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November 12, 2019

VIA FACSIMILE 914-390-4179 AND ECF
The Honorable Nelson S. Román
United States District Judge
300 Quarropas Street
White Plains, NY 10601

Re: Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.
Case No. 7:19-cv-01732-NSR
Our Matter Number: 17-2070

Dear Judge Román:

Pursuant to Paragraph 3.A.(ii) of your Honor's Individual Practices in Civil Cases, Respondent, the Law Offices of Crystal Moroney, P.C. ("LOCM" or "Law Offices") requests a Pre-Motion Conference as to its intended motion to alter or amend this Court's Order dismissing this case as moot (ECF No. 27).[1] The motion will explain that the Petitioner, Consumer Financial Protection Bureau ("CFPB" or "Bureau") manufactured the mootness of this case [2] by abandoning its effort to enforce a Civil Investigative Demand ("CID") on the eve of a hearing on Respondent's objections, while on the same date that the dismissal was entered, announcing its intention to serve a new CID.

At the cancelled hearing on November 8, 2019, Respondent intended to pursue its challenge to the constitutional structure of the CFPB based on *Consumer Financial Protection Bureau v. RD Legal Funding, LLC*, 332 F.Supp.3d 729 (S.D.N.Y. 2018).[3]

[1] Respondent requests this Pre-Motion Conference because it is unclear whether the exception for "motions for reargument or reconsideration" apply to a Rule 59(e) motion to amend an order of dismissal.

[2] *See New York Civil Liberties Union v. Grandeau*, 305 F. Suup. 2d 327,332 (S.D.N.Y. 2004)(party asserting mootness based on its own voluntary conduct bears a heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again)

[3] Appeal pending, Case No. 18-2743, Second Circuit Court of Appeals. The Second Circuit recently adjourned oral argument in this appeal upon the CFPB's request pending the ruling by the Supreme Court in *Seila Law, LLC. v. CFPB* (Case no. 19-7). In *Seila Law,* the Bureau filed a brief in September 2019 agreeing that its structure violated the provisions of Article II of the Constitution.

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I. FACTUAL BACKGROUND

In June, 2017, the CFPB served a CID on Respondent who responded by producing hundreds of documents, financial records and other materials. *See*, ECF No. 17 at n.6. The Respondent refused to produce its client's confidential and privileged documents. The parties could not resolve the legal issues surrounding these defenses to the CID and the matter sat dormant for nearly 18 months until the CFPB filed its petition to enforce the CID (ECF No. 1), demanding that Respondent produce information it identified as protected by Rule 1.6 of the Rules of Professional Conduct.

In April, 2019, after the Bureau announced a new policy regarding the "Notification of Purpose" disclosure in CIDs, a change that took "into account recent court decisions about 'Notifications of Purpose'" (*See*, ECF No. 17-2), Respondent sent a letter to the Bureau's Enforcement Attorney demanding that its petition be withdrawn on the basis that the CID was defective and contrary to law. *See*, Exhibit 1. Remarkably, less than a week later, the CFPB, ignoring its own policy change, responded that the "Statement of Purpose contained in the CID (served on Respondent) complies with the law." *See,* Exhibit 2.

Respondent was served with the Order to Show Cause on September 12, 2019 and timely filed its Response (ECF No. 17) which asked the Court to dismiss the petition based on the *RD Legal Funding* decision. Alternatively, Respondent argued that this Court should stay proceedings because of the pending appeal in *RD Legal Funding*. Two weeks after this response was filed, the Supreme Court accepted the petition for certiorari in *Seila Law, LLC* agreeing to decide whether the CFPB's "for cause" removal provision violates Article II of the Constitution and, if so, whether the offending clause can be severed from the statute.

The Bureau sought and obtained two extensions of time to respond, the second of which represented to the Court that a "short extension (which would have ended the day before the scheduled argument) is needed to allow senior Bureau leadership additional time to complete its review." *See,* ECF No. 23 at ¶ 7. Four days before the scheduled hearing and on the eve of its due date to file a responsive brief, the Bureau filed its Notice withdrawing the CID, arguing that the petition should be dismissed as moot. *See*, ECF No. 26. As will be explained in an Affidavit filed with the motion, Crystal Moroney, Esquire, upon being notified of the withdrawal of the CID by her counsel, justifiably believed that the Bureau decided not to move forward. Ms. Moroney's Affidavit will explain she was extremely relieved and gratified that the Bureau decided that her initial responses (and appropriate refusal to answer pursuant to Rule 1.6) was recognized as valid by the Bureau. Ms. Moroney's Affidavit will also explain that she did not instruct her counsel to

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oppose the notice of withdrawal but had she known that less than four hours after the Court's Order dismissing this matter for mootness, that the Bureau would announce its intent to serve a new CID,[4] she would have instructed her counsel to oppose the dismissal and seek a decision on the merits of her Constitutional claim.

II. LEGAL CONTENTIONS

The Respondent's motion will rely on the principle that a party cannot "manufacture mootness and thus evade a possible adverse decision by this Court." *See*, *New York Civil Liberty Union, supra*. The evidence is compelling that the Bureau waited until the last minute to avoid a decision on the merits as to the Respondent's constitutional challenge. Its excuse that it would issue a new CID that included a proper "Statement of Purpose" is contrived given that the Respondent asked the Bureau more than six months ago to withdraw its CID for this very reason. This contumacious behavior smacks of a nefarious intent to harass the Respondent with a years-long government investigation culminating in the Respondent's proverbial "day in court" only for the government to attempt an end-run around this Court's adjudication of the merits of Respondent's defenses.

III. RELIEF SOUGHT

Respondent's Rule 59(e) motion will ask the Court to vacate the Order of Dismissal and to reinstate this matter for a hearing on the merits of the Show Cause Order. Respondent will further seek recovery of its attorney fees under 28 U.S.C. §1927 and/or pursuant to this Court's inherent authority pursuant to Rule 11, based on the Bureau's duplicitous conduct in first refusing to withdraw the CID after Respondent demanded it do so, which required Respondent to file its memorandum opposing the petition. The Bureau later followed up with a notice withdrawing the CID and it stated intention to serve a new CID only after it contrived a false claim of mootness and failed to disclose to the Respondent or this Court its intention to reserve the CID after this Court's Order of Dismissal. This judge-shopping should not be tolerated by the Court.

Very truly yours,

THE LAW OFFICES OF RONALD S. CANTER, LLC

By: /s/ Ronald S. Canter
Ronald S. Canter

RSC/mdl

Cc: Vanessa Assae-Billie, Esq., Elizabeth.Assae-Bille@cfpb.gov

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[4] *See,* Exhibit 3, e-mail from Vanessa Assae-Billie to Ronald S. Canter dated November 7, 2019.

EXHIBIT 1

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April 24, 2019

VIA OVERNIGHT MAIL AND E-MAIL
Vanessa Assae-Bille
Enforcement Attorney
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Elizabeth.Assae-Bille@cfpb.gov

Re: *Civil Investigative Demand to Law Offices of Crystal Moroney, P.C.*
Dated June 23, 2017
Our File Number: 17-2070
Consumer Financial Protection Bureau v. Law Offices of Crystal Moroney, P.C.
Case No. 19-1732, Southern District of New York

Dear Ms. Assae-Bilie:

As you know, this office, along with John Bedard, Jr. of Bedard Law Group, P.C. represent the Law Offices of Crystal Moroney, P.C. in connection with the above-referenced Civil Investigative Demand. ("CID").

The CID included Notification of Purpose in violation of both Federal law and our client's right to due process because it did not include any statement as to the conduct constituting the alleged violation which is under investigation. *See, e.g., Consumer Financial Protection Bureau v. The Source for Public Data, L.P.*, 903 F.3d 456, 458 (5th Cir. 2018) and *Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools*, 854 F.3d 683 (D.C.Cir. 2017). As you know, when the meet and confer was conducted in person in July 2016, the CFPB refused to respond to my client's inquiry as to the basis of the investigation and to identify what conduct was alleged to violate the law.

Further, the Notification of Purpose is contrary to the Bureau's updated policy issued April 23, 2019 which "takes into account recent Court decisions about Notification of Purpose, and is consistent with the 2017 Report by the Bureau's Office Inspector General that emphasized the importance of updating Office Enforcement Policies to reflect such developments."

For these reasons, we hereby demand that the CFPB withdraw the CID and dismiss the pending lawsuit against our client. Please acknowledge receipt of this correspondence and provide the Bureau's response to this demand within ten (10) days from the date of this letter.

Very truly yours,

THE LAW OFFICES OF RONALD S. CANTER, LLC

By: /s/ Ronald S. Canter
Ronald S. Canter

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EXHIBIT 2

1700 G Street, NW
Washington, DC 20552

April 30, 2019

Via Email

Ronald S. Canter, Esq.
The Law Offices of Ronald S. Canter, LLC
200 A Monroe Street
Suite 104
Rockville, MD 20850

Re: Civil Investigative Demand served on the Law Offices of Crystal Moroney, P.C., on June 27, 2017

Mr. Canter:

This letter is in response to your April 24 letter demanding that the Bureau withdraw both the Civil Investigative Demand (CID) served on the Law Offices of Crystal Moroney, P.C. (LOCM) and the Petition to Enforce the CID filed in the Southern District of New York.

The statement of purpose contained in the CID complies with the law. Further, in our extensive discussions regarding compliance with the CID, LOCM has never raised insufficient notice of the purpose of the investigation as a basis for withholding information requested in the CID. The Bureau will not be dismissing the petition proceeding or withdrawing the CID.

If you have any questions, please feel free to contact me at 202-435-7688.

Sincerely,

/s/ E. Vanessa Assae-Bille
Deputy Enforcement Director

cc: John H. Bedard, Jr. Esq.

EXHIBIT 3

Ronald Canter

From: Assae-Bille, Vanessa (CFPB) <Elisabeth.Assae-Bille@cfpb.gov>
Sent: Thursday, November 7, 2019 4:15 PM
To: Ronald Canter
Cc: Patterson, Jehan (CFPB); 'John Bedard'
Subject: Law Offices of Crystal Moroney, P.C.

Mr. Canter,

We plan to issue Law Offices of Crystal Moroney, P.C. a new CID in the next few days. This CID will contain a revised Statement of Purpose. At your earliest convenience, please confirm whether you and/or Mr. Bedard will accept service for Ms. Moroney.

Best,
Vanessa

E. Vanessa Assae-Bille
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