constitutional deficiency issue doesn't exist here anymore. Of  
25 course, Judge Preska didn't have the benefit of the *Seila Law*

1 decision, which we obviously have here. As such, the relevant  
2 question seems to be whether the constitutional violation has  
3 been remedied and whether the remedy was effective and  
4 adequately addressed the prejudice to respondent from the  
5 constitutional violation. And that's the framing that was set  
6 forth by the DC Circuit in the *Legi-Tech* decision, 75 F.3d 704,  
7 708. If that's true, then dismissal of the enforcement action  
8 is neither necessary nor appropriate.

9           And I think *Legi-Tech* is instructive here as one of  
10 the few cases where a court examined whether ratification of a  
11 previously brought enforcement action, in light of a structural  
12 constitutional defect that had been cured, was sufficient to  
13 remedy respondent's claimed injury against whom the enforcement  
14 action was taken. In that case, what the DC Circuit did is it  
15 handled a challenge to litigation brought by the FEC after the  
16 circuit had determined that the agency's structure violated the  
17 Constitution in the case called *FEC versus NRA Political*  
18 *Victory Fund*, given the presence of two congressional officers  
19 as non-voting *ex officio* members of the FEC. As in *Seila Law*,  
20 however, the DC Circuit determined that the provision was  
21 severable and the FEC thereafter voted to reconstitute itself,  
22 excluding those *ex officio* members from all proceedings and  
23 ratified former actions, including the agency's previous  
24 probable cause finding and civil enforcement action.

25           Just as has happened here, the respondent in that

1 case argued that separation of powers is a structural  
2 constitutional defect that made the entire investigation void  
3 and that the FEC's later ratification of the PC finding  
4 couldn't cure the constitutional violation given that the vote  
5 at the end of the administrative process doesn't the remove the  
6 taint, the structural taint, from the sequence of the decision.

7           And there the DC Circuit even acknowledged the  
8 respondent was, in fact, prejudiced given the structural defect  
9 in place at time, but the court framed the question as "the  
10 degree of continuing prejudice after the FEC's reconstitution  
11 and ratification," at page 708.

12           The DC Circuit assumed that no matter what course was  
13 followed, other than a dismissal with prejudice, some effects  
14 of the unconstitutional structure of the FEC are to be presumed  
15 to have impacted on the action. The court nonetheless  
16 determined there was no ideal solution to that problem because  
17 "even were the commission to return to square one, it is  
18 virtually inconceivable that its decisions would differ in any  
19 way the second time from that which occurred the first time."  
20 And that's what I think we have here, and that's what I  
21 mentioned during argument. But even if the Court were to  
22 dismiss this enforcement action, there's really no reason to  
23 believe that the Bureau's decision to issue the CID to bring an  
24 action would differ another time around. And I think that's  
25 been acknowledged here. So, as in *Legi-Tech*, where there is no

1 significant change in the membership of the commission, there's  
2 been no significant change in the leadership here, forcing the  
3 Bureau to start at the beginning of the process, given what the  
4 DC Circuit described as human nature, "promises no more  
5 detached and pure consideration of the merits of the case than  
6 in this case the Bureau's ratification decision reflected." So  
7 the more efficient and sensible course seems to be to take the  
8 ratification of this prior decision at face value and treat  
9 that as the adequate remedy for the constitutional violation  
10 bearing in mind "the discretion the judiciary employs in the  
11 selection of remedies."

12           Indeed, ratification has similarly been found to be  
13 an effective cure in cases involving appointments clause  
14 violations that were later resolved, particularly when a  
15 dismissal would likely result in a similar administrative  
16 procedure. So one case is the DC Circuit's decision in *Wilkes*  
17 *Barr Hospital Company LLC versus NLRB*. There's the *Doolin*  
18 *Security Savings Bank* case, 139 F.3d 214, *Intercollegiate*  
19 *Broadcast Systems*, 796 F.3d at 117.

20           Also, it's bears noting that before *Seila Law*, at  
21 least two courts determined that even if the CFPA's for-cause  
22 removal provision was severable, the enforcement action would  
23 still being effective. And I'll note both a *PHH I* and *II* cases  
24 where then Judge Kavanaugh determined that the for-cause  
25 removal provision was, in fact, unconstitutional but that it

1 was severable from the rest of the CFPA. Judge Kavanaugh then  
2 considered the petitioner's statutory objections to the  
3 enforcement action and vacated the action on statutory grounds  
4 but not based on the structural constitutional violation,  
5 "because the constitutional ruling would not halt the CFPB's  
6 ongoing operations or the CFPB's ability to uphold the order  
7 against the petitioners."

8 And a similar decision was reached by Judge McMahon  
9 in *CFPB versus NDG Financial Corp.*, 2016 WL 7188792.

10 Now, to the extent that there's the argument that not  
11 only would this ruling deprive respondent of a remedy in this  
12 case but also in the related case, the Court does not agree.  
13 In the related case, the respondent seeks a declaratory  
14 judgment that the CFPB'S single-director structure violates the  
15 Constitution, but that's precisely the remedy that the  
16 conclusion in *Seila Law* provides.

17 With respect to *Lucia versus SEC*, I think that case  
18 is just different. The Supreme Court there determined that the  
19 appointment of an ALJ who presided over an enforcement  
20 proceeding did not comport with the appointments clause. The  
21 court found that under its precedent, "one who makes a timely  
22 challenge to the constitutional validity of the appointment of  
23 an officer who adjudicates his case is entitled to relief."  
24 That's from page 2055. The court determined that the  
25 appropriate remedy for an adjudication tainted with

1 appointments violation is a new hearing before a properly  
2 appointed official. But, here, as the Bureau points out, the  
3 adjudication of the CID is before this Court, as is the  
4 adjudication in the related case. So it's an  
5 apples-and-oranges comparison. What's more, in *Lucia*, the  
6 court found that another ALJ or the SEC itself would need to  
7 hold a new hearing because the previous ALJ already both heard  
8 the petitioner's case and issued an initial decision on the  
9 merits. But here, there's been no "adjudication," by the  
10 Bureau or the director, with respect to the enforcement action  
11 and also there's no substitute decision-maker to revisit the  
12 decision such as another ALJ.

13 To the extent that the respondent argues that the  
14 Supreme Court determined in *Seila Law* that the only lawfully  
15 acting principal is the President, I just don't think that's a  
16 fair reading of *Seila Law*. Although the court, the Supreme  
17 Court cited the well-established principle that the executive  
18 power belongs to the President, it didn't issue any sort of  
19 ruling on ratification in fact stating that "because it would  
20 be impossible for one man to perform all the great business of  
21 the state, the Constitution assumes that lesser executive  
22 officers will assist the supreme magistrate in discharging the  
23 duties of his trust." Quoting from the writing of George  
24 Washington. Can you get a better source than that. There  
25 really isn't any other authority to support this proposition,



1 as clever as it is.

2 So the Court finds that where the for-cause removal  
3 provision has been severed, and thus, the constitutional  
4 violation has dissipated, the ratification of the prior action  
5 is valid.

6 Now there's the other argument, as I said, there's  
7 the argument that the director has not validly ratified the  
8 Bureau's regulations and its related guidance documents that  
9 her ratification of this action is invalid. In fact, what the  
10 respondent argues is because Director Kraninger ratified the  
11 investigation and the enforcement on July 2 and regulations on  
12 July 10, that she could not have attained the regulatory  
13 authority to ratify this case until July 10 at the earliest.  
14 And the respondent further argues that the ratification was, in  
15 any event, ineffective, as "if anyone can ratify prior invalid  
16 Bureau regulations, guidance documents, and enforcement  
17 activities, only the President can."

18 The Court does not agree. The Bureau's authority to  
19 issue and enforce CIDs is derived not just from the CFPB but  
20 from the CFPA, and in deciding that the Bureau was  
21 unconstitutionally constituted, the Supreme Court determined  
22 that the removal provision was severable from any other  
23 statutory provision relating to the Bureau's powers and  
24 responsibilities. So the provisions related to the Bureau's  
25 authority to issue CIDs, they remain valid based on *Seila Law*.

1           To the extent that there's this argument that the  
2 director failed to perform a detached and considered judgment  
3 of the actions she ratified, this argument is based on the  
4 assumption that she couldn't have given the prior acts more  
5 than a passing glance because it would have had to have been  
6 done within a matter of days after *Seila Law*.

7           While it's certainly true a ratifier must make and  
8 detached and considered judgment and not simply rubber-stamp an  
9 earlier action, there's really no actual evidence to establish  
10 that the director failed to conduct an independent evaluation  
11 or make a detached considered judgment, it's merely speculation  
12 based on sort of timing, but that's just, at the end of the  
13 day, that's just not enough authority that says that somehow  
14 that's enough. So, for example, in *Advance Disposal Services*,  
15 the Court noted that mere lack of detail in the director's  
16 express ratification is not sufficient to overcome the  
17 presumption of regularity. In fact, elsewhere in that decision  
18 the Third Circuit noted that the presumption of regularity  
19 applied to the actions of an agency, and finding that those  
20 opposing ratification, in that case, had "not produced evidence  
21 that cast doubt on the agency's claim that the board of  
22 director properly ratified the earlier actions." And the party  
23 argued only that ratification was a "rubber-stamp." And also  
24 *Legi-Tech*, the DC Circuit said that it couldn't examine the  
25 internal deliberations of the commission, at least absent the

1 contention that one or more commissioners was actually biased.

2 Here, the ratification states that the director  
3 considered the basis for the Bureau's decisions to issue the  
4 CID, to deny respondent's request to modify or set aside the  
5 CID, and to file a petition requesting that the district court  
6 enforce the CID, and she ratified those decisions on behalf of  
7 the Bureau. In the Court's view, that is sufficient under the  
8 circumstances.

9 All right, now in terms of the enforceability of the  
10 CID, as noted, the Court's role here is extremely limited, but  
11 of course the information being sought has to be reasonable.  
12 I've gone through all this. An agency does have to make only a  
13 *prime facie* showing that the four requirements I discussed  
14 earlier had been met.

15 In terms of the purpose of the investigation, the CID  
16 indicates the purpose. It's all laid out in the CID. In the  
17 Court's view, this reflects a legitimate, investigatory  
18 purpose, as the CFPB expressly authorizes the Bureau to  
19 investigate suspected violations of consumer protection laws,  
20 such as the FDCPA and the FCRA, which is what is the purpose  
21 here, among others. I'll just note a couple of cases that have  
22 come to similar conclusions, *CFPB versus Heartland Campus*  
23 *Decisions*, *ESCI*, 2018 WL 1089806, as I said, among others.

24 Now the argument here is that respondent sort of  
25 states the purpose of the CID, arguing that it falls under the

1 practice-of-law exception, acknowledging that although the  
2 respondent's services include debt-resolution activities that  
3 might be regulated by the Bureau as the third party, the Bureau  
4 is prohibited from regulating the practice of law and that the  
5 Bureau has "pressed its obstinate demand for information and  
6 documents, including those created in respondent's practice of  
7 law that respondent is duty-bound to protect from disclosure."  
8 The practice-of-law exclusion instructs the Bureau may not  
9 exercise any supervisory or enforcement authority with respect  
10 to an activity engaged in by an attorney as part of the  
11 practice of law under the laws of the state in which the  
12 attorney is licensed to practice law. So though while it's  
13 true the CID sought information that regulated the practice of  
14 law and that that would be impermissible on its face, that's  
15 not the purpose of the CID. In fact, the Bureau has made this  
16 quite clear that that is not the purpose of the CID.

17           The nature of the CID and the investigation falls  
18 under an exception to the practice-of-law exclusion. Section  
19 5517(e)(2) states that the exclusion "shall not be construed as  
20 to limit the authority of the Bureau with respect to any  
21 attorney to the extent that such attorney is otherwise subject  
22 to any of the enumerated consumer laws or authorities  
23 transferred." So here the Bureau seeks information about  
24 possible violations, as I said, of the FDCPA and the FCRA, both  
25 of which respondent is subject to and the Bureau represents

1 that the purpose of the CID is not to investigate in the actual  
2 practice of law but is instead meant to gather information  
3 about respondent's debt-collection activity, which the CID  
4 specifically defines as activities, including attempts to  
5 collect a debt, either directly or indirectly, excluding the  
6 provision of legal services. I think respondent acknowledges  
7 that that's not an impermissible purpose. I think there's just  
8 a question of the extent to which the documents themselves that  
9 are being sought, for example, might implicate attorney-client  
10 privilege. And I will certainly talk about that in a minute.  
11 But on its face, the Court finds that the purpose is  
12 legitimate.

13 In terms of relevance, that could be broadly  
14 interpreted, and the courts are supposed to defer to an  
15 agency's appraisal of relevance. And so, unless it's obviously  
16 wrong, the Court's not going to question it. Again, this gets  
17 into the attorney-client confidences issue. And the Bureau  
18 obviously disagrees that it is trying to seek or retain  
19 information that is covered by the privilege because, for  
20 example, the communications being sought do not reflect  
21 communications by clients seeking an opinion of law, legal  
22 services, or assistance in some legal proceeding involving  
23 respondent. Instead, the CID seeks information related to  
24 respondent's debt-collection business and specifically defines  
25 debt-collection activities as excluding the provision of legal

1 services and directs respondent that if any responsive  
2 materials were held on the basis of privilege that respondent  
3 should submit a schedule of the documents and information  
4 withheld that includes details, such as the subject matter,  
5 dates, names, address, et cetera.

6           And any party asserting attorney-client privilege has  
7 to demonstrate: The asserted holder of the privilege is or  
8 sought to become a client; that the person to whom the  
9 communication was made is the member of a bar or a court, or  
10 that person's subordinate; in connection with this  
11 communication is acting as lawyer; the communication relates to  
12 a fact the attorney was informed, A, by a client, B, without  
13 the presence of strangers, C, for the purpose of securing  
14 primarily an opinion of law or legal services, or assistance in  
15 some legal proceeding, and not for the purpose of committing a  
16 crime or tort, and the privilege has been claimed and not  
17 waived by the client. That's all spelled out in *SEC versus*  
18 *Yorkville Advisors, LLC* 300 F.R.D. 152, 161.

19           As I said, it's pretty clear that the material that  
20 the Bureau seeks is relevant in terms of how it relates to the  
21 investigation and the statutory violations that the Bureau is  
22 statutorily charged with investigating, and on the face the  
23 requests appear to be related to debt-collection services  
24 provided by respondent, and so they are relevant to the  
25 investigatory purpose.

1           To the extent that there are broad assertions of  
2 attorney-client privilege, that's really not going to get it  
3 done. So, for example, to the extent that there is a claim  
4 that the Bureau seeks attorney-client confidences and  
5 privileged documents and information, those are not really  
6 detailed at all, there's no specific examples given, there's  
7 nothing about relating to specific legal advice the respondent  
8 had given. So, for example, some of the documents that the  
9 Bureau seeks, information on consumer complaints in recordings  
10 of calls between respondent and consumers, that's not embodied  
11 by the attorney-client privilege. Just on its face it's just  
12 not.

13           And it also should be I think undisputed territory  
14 that to the extent an attorney acts as a collection agent, any  
15 communications between that attorney and the client are not  
16 protected by the attorney-client privilege. Among other cases  
17 that was noted in *Avoletta versus Danforth*, 2012 WL 3113151.  
18 Again, the Bureau is saying that all it wants is information  
19 related to respondent's activity and debt-collection  
20 activities.

21           To the extent that there is information that is  
22 privileged, then respondent can submit a privilege log, which  
23 has not been done in connection with the CID.

24           And I think there's also, I think, force to the  
25 Bureau's argument that Rule 1.6 specifically exempts an

1 attorney from any sort of responsibility to the extent the  
2 information is required by an order of the Court. Among other  
3 cases, *In re Alghanim*, 2018 WL 2356660.

4 Thus, because the Court's view is that the Bureau is  
5 not seeking privileged information, it's conducting an  
6 investigation, and the respondent hasn't shown that the Court  
7 should otherwise refuse to enforce the CID on the basis of  
8 relevance, the Court finds that the Bureau has demonstrated  
9 that the information it seeks is relevant.

10 Again, to the extent there are specific objections  
11 because there are specific documents or portions of documents  
12 that are privileged, then a privilege log can be submitted.

13 In terms of what's already in the Bureau's  
14 possession, the Bureau I think persuasively makes the point  
15 that the previously identified pages from the 2017 CID, there  
16 were some issues about formatting which that was provided,  
17 there was clawback. So there was a clawback and redaction of  
18 many of the pages that were responsive. And to the extent  
19 respondent generally has said, hey, I produced thousands of  
20 pages in response to the 2017 CID, that's not sufficient to  
21 rebut the Bureau's representation, its showing as to what it  
22 has not been given. Plus the 2017 and 2019 CIDs are not  
23 identical. And so absent more specific detail, the Court finds  
24 this objection not to be persuasive.

25 In terms of the administrative steps taken, the only



1 argument here has to do with the ratification, but the Court  
2 has already ruled on that.

3           With respect to FedChex issue, the Court agrees that  
4 Rule 19 is essentially not applicable here, not applicable to  
5 enforcement proceedings, and I don't think respondent has made  
6 the showing that, even if it somehow did apply, that it should  
7 apply here. I'll note that the Court hasn't been able to find  
8 a case within the Second Circuit regarding the applicability of  
9 Rule 19 to enforcement proceedings, but there have been,  
10 certainly are decisions that in the context of the SEC and CFTC  
11 proceedings, that Rule 19 is not dispositive, among other cases  
12 *SEC versus Princeton Economic International Limited*, 2001 WL  
13 102333, at \*1.

14           Even if it did apply, it's far from clear FedChex is  
15 a necessary party. To the extent that the respondent has  
16 information that is responsive to the CID that might  
17 tangentially relate to FedChex, then respondent should produce  
18 that material. To the extent that they are privileged, then  
19 respondent can submit a privilege log, as previously discussed.

20           So for these reasons the Court grants the petition to  
21 enforce the 2019 CID. To the extent, as I said, that there are  
22 objections, specific objections regarding privileged material,  
23 respondent should submit a schedule of that material as  
24 directed by the CID to the Bureau. To the extent that the  
25 respondent seeks modifications based on what it produced in

1 response to the 2017 CID, it can discuss this with the Bureau  
2 and write specific details on the material if it feels  
3 satisfied the requests from the 2019 CID that are duplicative  
4 of the 2017 CID.

5 Sorry to keep you so long, is there anything else?

6 MS. ASSAE-BILLE: Not from the Bureau, your Honor.

7 MR. DeGRANDIS: For the respondent, we have nothing  
8 further. Thank you, your Honor.

9 THE COURT: All right. Have a pleasant afternoon.  
10 Everybody stay healthy.

11 MR. DeGRANDIS: Thank you, you, too.

12 MS. ASSAE-BILLE: Thank you, your Honor.

13 (Proceedings concluded)

14 CERTIFICATE: I hereby certify that the foregoing is a true and  
15 accurate transcript, to the best of my skill and ability, from  
my stenographic notes of this proceeding.

16 -----  
Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 BUREAU OF CONSUMER FINANCIAL,

4 Petitioner,

5 -against-

20 Civ. 3240 (KMK)

6 LAW OFFICES of CRYSTAL MORONEY,

7 Respondent.

8 -----x

9  
10 United States Courthouse  
White Plains, New York

11 December 16, 2020

12  
13 HONORABLE KENNETH M. KARAS,  
14 District Court Judge

15  
16 CONSUMER FINANCIAL PROTECTION BUREAU  
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23 BY: MICHAEL P. DeGRANDIS  
JARED McCLAIN

24  
25

1 THE COURT: This is Bureau of Consumer Financial  
2 Protection v. Law Offices of Crystal Moroney, 20CV3240.

3 Counsel for petitioner, please state your  
4 appearances.

5 MR. DeGRANDIS: Michael DeGrandis.

6 MR. FRIEDL: Kevin --

7 MR. DeGRANDIS: Oh, I'm sorry. With the respondent.

8 MR. FRIEDL: Kevin Friedl for the Bureau.

9 MS. PATTERSON: Jehan Patel also for the Bureau.

10 THE DEPUTY CLERK: And for respondent.

11 MR. DeGRANDIS: Michael DeGrandis, Law Offices of  
12 Crystal Moroney.

13 MR. McCLAIN: Jared McClain for the Law Offices of  
14 Crystal Moroney.

15 THE DEPUTY CLERK: Thank you, counsel.

16 THE COURT: All right, good morning everybody. We  
17 are gathered telephonically here to consider the respondent's  
18 motion to stay pending appeal. So respondent, you get to go  
19 first.

20 MR. DeGRANDIS: Good morning, your Honor. May it  
21 please the Court, Michael DeGrandis on behalf of the  
22 respondent.

23 Your Honor, I just want to be clear at outset that  
24 Ms. Moroney's law firm is not asking the Court to reconsider  
25 its August 18th decision on the merits of this case. You have

1 made your decision, and we respect that, of course. But  
2 Ms. Moroney does have a right to an appeal, and in order to  
3 appeal, we need a stay of the August 18th order to maintain the  
4 status quo, that's to prevent her from suffering irreparable  
5 harm which includes violation of her constitutional rights and  
6 complete ruination of her business.

7 There are just four questions that this Court must  
8 answer in considering the pending motion, and all of them  
9 support a stay:

10 First, will the respondent suffer irreparable injury  
11 without a stay;

12 Second, has the respondent demonstrated a substantial  
13 possibility of success on appeal;

14 Third, will the Bureau suffer substantial injury with  
15 a stay; and

16 Four, how would a stay affect the public interest  
17 involved.

18 These factors should be weighed on a sliding scale.  
19 The Second Circuit describes it like this. I'd like to read a  
20 quote from the Second Circuit. "The probability of success  
21 that must be demonstrated is inversely proportional to the  
22 amount of irreparable injury plaintiff will suffer absent the  
23 stay. Simply stated, more of one excuses less of the other."  
24 And that's from *Thapa v. Gonzales* in 2006.

25 So just to quickly address the sliding-scale analysis

1 with the irreparable injury prong, Ms. Moroney seemingly has  
2 two choices here. She could blindly comply with the demands of  
3 a federal agency that she believes to be unconstitutional, that  
4 has already been declared unconstitutional once by the Supreme  
5 Court, and whose attempts to ratify prior unconstitutional acts  
6 have yet to be reviewed by circuit courts and may very well be  
7 addressed in whole or part by the Supreme Court in *Collins v.*  
8 *Mnuchin* which the Supreme Court just heard last week, or she  
9 could re-engage in the process of reviewing documents, creating  
10 privilege logs, negotiating document format, or acceding to the  
11 Bureau's unreasonable formatting demands, among other things,  
12 and accept complete ruination of her business as a result.  
13 This isn't really a choice. The Second Circuit has held that  
14 where a party may either accept the constitutional violation or  
15 suffer noncompensable economic injury, the harm is irreparable.

16 Here, it's impossible to escape the noncompensable  
17 economic injury of complete business ruination regardless of  
18 what Ms. Moroney chooses. And I can't stress this enough.  
19 This isn't a mere traditional civil litigation discovery  
20 dispute where one party wants to avoid losing leverage by  
21 turning over documents. The issue here is one of  
22 constitutional rights and noncompensable business ruination.  
23 The Second Circuit has been clear that a violation of  
24 constitutional right is presumptively irreparable.

25 If the Court denies our request for a stay, the law

1 firm's appeal could be rendered moot because the law firm would  
2 be subjected to the very constitutional harm of which we  
3 complain. And that would happen before the Second Circuit  
4 could consider the appeal possibly leaving the Second Circuit  
5 with nothing to decide.

6 Also, the Second Circuit has held that a threat, just  
7 a credible threat to the continued existence of a business can  
8 constitute irreparable harm. As Ms. Moroney's affidavit makes  
9 clear, her business will cease to exist without a stay. Your  
10 Honor, this isn't a concern about excessive costs, it's an  
11 existential threat to the business that she has struggled to  
12 build and maintain through these difficult times. And there's  
13 nothing speculative about it. Nothing. We know that the time  
14 and resources required to comply with the first CID forced  
15 Ms. Moroney to lay off half her staff, slash her income, and  
16 substantially hindered her ability to maintain, much less grow  
17 her business. We know that the Bureau believes that her  
18 compliance with the first CID was insufficient, so we know that  
19 compliance with the second CID will be far more taxing. On top  
20 of that, we know that the second CID imposes a longer  
21 applicable period than the first, so it will impose additional,  
22 business-crushing demands.

23 And to make matters even worse, we know that the  
24 pandemic has left the law firm a shell of its former self with  
25 just Ms. Moroney, four full-time employees, where one of the

1 four the currently out with COVID-19, and it has one part-time  
2 employee. Law firm doesn't collect from people unable to pay,  
3 and there are a lot of those people during this  
4 pandemic-induced recession.

5 And then there's the specter of another complete  
6 shutdown coming in New York and elsewhere. Law firm staff  
7 would become unavailable, and Ms. Moroney may not be able to  
8 pick up the slack because she'll have to provide additional  
9 childcare and home schooling for her nine-year-old twin boys.

10 Just to shift to the second prong, substantial  
11 possibility of success prong, I think the law firm has  
12 demonstrated that she has a substantial possibility of success  
13 on appeal. I do appreciate that your Honor has unequivocally  
14 held that the CFPB's funding structure is constitutional and  
15 that the director's ratifications are valid. So it would be  
16 impossible to convince you that we are likely to succeed on  
17 appeal, but fortunately for us, likelihood of success is not  
18 the applicable standard, no matter how badly the CFPB wants it  
19 to be.

20 An objective examination of the precedent upon which  
21 your Honor relied in deciding the merits of this case, the  
22 standard of review on appeal and whether the Bureau should be  
23 afforded any deference by the Second Circuit, that's what makes  
24 up the probability of success prong, not whether you agree with  
25 our argument, which you clearly don't at this point. Each of



1 these factors I believe demonstrate a probability of success.

2 First, this Court answered the threshold question  
3 regarding whether the CFPB's funding structure was  
4 unconstitutional by extrapolating from the Appellate Court  
5 precedent. No appellate court before or after August 18th when  
6 we had our merits hearing has rendered a decision on post *Selia*  
7 *Law* funding structure in the Bureau. And I'd like to quote  
8 *Hays v. City University of New York* here, the Southern District  
9 of New York case from 1980. "Absent definitive appellate  
10 guidance, a court, no matter how confident that its decision is  
11 correct, must recognize that it is operating in an area of  
12 uncertainty."

13 So, your Honor, we submit that the very nature of the  
14 claim, the gravity of the issues presented, and the lack of  
15 precedent creates a substantial possibility of success.

16 And I think to the second point we need to note that  
17 the Second Circuit will conduct a *de novo* review of our appeal  
18 because we pose questions of statutory and constitutional law.  
19 I don't think I need to belabor this point. I trust that even  
20 the CFPB agrees with that.

21 So lastly, the Bureau is not entitled to any  
22 deference regarding whether the agency believed its own funding  
23 structure is constitutional or whether its purported  
24 ratifications are valid. And since this is a *de novo* review,  
25 if the Second Circuit isn't going to defer to this Court, then

1 surely it will not be deferring to the CFPB.

2 I think, as we noted in our briefing, the CFPB itself  
3 also acknowledges that it lacks the competency to decide  
4 whether its funding structure is constitutional. It did so  
5 through the administrative process.

6 Now, the last two factors to consider here emerge  
7 since the government is a party. And we submit that a stay  
8 would neither harm the Bureau nor harm the public interest.  
9 And I'll take it a step further, I would say that the public  
10 interest is best served by ensuring that constitutional rights  
11 are vindicated, that they are upheld, that they are defended  
12 here.

13 We allege that an unconstitutional agency is pursuing  
14 an enforcement action while appellate courts are working out  
15 complex constitutional questions that go to the heart of the  
16 CFPB's enforcement authority.

17 Now Ms. Moroney I mentioned a little bit earlier that  
18 she's caught in this Hobson's choice. I think I reference  
19 Hobson's choice in our briefing. The Second Circuit has held  
20 that where a federal statute is alleged to violate  
21 constitutional rights, a Hobson's choice of compliance with an  
22 unconstitutional act or economic injury as a result of the  
23 act's enforcement tips the public interest in favor of  
24 injunctive relief. We aren't asking for a preliminary  
25 injunction here, and the standards are different. This is just

1 a stay pending appeal to keep the matter alive by preserving  
2 the status quo.

3 In stark contrast to the law firm's position, a stay  
4 won't injure the CFPB. I don't think we need to go through the  
5 litany of delays here because it's in our briefing and your  
6 Honor is probably painfully familiar with the facts that have  
7 been presented over the past year, so unless you'd like to  
8 discuss it, maybe it will suffice to say that the Bureau has  
9 been in no rush to compel production of documents and  
10 information. It's responsible for two-and-a-half years of  
11 self-imposed delays. Perhaps that's due to the lack of  
12 consumer complaints against Ms. Moroney's law firm, I don't  
13 know, but what I do know is that despite these delays, the CFPB  
14 still has not reviewed documents that the Bureau admits are  
15 already in its possession. Even if the Bureau thinks that  
16 they're insufficient, it still does have a lot of documents in  
17 its possession. So further delaying enforcement so that  
18 Ms. Moroney may seek appellate review of her defenses to the  
19 Bureau's enforcement powers, won't injure the CFPB. I would  
20 ask the Court to look at the Bureau's own actions, not its  
21 self-serving litigation position.

22 Now the Supreme Court has already struck down one  
23 aspect of the Bureau's unprecedented structure, and that's  
24 relevant to both the probability-of-success prong and the  
25 public-interest prong.

1           But also the Supreme Court will again address the  
2           constitutionality of agency structures and the remedies  
3           available to those victimized by unconstitutional agency  
4           structures in its new term. Just last week in *Collins v.*  
5           *Mnuchin*, Justice Alito, and I'd like to read his quote here, he  
6           said, "The identification of an unconstitutional restriction on  
7           a removal necessarily means because it is a structural defect  
8           that everything done by that officer is void *ab initio*."

9           The Supreme Court remanded post *Selia Law* remedial  
10          consideration but is still struggling how best to address  
11          problems that Congress created with some independent agencies.  
12          Courts, including this one in this case, have previously stayed  
13          the Bureau's enforcement proceedings or delayed briefing as  
14          appellate courts in the Supreme Court had determined the  
15          constitutionality of the CFPB's structure. The stays awaiting  
16          *Selia Law* served public interest because the Supreme Court  
17          disagreed with most lower courts and ruled that the Bureau's  
18          for-cause removal provision was unconstitutional which was the  
19          opposite of what most courts had done prior to that point.

20          It is similarly in the public interest for this Court  
21          to grant a stay pending appeal of CFPB's post *Selia Law* funding  
22          structure and purported ratification while those issues are  
23          presented on appeal.

24          And I think just in concluding I would like to add  
25          two or three points regarding the CFPB's filings in this case.

1 First, the CFPB is trying to obfuscate the real  
2 standard of review of a motion to stay. It's not a likelihood  
3 of success but the probability of success. And so the Bureau's  
4 filings, just trying to relitigate a matter that it's already  
5 won.

6 And I think the Bureau may be doing this because the  
7 inescapable truth of the matter is that this is a case of first  
8 impression. All prior Appellate Court decisions regarding the  
9 CFPB's funding structure did not consider its currently  
10 existing funding structure where the President may remove a  
11 single director at any time for any reason. This fact is  
12 materially different from every case decided before June 30th.  
13 And as your Honor stated in the August 18th hearing, the  
14 Supreme Court did not decide the issue of constitutionality of  
15 the Bureau's funding structure. I'll also say that the Supreme  
16 Court left the issue of the validity of ratifications to lower  
17 courts to decide. You did that in August. But no Appellate  
18 Court has ruled on the matter yet, not the Second Circuit, no  
19 other circuit, and the Second Circuit should have the  
20 opportunity to be the first to do so.

21 So in conclusion, if there were ever a case deserving  
22 of a stay pending appeal, it is this one where there's no  
23 appellate guidance much less definitive guidance, no appellate  
24 guidance on weighty constitutional matters governing a federal  
25 agency where the Supreme Court characterized it as

1 knee-buckling power of private citizens.

2 Without a stay, Ms. Moroney will suffer the  
3 constitutional deprivation which she seeks to vindicate on  
4 appeal, and her law firm will cease to exist. But the CFPB  
5 will only be inconvenienced, not harmed, as demonstrated by the  
6 CFPB's own action. And the public interest in protecting civil  
7 liberties and constitutional order of government will be  
8 advanced.

9 That's really all I have, your Honor, of course  
10 unless you have any questions for me.

11 THE COURT: Not so far. I want to hear from CFPB,  
12 and I might have questions for both sides. But thank you very  
13 much for that very thorough presentation. I appreciate it.

14 All right, CFPB.

15 MR. FRIEDL: Good morning, your Honor. Kevin Friedl  
16 for the CFPB.

17 THE COURT: Good morning.

18 MR. FRIEDL: So I think we will stand on our papers  
19 for a lot of this, but I did want to address a few points  
20 briefly, starting by disputing the suggestion that the Bureau  
21 has obfuscated the applicable standard here or anything else to  
22 the Court.

23 The Second Circuit in June in a case called *United*  
24 *States v Grote*, G-R-O-T-E, that's 961 F.3d 105, described one  
25 of the state actors as whether the state applicant "has made a

1 strong showing that he is likely to succeed on the merits." So  
2 that's the standard that we think applies. That's the standard  
3 the Second Circuit set aside there, but even if respondents  
4 were correct that the Court should be considering a lesser  
5 standard such as substantial possibility of success, they  
6 haven't met that standard either.

7 And it is true, I guess I would add that these  
8 chapters are considered on a sliding scale, but that cuts both  
9 ways. So the fact that respondent really has not shown any  
10 likelihood of success on the merits actually raises the bar of  
11 what it has to show in terms of irreparable injury.

12 So on likelihood of success on the merits,  
13 respondents haven't cited a single case supporting any of their  
14 theories, and in fact, every court that has considered them has  
15 rejected them.

16 There was the decision in *RD Legal*. That decision  
17 has now been vacated. Respondents reply that on appeal the  
18 Second Circuit will consider their argument *de novo*, it won't  
19 give any deference to the Bureau, but that's the same standard  
20 that this Court applied when it rejected respondent's  
21 arguments. That's the same standard that the court in the  
22 *Citizens Bank* case applied when it rejected the same argument,  
23 the same standard that other courts have applied in rejecting  
24 these arguments. So it's always good for an appellant not to  
25 face an even tougher standard of review on appeal, but that

1 doesn't move the ball forward in showing likelihood of success  
2 on the merits here.

3           In terms of irreparable injury, the Court has already  
4 considered a lot of these arguments and rejected them in the  
5 very similar context of respondent's motion for a preliminary  
6 injunction in their suit against the Bureau. So the only thing  
7 I would really add here, the new piece I think is this claim  
8 that the appeal will be rendered moot if respondents comply  
9 with this Court's order enforcing the CID. That claim was  
10 considered and expressly rejected by the Supreme Court in  
11 *Church of Scientology* which squarely holds compliance with an  
12 administrative subpoena like the CID here does not moot an  
13 appeal. So there's no impediment to respondent continuing to  
14 sort of try its luck on these constitutional claims in the  
15 Second Circuit while also complying with this Court's order of  
16 last August enforcing the CID.

17           I don't want to overlook the last two factors which  
18 merge here, the Bureau's interest in the --

19           THE COURT: Before we get to that, before we get to  
20 that --

21           MR. FRIEDL: Yes.

22           THE COURT: -- I want to just get back to irreparable  
23 harm. So what we're talking about here, you're right that  
24 there were certain findings made in the PI context, but we're  
25 just talking about freezing the status quo until the Second



1 Circuit gets a chance to weigh in on this, and there is an  
2 affidavit here that admittedly you could sort of characterize  
3 or spin this as self-serving, but Ms. Moroney does make  
4 specific statements about the viability of her firm being put  
5 in jeopardy through compliance with the CID. So all she's  
6 asking for is just to put a freeze on things until the Circuit  
7 says yea or nay. If the Circuit ends up agreeing with you,  
8 then you can go ahead and enforce, and if the Circuit disagrees  
9 with you, then at least we haven't seen a law firm perish as a  
10 result of the compliance burdens.

11 I mean, at the end of the day, if it's balancing  
12 equities, I'm kind of trying to understand why she shouldn't be  
13 allowed to keep her firm afloat and then if you win in the  
14 Circuit you're going to get what you're entitled to anyway.

15 MR. FRIEDL: Well, so I want to address the  
16 affidavit, but I would also emphasize first that a stay is not  
17 a matter of right, it is a departure from the ordinary process  
18 of judicial review. The Bureau has --

19 THE COURT: Right, but a stay is not inappropriate.  
20 I understand it's a departure, but one of the reasons the  
21 departure is sometimes done is because of irreparable harm, and  
22 here you're talking about the survivability of a business.

23 MR. FRIEDL: Well so two responses on that, your  
24 Honor. The first is the point I think we made in our  
25 opposition that there are additional details in this affidavit

1 as compared to what respondent submitted in response, in  
2 support of its motion for a PI but there's not -- they don't  
3 provide the sort of details that courts in this district have  
4 said are necessary. There's nothing about the firm's current  
5 capitalization, their annual or monthly profit, their ability  
6 to withstand significant loss in business. This is all from  
7 the *Sunni* decision that we cite in our opposition. There are  
8 more details in here, but if you look at what details are  
9 offered as to the firm's ability to stay afloat while complying  
10 with this, those are essentially a series of conclusory  
11 statements that I reasonably think this, I reasonably think  
12 that. Again, courts in this district have said that those  
13 sorts of assertions by the owner of a business aren't enough.

14           And I would also say, my second point that I think is  
15 important is that respondent has had multiple opportunities  
16 throughout this process to seek modifications to the CID that  
17 would potentially alleviate some of the burden it's now  
18 complaining about, and respondent hasn't pursued those.

19           So, for example, in the meet and confer about this  
20 CID with enforcement counsel before this court proceeding  
21 began, the enforcement counsel, there was the beginning of a  
22 process where enforcement counsel invited modifications, that  
23 respondent wanted to suggest. Respondent didn't propose any  
24 specific changes to the CID, instead they filed their petition  
25 with the Bureau's director seeking to set it aside, which of

1 course was their right to do. But even in that position they  
2 didn't ask the Bureau's director for any specific modifications  
3 to the request in the CID. She pointed this out in denying  
4 that petition, and she said in that order, enforcement  
5 counsel -- she said, respondent, you can submit modification  
6 requests to enforcement counsel, and enforcement counsel, you  
7 should consider and grant those requests as appropriate.

8           Again, they did not submit any. I think it's come up  
9 perhaps at the last hearing that there was sort of a dispute  
10 earlier on about the submission standard for actually providing  
11 the information to the Bureau, and respondent counsel was  
12 representing that it would be too costly to provide the  
13 information in the format requested. Enforcement counsel  
14 offered various ways to try to accommodate those concerns, such  
15 as accepting the files in native format, processing them for  
16 respondent, Bates stamping them for respondent, and respondent  
17 never followed up on those offers.

18           I would also just note more generally that  
19 respondent's conduct during this litigation seems inconsistent  
20 with sort of a desire to avoid litigation, related expenses and  
21 attorneys fees. They've done everything they can every step of  
22 the way to prolong and multiply the proceedings here. So I  
23 think the conduct both in failing to pursue these opportunities  
24 to alleviate burden and just generally their conduct in failing  
25 to pursue these opportunities to alleviate the burden of the

1 CID, and more generally sort of the way that this litigation  
2 has progressed seems inconsistent with the representations now  
3 that responding to the requests in this administrative subpoena  
4 are essentially business ending.

5 THE COURT: Okay, thank you. I know you were about  
6 to get to the merged factors, so go ahead.

7 MR. FRIEDL: Well and I think that's relevant to what  
8 your Honor was asking about, too, because, as you noted, there  
9 is a balance of equities going on here, and I didn't want to  
10 leave out important equities on the other side in favor of  
11 enforcement of this Court's order in favor of the Bureau being  
12 able to pursue its congressionally mandated mission for the  
13 protection of consumers. We're investigating, you know,  
14 potential violations of a number of consumer protection laws,  
15 including the Fair Debt Collection Practices Act based on a  
16 number of potential theories, including debts being collected  
17 in disregard of the fact that those debts might have been the  
18 product of identity theft or otherwise disputed. And this  
19 Court made a similar point at the end of the PI hearing in  
20 noting that there are important government interests in these  
21 sorts of investigations moving forward expeditiously.  
22 Administrative subpoena enforcement proceedings like this one  
23 are supposed to be summary, and in order to allow agencies to  
24 expeditiously carry out their duties to investigate potential  
25 violations of law, and this one for a number of reasons,

1 including of course the *Selia Law* issue, has not been, and we  
2 think at this point that delay militates in favor of the  
3 respondent now complying with the CID and with this Court's  
4 order enforcing it.

5 THE COURT: All right, anything else?

6 MR. FRIEDL: I would leave it there, your Honor,  
7 unless you have any other questions.

8 THE COURT: I'm good. Thank you.

9 All right, so from respondent's perspective, if you  
10 could focus -- I mean, you could obviously address anything you  
11 want, but if you could just focus on the irreparable harm point  
12 that we've been discussing, that would be helpful.

13 MR. DeGRANDIS: Sure, I'd be happy to. So when it  
14 comes to irreparable harm, obviously, since we're alleging  
15 constitutional injury, that should be considered potential  
16 irreparable harm, but with respect to the dire straits which  
17 the law firm itself finds itself financially, counsel for the  
18 CFPB suggests that if we prolong the proceedings we've  
19 increased the cost.

20 Maybe it hasn't been clear, but the New Civil  
21 Liberties Alliance offers representation *pro bono*. Ms. Moroney  
22 was introduced to me Thanksgiving last year. We were her last,  
23 best hope to defend against CFPB's overreach. She didn't have  
24 money to pay attorneys anymore. We are offering our services  
25 *pro bono*. She has not paid for filing fees, she doesn't pay

1 for hourly fees, nothing like that. And it was absolutely  
2 essential -- we would not be here today if we weren't  
3 representing her. Let me make that perfectly clear.

4           Secondly, with respect to the affidavit, Ms. Moroney  
5 provided all of the information necessary in her affidavit to  
6 demonstrate not just likely, it is a fact, she will, that is  
7 the law firm, become insolvent if she is forced to once again  
8 negotiate with the CFPB regarding compliance with the CID.  
9 This affidavit is signed, of course, under pain and penalty of  
10 perjury. But what I really want to underscore with that is  
11 that this is a duplicative oath. Ms. Moroney is an attorney,  
12 she is a member of the New York and New Jersey state bars, and  
13 quite frankly, the pains and penalty of perjury do not compare  
14 to the potential sanction for doing anything but being  
15 completely open with this Court. She has a duty of candor to  
16 the Court. There's no exaggeration in her statement, her  
17 statement is true, and it should suffice to demonstrate that  
18 she will suffer irreparable economic harm that is  
19 noncompensable.

20           The only other point that I'd like to bring up is the  
21 issue of standard. *US v. Grote* doesn't stand for the  
22 proposition the likelihood of success is a standard for  
23 determining a motion to stay pending appeal. In that case what  
24 the Court said was that in cases like *Grote* that some courts do  
25 use a likelihood of success on appeal standard. But in cases

1 like *Grote* means criminal cases for racketeering, it doesn't  
2 mean civil cases brought by the United States government. So I  
3 think it's completely inapposite to what we're doing here  
4 today.

5 So I don't know if your Honor has any other  
6 questions, but I think those are the main points that I wanted  
7 to address.

8 THE COURT: No, I appreciate that. I don't have any  
9 other questions.

10 Anything else from CFPB?

11 MR. FRIEDL: No, your Honor.

12 THE COURT: All right. Well, as I said, we're here  
13 on respondent's motion to stay the case pending appeal, and the  
14 CFPB, of course, opposes this request. The notice of appeal  
15 was filed back in early October of this year. So I want to  
16 just go ahead and give you the ruling now rather than having  
17 you wait for me to dot Is and cross Ts.

18 The brief factual background is that respondent is a  
19 law firm that collects delinquent or defaulted debts on behalf  
20 of various creditors and also provides consumer information to  
21 consumer reporting agencies.

22 Ms. Moroney is the president and managing officer of  
23 the Law Offices of Crystal Moroney PC. Back on August 18th of  
24 this year this Court granted the CFPB's request to enforce the  
25 2019 CID, and I gave all the reasons for granting that request

1 on the record. In a nutshell, the Court noted that it ordered  
2 enforcement of the 2019 CID because *Seila Law* severed the  
3 for-cause removal provision of the director of the CFPB, and as  
4 a result the constitutional violation had dissipated and the  
5 ratification of the prior action of issuing the CID was  
6 therefore, in the Court's view, valid.

7 The Court also held that provisions related to the  
8 Bureau's authority to issue CIDs remained valid based on *Seila*  
9 *Law* explaining that the CFPB had made a *prima facie* showing  
10 that the four requirements to enforce an administrative  
11 subpoena like the CID had been met. Specifically, that the  
12 CFPB was not seeking privileged information, that it was  
13 conducting an investigation, information sought was relevant to  
14 that investigation, and that respondent had failed to show that  
15 the Court should otherwise refuse to enforce the CID. So that  
16 is what has led us to this motion to stay following the notice  
17 of appeal filed with the Second Circuit.

18 Now in terms of whether to grant a stay pending  
19 appeal, that is one of the many things that are supposedly  
20 within the discretion of the District Court. In determining  
21 whether to issue a stay, in other words, in the exercise of  
22 that discretion there are the four factors:

23 The extent to which the applicant has made a showing  
24 of success on the merits;

25 Whether the applicant will be irreparably harmed



1 absent the stay;

2           Whether issuance of the stay will substantially  
3 injure other parties in pursuing the proceeding; and

4           Also where the public interest lies.

5           That's all spelled out in *Hirschfeld v. Board of*  
6 *Elections*, 984 F.2d 35, 39, it's a Second Circuit decision from  
7 1993.

8           We are told that the first two factors are the most  
9 important. It is true, as CFPB has noted, that a stay is not a  
10 matter of right even if the irreparable injury might otherwise  
11 result. Rather, the stay is "an exercise of judicial  
12 discretion," and "the party requesting a stay bears the burden  
13 of showing that the circumstances justify an exercise of  
14 discretion." That's from the Supreme Court in *Nken v. Holder*,  
15 556 U.S. 418.

16           And then there is the point, it was made by  
17 respondents here, that there's sort of a sliding-scale analysis  
18 such that the necessary level or degree of the possibility of  
19 success varies according to the Court's assessment of the other  
20 stay factors. That's from *Thapa v. Gonzales*, 460 F.3d 323,  
21 334, Second Circuit decision in 2006. So for example, what the  
22 courts have explained is "probability of success that must be  
23 demonstrated is inversely proportional to the amount of  
24 irreparable injury plaintiff will suffer absent the stay.  
25 Simply stated, more of one excuses less of the other." That's

1 from the same Second Circuit case I just mentioned.

2 Now in terms of the debate about what the standard  
3 is, in the Court's view, the Court is to evaluate whether the  
4 respondent has a "substantial possibility" of success on  
5 appeal, the Court's view is less rigorous than a likelihood of  
6 success. So I guess on this sort of mini debate I'm solidly in  
7 respondent's camp on this point. But I don't think respondent  
8 has made a showing that there is a substantial possibility of  
9 success. Respondent points to three reasons:

10 First, that her principal argument that the CFPB's  
11 funding is unconstitutionally structured is a matter of first  
12 impression;

13 Second, that the Second Circuit will conduct a  
14 *de novo* review because respondent's appeal imposes legal  
15 questions, and I don't think there's really any denying that;

16 Third, that the CFPB is not entitled to any deference  
17 regarding whether the agency believes its own funding structure  
18 is constitutional.

19 So those are the sort of three grounds. And  
20 respondent does add that a stay here is particularly compelling  
21 where the Supreme Court has already struck down at least one  
22 aspect of what respondent describes as the "unprecedented  
23 structure" of CFPB.

24 Now I think *Seila Law* does foreclose some of  
25 respondent's position here. We all know that the only thing

1 the Supreme Court did in *Seila Law* was invalidate the removal  
2 provision of the director, but otherwise the Supreme Court said  
3 that the Bureau could "continue to operate." And this is  
4 something we discussed during oral argument regarding the  
5 CFPB's enforcement request back in August.

6 So while it's true that the Bureau's funding  
7 structure was not directly at issue in *Selia Law*, the Supreme  
8 Court said that "the only constitutional defect the Court has  
9 identified in the CFPB's structure is the director's insulation  
10 from removal," and that's at page 2209. The Supreme Court went  
11 on to say that if "the director were removable at will by the  
12 President, the constitutional violation would disappear." It's  
13 from the same page. So I think it's a fair inference that  
14 because the CFPB director is now removable, there doesn't  
15 appear to be, at least in the Supreme Court's view, any  
16 lingering constitutional concerns.

17 Now respondent understandably makes the same argument  
18 that was made during the enforcement hearing and said that this  
19 is a matter of first impression, but I think that it's going to  
20 be pretty hard to argue that there are these serious  
21 constitutional concerns regarding funding given what the  
22 Supreme Court said in *Seila Law*. So while it's true I did not  
23 directly address the issue, I think the language in the holding  
24 itself is very instructive. And of course the CFPB points out  
25 that there's really not been a solid explanation as to why the

1 funding that Congress included when it enacted CFPB violates  
2 the appropriations clause, and this is through the mechanism of  
3 payment from the Treasury. And in fact, this is something we  
4 talked about. The Court rejected argument that the statutory  
5 method of funding violated the Constitution. In fact, that was  
6 part of the ruling that respondents had not shown a likelihood  
7 of success on the merits on that particular point, and I think  
8 the same applies to even this diluted standard. And I think  
9 before moving on, I think it's important to note that the cases  
10 as we talked about back in August that predate *Seila Law* are  
11 instructive, and in fact, as I noted back in August, there are  
12 other courts that have considered this exact question of the  
13 funding structure, so the DC Circuit determined in *PHH Corp. v.*  
14 *CFPB*, which I'll call *PHH II*, "the CFPB's budgetary  
15 independence...is traditional among financial regulators,  
16 including in combination with typical removal constraints." In  
17 fact, in that case the DC Circuit noted that Congress has  
18 "provided similar independence to other financial regulators  
19 like the Federal Reserve, the Federal Deposit Insurance  
20 Company, the Office of the Controller of the Currency, the  
21 National Credit Union Administration, and the Federal Housing  
22 Agency, which have all complete uncapped budgetary autonomy."  
23 That's at page 81. The DC Circuit ultimately concluded that  
24 "the CFPB's budgetary independence primarily affects Congress,  
25 which has the power of the purse, it does not intensify any

1 effect on the President of the removal constraints," because  
2 the opposing party in that case sought to argue that not only  
3 were the budgetary independence and for-cause removal  
4 protection separately unconstitutional, but the combination was  
5 as well.

6 Additional authority comes from of all places the  
7 District of Montana, *CFPB v. Think Finance LLC*, 2018 WL  
8 3707911, where the court there rejected the defendant's  
9 argument that the CFPB's ability to control its own budget  
10 "unconstitutionally interferes with Congress's power to direct  
11 federal spending pursuant to the Appropriations Clause," citing  
12 nine lower court decisions determining that Congress did not  
13 violate the Constitution in structuring the CFPB. The Middle  
14 District of Pennsylvania weighed in in *CFPB v. Navient Corp.*,  
15 2017 WL 3380530. In that case, when analyzing whether the CFPB  
16 curtails the President's powers under Article II, the court  
17 noted "Congress...may choose to loosen its own reins on public  
18 expenditure and decide not to finance a federal entity with  
19 appropriations...moreover...Congress has not relinquished all  
20 control over the agency's funding because it remains free to  
21 change how the [CFPB] is funded at any time." Southern  
22 District of California in *CFPB v. D&D Marketing*, 2016 WL  
23 8849698. The court there included that CFPB's structure did  
24 not violate the Appropriations clause. Different Central  
25 District of California case, *CFPB v. Morgan Drexen Inc.*, that's

1 60 F.Supp. 3d 1082, the court there stated that the  
2 Appropriations Clause "does not in any way circumscribe  
3 Congress from creating self-financing programs without first  
4 appropriating the funds as it does in typical appropriation and  
5 supplement appropriation acts," and noted that the Supreme  
6 Court has determined that the Appropriations Clause "means  
7 simply that no money can be paid out of the Treasury unless  
8 it's been appropriated by an act of Congress."

9 Now, respondent does argue that to the extent that  
10 *Seila Law* invalidated the presidential removal restriction that  
11 that sort of is a precursor to the constitutionality or the  
12 unconstitutionality of the funding structure of the CFPB, but I  
13 just don't think there's really any case law that supports that  
14 spin onto the law. And so I think it's important to remember  
15 that the accountability of the CFPB director to the President  
16 that has no bearing on the question of whether the Bureau's  
17 funding was authorized by statute.

18 In fact, in one fairly recent decision post our  
19 argument in August, *Rop v. Federal Housing Finance Agency*, 2020  
20 WL 5361991, Western District of Michigan, noted that in fact  
21 *Seila Law*, or at least Western District of Michigan interpreted  
22 *Seila Law* to mean that the Supreme Court had "strongly implied"  
23 that the CFPB source of funding did not raise any  
24 constitutional concerns. In fact, the court highlighted that  
25 it was "aware of no authority supporting the notion that an

1 independent source of funding creates a separation of powers  
2 problem."

3 I do think it's appropriate here to pause and note  
4 that respondent does claim that there may be an appeal of other  
5 issues equally as unprecedented as the CFPB's funding, but  
6 without more, I think it's hard to say that there's any sort of  
7 possibility of success on appeal.

8 So for example, the ratification argument was raised  
9 and rejected by this Court during the PI phase in a related  
10 proceeding, and it's also just not supported by the case law.  
11 I'll just note for the record some of the cases that support  
12 that conclusion: *CFPB v. Gordon*, 819 F.3d 1179, it's a Ninth  
13 Circuit decision; *FEC v. LegiTech Inc.*, 75 F.3d 704, it's a DC  
14 Circuit decision from 1996; and, *CFPB v. Chou Team Realty*, 2020  
15 WL 5540179, Central District of California decision a couple  
16 days after our argument. A couple things on that. First, the  
17 court held "any constitutional deficiency regarding the  
18 removability issue at the time the complaint was filed was  
19 cured by the Supreme Court severing the removal provision from  
20 the rest of the organic statute, coupled with the director's  
21 July 9 ratification of the action." Also, the court in *Chou*  
22 found that the CFPB's ratification after *Seila Law* was  
23 effective and that the Supreme Court's severance of the removal  
24 provision was sufficient to cure any constitutional deficiency  
25 in the Bureau's structure.

1           So, look, I agree, I think when you're arguing to a  
2 Court that's ruled a certain way, it's hard to tell the Court  
3 that there's some possibility that you're wrong. But I've done  
4 that before. I mean, I've granted stays where even though I  
5 might have ruled against a party I granted a stay because there  
6 was some possibility of success on appeal. I just don't see it  
7 here based on the available case law. For example, I don't  
8 think it is true to say that there is no relevant precedent  
9 regarding the constitutionality of the funding. It is true  
10 that the Second Circuit hasn't squarely ruled on it, but I  
11 don't think it's true to say that somehow it's a completely  
12 blank slate in the jurisprudence on this issue.

13           Moving on to irreparable harm. We've obviously  
14 talked a bit about this today, and I've read the papers. So  
15 the claim that this will suffer irreparable injury because  
16 enforcement of the CID will result in the "complete ruination"  
17 of the firm, and in the papers, and it's been echoed here  
18 today, that the claim is that basically respondent is facing a  
19 Hobson's choice, either comply with the demands that are, from  
20 the respondent's perspective, unconstitutional, or accept  
21 "complete ruination" of the business. So I don't accept the  
22 notion that there's certain of a presumption of irreparable  
23 harm based on the claim of a constitutional foul. I'll get to  
24 that in a minute.

25           Then there's the claim of mootness that without the



1 stay the appeal becomes moot because the respondent will be  
2 subjected to the very constitutional harm of the basis of the  
3 complaint, but that's really not how the mootness doctrine  
4 works. An appeal becomes moot only when the issues presented  
5 are no longer live or the parties lack a legally cognizable  
6 interest in the outcome. That's explained in *AmeriCredit Inc.*  
7 *v. Thompkins*, 604 F.3d 753, Second Circuit decision from 2010.  
8 In fact, the Supreme Court itself has addressed a similar issue  
9 and held that a dispute over an agency investigative subpoena  
10 is not rendered moot by the recipient's compliance with the  
11 subpoena because the court could still provide meaningful  
12 relief by ordering that the subpoenaed material be returned or  
13 destroyed. That's the *Church of Scientology California v. US*,  
14 506 U.S. 9 at page 15, and it's from 1992. And lower courts  
15 have come to similar conclusions in comparable situations, one  
16 of them from this district, *SEC v. Finazzo*, 2008 WL 1721517.  
17 The court there rejected a stay motion involving enforcement of  
18 an SEC subpoena. And then in the Eastern District of Michigan  
19 in *CFPB v. Harbour Portfolio Advisors LLC*, 2017 WL 5892227, the  
20 Eastern District of Michigan came to the same conclusion  
21 regarding the CFPB CID.

22 Getting back to what the Supreme Court said in *Church*  
23 *of Scientology*, it rejected the argument that "there is no way  
24 to fashion meaningful relief after a party produces material  
25 according to administrative subpoena." And there the court

1 found that there could be meaningful relief by ordering the  
2 return of the materials and so it could be here.

3           So I mean I think basically what respondent said is  
4 there may be nothing left for the Circuit to decide absent a  
5 stay and claiming that the law firm could not "in good faith  
6 and in accordance with this Court's orders, slow the compliance  
7 process or control the pace of the Second Circuit's docket to  
8 hasten consideration of her constitutional rights." But  
9 there's really no case law that supports that conclusion. As I  
10 said, the weight of authority tilts heavily against the  
11 argument being made by respondent here.

12           Now in terms of the insolvency claim, you know,  
13 Ms. Moroney does cite *Emons Industry Inc. v. Liberty Mutual*  
14 *Insurance*, it's a Southern District decision from 1990,  
15 reported at 749 F.Supp. 1289. The Court did note that "it is  
16 firmly established that a threat to the continued existence of  
17 a business can constitute irreparable injury."

18           There's also citation to *Tucker Anthony Realty Corp.*  
19 *v. Schlesinger*, 888 F.2d 969, which explains that monetary loss  
20 that "cannot be rectified by financial compensation" can  
21 constitute irreparable injury. But the Court also in that case  
22 did note that "a monetary loss will not suffice [as irreparable  
23 harm] unless the movant provides evidence of damage that cannot  
24 be rectified by financial compensation," such as imminent  
25 bankruptcy. Now in that case the court found that there was

1 "ample evidence" of "imminent bankruptcy" including specific  
2 information on the plaintiff's assets and liabilities and loan  
3 obligations.

4 Now it's also true the Second Circuit has recognized  
5 that a threat to the continued existence of a business itself  
6 can constitute irreparable injury. Among other cases, *Nemer*  
7 *Jeep-Eagle Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435,  
8 it's a Second Circuit decision from 1993. But again, where  
9 there are claims of irreparable harm the courts have said are  
10 sufficient to establish the basis for whether it's a stay or an  
11 injunction, they are based on findings of specific evidence  
12 presented by the movant. And so I think it's pretty clear that  
13 conceptually speaking it's true respondent does have a basis to  
14 claim under the law that the ending of the business or the  
15 ruination of the business itself could constitute irreparable  
16 harm or could support irreparable harm finding in this context.

17 Now what respondent describes is that her law firm is  
18 "a shell of its prior self" and is "teetering on the edge of  
19 insolvency." And I think Ms. Moroney has provided some of the  
20 information to support her claim that absent a stay that there  
21 will be irreparable harm, but really the main proof is her own  
22 affidavit. There are no financial records that are submitted,  
23 there's really no detail of the kind that has been found  
24 sufficient in other cases to support a finding of irreparable  
25 harm. Details that are provided include the following. So

1 there is the explanation that Ms. Moroney spent seven hours  
2 each workday and three hours each weekend day between June and  
3 October 2017 to respond to the 2017 CID, and that based on  
4 those efforts her projection is that compliance with the 2019  
5 CID will require more than 650 hours of her time. That's  
6 paragraphs five and then eight and nine of her declaration.  
7 Ms. Moroney does describe some of the tasks that she performed  
8 to comply with the last CID, such as "sorting responsive and  
9 nonresponsive documents, identifying privileged materials,  
10 conferring with her attorneys," et cetera. That's paragraph  
11 nine.

12 So based on this prior experience, she explains that  
13 compliance with the current CID will require her staff shifting  
14 their focus from the core business function and instead working  
15 on complying with the CID. That's at paragraphs ten and 11.

16 Paragraph 12 Ms. Moroney goes through a history of  
17 her own personal salary and how it has dropped from a high of  
18 \$155,000 in 2017 and that her salary has been reduced by  
19 \$51,000 over the course of the last three years. She also  
20 notes that she's reduced her staff by almost half, which she  
21 said was necessary to keep up with her legal bills and believes  
22 the compliance with the 2019 CID will result in further  
23 reductions in staffing, and noting at paragraph 13, and also at  
24 five, that the staff has gone from 17 to six, and the six  
25 includes herself.

1           Then there's the added burdens on her business from  
2 the COVID-19 pandemic because people have to work remotely and  
3 that some of her business has dried up because of clients'  
4 inability to provide her with work.

5           And she also notes that most of her clients are on an  
6 extended payment plan because they cannot currently afford to  
7 pay their debts due to their own economic hardship.

8           And then Ms. Moroney does note that she is  
9 responsible for her twin boys, her nine-year-old twin boys who  
10 are in a hybrid in-person and virtual school model and they  
11 require her care and attention.

12           So I do think that there are more details than was  
13 provided at the PI stage, for example, the specific numbers in  
14 terms of reduction in staff and salary, but there is still no  
15 financial statements or any details as to how she arrived, for  
16 example, at \$75,000 estimate as the cost of her compliance with  
17 the 2017 CID or a detailed accounting of the 650 hours that  
18 were, that she thinks at least spent, it was spent in complying  
19 with the first CID.

20           And I do think it's important to note also what  
21 petitioner noted that petitioner has been ready and willing and  
22 able to work with Ms. Moroney to try to accommodate some of her  
23 concerns, and those have not been met with any real dialogue.  
24 It's also important to note that courts, some courts anyway,  
25 have held that litigation expenses, including those incurred in

1 a potential enforcement proceeding, are not sufficient to  
2 constitute irreparable harm. Among those cases is *John Doe v.*  
3 *CFPB*, this is a DC Circuit decision from 2017, 849 F.3d 1129.  
4 "The expense and disruption of defending [oneself] in  
5 protracted adjudicatory proceedings is not irreparable harm."  
6 And quoting the Supreme Court's decision in *FTC v. Standard Oil*  
7 *of California* in fact one District Court has noted that "the  
8 compelled production of nonprivileged documents in response to  
9 an administrative subpoena does not constitute irreparable  
10 injury warranting a stay pending appeal." That's from *Finazzo*  
11 2008 WL, the pincite is \*4.

12           Some of the economic challenges that Ms. Moroney is  
13 facing are also clearly coming from the pandemic. Now I  
14 realize that the argument is a combination of the pandemic and  
15 compliance with the CID may be what's going to cause her  
16 financial ruin, but to the extent that there's sort of an  
17 inevitable alternative cause, that is the pandemic itself, I  
18 don't think that that's really a basis to say that this CID  
19 enforcement is what's going to cause the irreparable harm here.

20           So it is a relatively close call. I think that the  
21 case law does, as I said, suggest that litigation costs or  
22 costs in connection with compelled production of nonprivileged  
23 documents don't typically amount to irreparable harm. I think  
24 that the CFPB is right to point out that the affidavit is still  
25 wanting in terms of some specific evidence, including, as I

1 mentioned, some of the financials. It's fair to say that while  
2 there is some detail in Ms. Moroney's declaration, there is  
3 also some unsubstantiated claims that I think -- I don't mean  
4 to impugn her, but they are naturally understandably  
5 self-serving, and again they point out really that her business  
6 may be threatened more by the pandemic than anything else. And  
7 as I said, there's really no evidence that Ms. Moroney is  
8 taking advantage of the CFPB's willingness to try to  
9 accommodate some of her concerns.

10           So given the absence of more specific evidence that  
11 substantiate the claim of irreparable harm, the Court finds  
12 that Ms. Moroney has failed to demonstrate that she would  
13 suffer irreparable harm absent a stay.

14           In terms of the CFPB's and the public's interest,  
15 they merge when the government is the opposing party. The stay  
16 would harm, in the Court's view, the interest of both CFPB and  
17 the public. What respondent says is that there's a strong  
18 public interest in preventing unconstitutional agencies from  
19 pursuing burdensome enforcement actions while appellate courts  
20 work through these issues. That's at pages nine and ten of the  
21 memorandum. But of course that's true. I mean, of course it's  
22 the case that the public interest is in preventing violation of  
23 somebody's constitutional right, but that assumes that there's  
24 been a violation which the Court, for reasons I've already  
25 mentioned here today and explained also back in August, I don't

1 think that the respondent has made the case that there is a  
2 constitutional violation. And I think the CFPB has  
3 substantiated its argument that it would be harmed by a stay in  
4 terms of further delay with investigation which is now over  
5 three years old, and you know, there is the risk of prejudice  
6 from things like lost memories, and documents being lost,  
7 witnesses just becoming unavailable. That's discussed in lower  
8 court's decision in *Seila Law*, 2017 WL 6502722, where the Court  
9 noted "crippling one investigation for years and potentially  
10 hampering an ongoing enforcement action, it's a grave injury  
11 not only to CFPB but also to public's strong interest in the  
12 vigorous enforcement of consumer protection laws."

13           So the protection of the public interest here I think  
14 cuts pretty strongly in CFPB's favor because of its charge to  
15 enforce the federal consumer financial laws and because this  
16 investigation has been ongoing for some time. It's a  
17 conclusion that is supported by what the court said in *Finazzo*  
18 at \*5 which talks there about the significant public interest  
19 in enforcing these types of laws.

20           So the Court concludes that denying a stay is in both  
21 the interest of the CFPB's ability to enforce the consumer  
22 financial laws and also to protect the public from the  
23 violations of such laws.

24           So for all those reasons, the motion to stay the  
25 Court's enforcement is denied.



1 Is there anything else?

2 MR. DeGRANDIS: No from the respondent.

3 MR. FRIEDL: Nothing from Bureau either. Thank you.

4 THE COURT: All right, then I'll just issue an order

5 stating for the reasons stated on the record, the motion is

6 denied, and I'll bid you all a happy holidays and good health.

7 We're adjourned.

8 MS. PATTERSON: Thank you, your Honor.

9 (Proceedings concluded)

10 CERTIFICATE: I hereby certify that the foregoing is a true and  
11 accurate transcript, to the best of my skill and ability, from  
my stenographic notes of this proceeding.

12 -----  
Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

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