

APPENDIX

APPENDIX A

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

CONSUMER FINANCIAL
PROTECTION BUREAU,

No. 18-90015

*Plaintiff -
Respondent*

v.

ALL AMERICAN CHECK CASHING,
INCORPORATED; MID-STATE
FINANCE, INCORPORATED;
MICHAEL E GRAY, Individually,

*Defendants -
Petitioners*

Motion for Leave to Appeal
from an Interlocutory Order

Before DENNIS, SOUTHWICK, and HIGGINSON,
Circuit Judges.

PER CURIAM:

The motion for leave to appeal from the interlocu-
tory order of the United States District Court of the

2a

Southern District of Mississippi, entered on March 21,
2018, is GRANTED.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

vs.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
Individually

Defendants

CIVIL ACTION
NO. 3:16-cv-356-
WHB-JCG

ORDER

In accordance with the stay issued in this case, all motions pending herein [Docket Nos. 197 and 201] will be held in abeyance, and the rulings thereon deferred, until the interlocutory appeal has been decided by the United States Court of Appeals for the Fifth Circuit.

SO ORDERED this the 29th day March, 2018.

s/ William H. Barbour, Jr.
UNITED STATES DIS-
TRICT JUDGE

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

vs.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
Individually

Defendants

CIVIL ACTION
NO. 3:16-cv-356-
WHB-JCG

ORDER

On March 21, 2018, the Court entered an Opinion and Order by which the Motion of Defendants for Judgment on the Pleadings was denied. Defendants have now moved for an Order certifying the following two questions for interlocutory appeal.

- (1) Does the structure of the Consumer Financial Protection Bureau (“CFPB”) violate Article II of the Constitution and the Constitution’s separation of powers?
- (2) Do principles of fair notice and due process prevent the CFPB from enforcing the Consumer Financial Protection Act’s prohibition

against “unfair,” “deceptive,” and “abusive” acts, 12 U.S.C. § 5536(a)(1)(B), without defining those terms?

Interlocutory appeals are governed by 28 U.S.C. § 1292(b), which provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

As regards the question of whether the structure of the Consumer Financial Protection Bureau violates Article II of the Constitution and the separation of powers set forth therein, the Court finds the grounds for granting an interlocutory appeal are satisfied. First, whether the structure of the CFPB is unconstitutional based on its single-director status presents a controlling question of law that has not yet been decided by the United States Court of Appeals for the Fifth Circuit. Second, there is substantial ground for difference of opinion as to this issue as exhibited by

the differences of opinion amongst the jurists in the United States Court of Appeals for the District of Columbia who have considered the issue. See PHH Corp. v. CFPB, 839 F.3d 1 (D.C. Cir. 2017) (holding the CFPB was unconstitutionally structured) (opinion by J. Kavanaugh, with separate concurring opinion by J. Randolph, and separate concurring in part, and dissenting in part opinion by J. Henderson); rev'd en banc, 881 F.3d 75 (D.C. Cir. 2018) (holding that the statutory provision by which the Director of the CFPB could be removed by the President only for cause was constitutional) (opinion and concurring [sic] opinions by Judges Pillard, Tatel, Millett, Wilkins, and Rogers; opinion concurring with judgment by J. Griffith; dissenting opinions by Judges Henderson, Kavanaugh, and Randolph). Third, the immediate appeal of this question will materially advance the ultimate termination of the litigation because the case would not be able to proceed in the event the CFPB is not a constitutionally authorized entity. A decision that the case cannot proceed at this time would avoid the anticipated two week jury trial, which, in turn, would prevent the parties' incurring additional litigation expenses and would prevent the expenditure of judicial resources.

As regards the question of whether the principles of fair notice and due process prevent the CFPB from enforcing the Consumer Financial Protection Act's prohibition against "unfair," "deceptive," and "abusive" acts without defining those terms, the Court finds the grounds for granting an interlocutory appeal have not been satisfied because there is no substantial ground for difference of opinion as to whether the terms "unfair," "deceptive," and/or "abusive" have been adequately defined by other federal statutes

from which Congress borrowed when enacting the Consumer Financial Protection Act.

For these reasons:

IT IS THEREFORE ORDERED that the Motion of Defendants for Certification of Questions for Interlocutory Appeal [Docket No. 238] is hereby granted only as to the following question:

(1) Does the structure of the Consumer Financial Protection Bureau (“CFPB”) violate Article II of the Constitution and the Constitution’s separation of powers?

IT IS FURTHER ORDERED that the Clerk of Court is directed to stay all proceedings in this case pending decision by the United States Court of Appeals for the Fifth Circuit as to whether it will consider the question herein certified, or until the interlocutory appeal is concluded, whichever is later.

SO ORDERED this the 27th day of March, 2018.

s/ William H. Barbour
UNITED STATES DISTRICT JUDGE

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

vs.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
Individually

Defendants

CIVIL ACTION
NO. 3:16-cv-356-
WHB-JCG

OPINION AND ORDER

This cause is before the Court on the Motion of Defendants for Judgement on the Pleadings. Having considered the pleadings, as well as supporting and opposing authorities, the Court finds the Motion is not well taken and should be denied.

I. Factual Background and Procedural History

The Consumer Financial Protection Bureau (“Bureau”) filed a lawsuit against All American Check Cashing, Inc. (“All American”); Mid-State Finance,

Inc.; and Michael E. Gray,¹ alleging that they violated Sections 1031(a), 1036(a), and 1054(a) of the Consumer Finance Protection Act of 2010 (“CFPA”), codified at 12 U.S.C. §§ 5531(a), 5536(a), and 5564(a), respectively.² The alleged violations are connected with check cashing services and payday loans that had been offered by Defendants.

In its Complaint, the Bureau alleges that Defendants violated the CFPA by engaging in “abusive acts and practices” and/or “deceptive acts or practices” with respect to the check cashing services they provided. The alleged abusive and/or deceptive acts and practices included, but were not limited to, that Defendants: (1) failed to inform customers of the fees they would be charged for check cashing services; (2) intentionally blocked or otherwise interfered with a customer’s ability to see the fee they were being charged on the receipt they were required to sign to have their check cashed; (3) provided false and/or misleading information to customers regarding the fees they would be charged and their ability to cancel check-cashing transactions; and (4) pressured or coerced customers into cashing their checks by, *inter alia*, processing checks without the customer’s consent or prematurely endorsing the check thereby impeding the ability of the customer to have the check cashed elsewhere.

¹ All American Check Cashing, Inc.; Mid-State Finance, Inc.; and Michael E. Gray will be collectively referred to as “Defendants”.

² As the Complaint alleges claims arising under federal law, and is brought by an agency of the United States Government, the Court may exercise federal subject matter jurisdiction in this case under 28 U.S.C. §§ 1331 and 1345.

The Bureau also alleges that Defendants violated the CFPA by engaging in “deceptive acts or practices” with respect to the payday loans they offered. Specifically, the Bureau alleges that Defendants misrepresented to customers that the two-week payday loans they offered provided greater financial benefit than the thirty-day payday loans offered by their competitors when in reality the customer was charged higher fees for the two-week payday loans. Finally, the Bureau alleges that Defendants violated the CFPA by failing to notify customers when they had overpaid their loan amounts and/or by failing to refund the overpayments.

Defendants have now moved for judgment on the pleadings arguing that this action is void *ab initio* because, *inter alia*, the CFPA is unconstitutional.

II. Discussion

Defendants have moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. This rule provides, in relevant part: “[a]fter the pleadings are closed ... a party may move for judgment on the pleadings.” According to the United States Court of Appeals for the Fifth Circuit, “[a] motion brought pursuant to [Rule] 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts.” Machete Prods., L.L.C. v. Page, 809 F.3d 281, 287 (5th Cir. 2015) (quoting Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 312 (5th Cir. 2002)). When considering a Rule 12(c) motion, the Court applies the same standard as is used when considering a motion

for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Great Plains, 313 F.3d at 313. As with Rule 12(b)(6), the “central issue” when deciding a Rule 12(c) motion “is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.” Hughes v. Tobacco Inst., Inc., 278 F.3d 417, 420 (5th Cir. 2001) (alteration in original) (internal quotations omitted).

In their Motion for Judgment on the Pleadings, Defendants first argue that the structure of the Bureau is unconstitutional and, therefore, the agency lacks authority to bring this action. The claim underlying this argument is that the structure of the Bureau is “antithetical to the separation of powers” doctrine in so far [sic] as the Bureau is headed by a single director who allegedly “wields unchecked legislative, executive, and judicial powers”, and who is not accountable to either Congress or the President. See Mem. in Supp. of Mot. [Docket No. 145], 5-15. The argument that the Bureau is unconstitutional based on its single-director status, however, was recently rejected by the United States Court of Appeals for the District of Columbia. See PHH Corp. v. CFPB, 881 F.3d 75 (D.C. Cir. 2018). As summarized by that Court:

The Supreme Court’s removal-power decisions have, for more than eighty years, upheld ordinary for-cause protections of the heads of independent agencies, including financial regulators. That precedent leaves to the legislative process, not the courts, the choice whether to subject the Bureaus’s leadership to at-will presidential removal. Congress’s decision to provide the CFPB Director a degree of insulation reflects its permissible judgment

that civil regulation of consumer financial protection should be kept one step removed from political winds and presidential will. We have no warrant here to invalidate such a time-tested course. No relevant consideration gives us reason to doubt the constitutionality of the independent CFPB's single-member structure. Congress made constitutionally permissible institutional design choices for the CFPB with which courts should hesitate to interfere. "While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952).

Id. at 110. For the same reasons stated in PHH Corp., this Court rejects the arguments raised by Defendants, and likewise finds that the Bureau is not unconstitutional based on its single-director structure.

Next, Defendants argue that the claims alleged under the CFPA violate due process because the Act fails to give fair notice of the conduct proscribed by that statute. The issue of due process/fair notice was considered by the United States District Court for the Southern District of Indiana in the case of CFPB v. ITT Educational Services, Inc., 219 F. Supp. 3d 878 (S.D. Ind. 2015). In ITT, the defendant argued that the CFPA claims alleged against it were subject to dismissal because the Act did not provide fair notice as to what constituted "unfair" and "abusive" conduct thereunder. The defendant further argued that because the terms "unfair" and "abusive" were vague, any attempt to enforce the CFPA against it would violate the Due Process clause of the Fifth Amendment.

In considering the vagueness/due process challenge, the court in ITT began with this summary of applicable case law on the issue.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012); Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (“Living under a rule of law entails various suppositions, one of which is that all persons are entitled to be informed as to what the State commands or forbids.”) (citations omitted). A statute is void for vagueness if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” United States v. Williams, 553 U.S. 285, 304 (2008); Hill v. Colorado, 530 U.S. 703, 732 (2000). This doctrine is not implicated merely because “it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved.” Fox Television, 567 U.S. at 253. Nor can a court declare a law unconstitutionally vague based on “the mere fact that close cases can be envisioned” under its provisions. Williams, 553 U.S. at 305–306. Rather, we refuse to apply a statutory standard only where it is so amorphous that reasonable observers have no choice but to “guess at its meaning[,] and differ as to its application.” Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) (explaining that “[a] statute which either forbids or requires the doing of an act in terms so vague

that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law”).

ITT, 219 F.Supp.3d at 899 (alterations in original). The ITT court then considered the challenged provision of the CFPA, which provides, in relevant part: “It shall be unlawful for ... any covered person or service provider ... to engage in any unfair, deceptive, or abusive act or practice.” 12 U.S.C. § 5536(a)(1)(B). On review the court in ITT rejected the defendant’s argument that the terms “unfair” and “deceptive” were impermissibly vague on the grounds that these same terms are contained in the Fair Trade Commission Act, codified at 15 U.S.C. § 45(a)(1), and Congress was well aware of the meaning given to those terms when it enacted the CFPA. As further explained:

The CFPA, like the FTCA before it, has empowered the agency itself to fill in the broad outlines of its authority with specific regulations and interpretations. The agency and the courts have done so in fleshing out the term “unfair ... act or practice,” and Congress has tapped into that existing body of law in framing the CFPA with identical terminology. We thus have no difficulty in rejecting [defendant’s] suggestion that a reasonable business entity would be forced to guess at the term’s meaning, or would be subject to agency’s standardless discretion in its enforcement.

ITT, 219 F.Supp.3d at 904.

The court in ITT likewise rejected the argument that the phrase “abusive act or practice” was unconstitutionally vague, first, on the grounds that the

CFPA expressly describes the type of conduct/practice that can be declared “abusive”. See 12 U.S.C. § 5531(d).³ Second, the court in ITT found that the term “abusive” was not novel in that the same term was used by Congress when enacting the Fair Debt Collection Practices Act (“FDCPA”), see 15 U.S.C. § 1692(e) (explaining that one of the purposes of the FDCPA is to “eliminate abusive debt collection practices by debt collectors”), and that that Act expressly describes conduct and/or practices considered abusive. See 15 U.S.C. § 1692d. As summarized by the court in ITT:

Because the CFPA itself elaborates the conditions under which a business’s conduct may be found abusive — and because agencies and courts have successfully applied the term as used in closely related consumer protection statutes and regulations — we conclude that the language in question provides at least the minimal level of clarity that the due process

³ The relevant subsection of the CFPA provides:

- (d) The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice –
- (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
 - (2) takes unreasonable advantage of –
 - (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
 - (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

clause demands of non-criminal economic regulation.

ITT, 219 F.Supp.3d at 906. For the same reasons stated by the court in ITT, this Court rejects the fair notice/due process challenge made by Defendants, which is premised on arguments that the terms “unfair”, “deceptive” and “abusive acts and practices” in the CFPA are unconstitutionally vague.

Third, Defendants argue that the CFPA violates the non-delegation doctrine because Congress did not clearly delineate the general policy for, or the boundaries of delegated authority to, the Bureau. Contrary to this argument, the CFPA does provide general policy/boundaries of authority for the Bureau. See 12 U.S.C. § 5511 (providing that the purposes of the Bureau include implementing and enforcing federal consumer financial law; investigating consumer complaints; identifying risks to consumers in the marketplace; taking appropriate enforcement action against violators of federal consumer financial law; and issuing rules, orders, and guidance for implementing federal consumer financial law). The CFPA likewise provides limits on the types of conduct that can be declared “unfair” or “abusive” under the Act. See 12 U.S.C. § 5532(c) and (d). Because Congress, when enacting the CFPA, delineated a general policy for the Bureau to follow, and provided limits on its authority, the Court finds Defendants have failed to show that the CFPA violates the non-delegation doctrine. See e.g. [sic] United States v. Whaley, 577 F.3d 254, 263-64 (5th Cir. 2009) (explaining that the “modern test” for assessing alleged violations of the non-delegation doctrine is “whether Congress has provided an ‘intelligible principle’ to guide the agency’s regulations”, and that delegation is “constitutionally sufficient if

Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority”) (quoting Mistretta v. United States, 488 U.S. 361, 372 (1989) and American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946), respectively).

Finally, Defendants argue that they are entitled to a judgment on the pleadings because the CFPA violates the principles of federalism. The federalism challenge stems from the fact that the Bureau allegedly bases several of its FCPA claims on allegations including that All American violated state law. According to Defendants, if their conduct violated state law, then the state, as opposed to the federal government, should be responsible for bringing an enforcement action. See Mem. in Supp. of Mot. [Docket No. 145], 21 (arguing that the Bureau, by basing its claims on alleged violations of state law, has intruded on the rights of the states “to determine how far their laws should reach and how they should be enforced.”). A review of the Complaint makes clear, however, that while there are allegations that state law was violated, the Bureau also alleges conduct on the part of All American that has not been shown subsumed by state law. For example, the Complaint alleges that Mississippi and Louisiana law require the display of fees for check cashing services. See Compl. ¶ 21. According to the Complaint, All American did display the required fee information, but it was displayed in such a manner as to make it unlikely that customers would actually see it. Id. (alleging that the fee sign was placed “under the counter” in All American offices). The Complaint further alleges that All American employees were specifically instructed to take action so as to either minimize or negate the likelihood that the fee display would be seen by customers. Id.

(alleging that All American employees were told to limit the time customers were at the counter, and have them wait in the lobby while their checks were processed so as to minimize the likelihood that they would see the posted fee signs); *Id.*, ¶ 22 (alleging that All American employees were trained to use distraction techniques including providing consumers with non-relevant information and small gifts to keep them from having an opportunity to ask about fees). Because there has been no showing that all of the conduct on which the Bureau bases this enforcement action would be solely in the providence of state law, the Court finds Defendants have failed to show that they are entitled to judgment on the pleadings based on federalism concerns.

III. Conclusion

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Motion of Defendants for Judgment on the Pleadings [Docket No. 144] is hereby denied.

IT IS FURTHER ORDERED that the Motion of Defendants for Hearing on their Motion for Judgment on the Pleadings [Docket No. 235] is hereby denied as unnecessary.

SO ORDERED this the 21st day of March, 2018.

s/ William H. Barbour, Jr.
UNITED STATES DIS-
TRICT JUDGE

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI NORTHERN
DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

vs.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
individually

Defendants

CIVIL ACTION
NO. 3:16-cv-
00356-WHB-JCG

NOTICE

The Consumer Financial Protection Bureau hereby notifies the Court and defendants of recent events relevant to defendants' claim that this case must be dismissed because the Consumer Financial Protection Act unconstitutionally permits the President to remove the Bureau Director only for cause. *See* 12 U.S.C. § 5491(c)(3). Recent events have rendered that argument moot.

On November 24, 2017, the Bureau's former Director, Richard Cordray, resigned, and President Trump designated Office of Management and Budget Director

Mick Mulvaney to serve as the Bureau's Acting Director pursuant to the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d. See The White House, Office of the Press Secretary, *Statement on President Donald J. Trump's Designation of OMB Director Mick Mulvaney as Acting Director of the Consumer Financial Protection Bureau* (Nov. 24, 2017), <https://www.whitehouse.gov/the-press-office/2017/11/24/statement-president-donald-j-trumps-designation-omb-director-mick>. Acting Director Mulvaney has carefully considered the Bureau's decision to bring this lawsuit and has ratified that decision. See Ex. 1, Declaration of Mick Mulvaney, the Acting Director of Plaintiff Consumer Financial Protection Bureau, Regarding Ratification.

In light of these events, defendants' constitutional challenge no longer applies. In his capacity as Acting Director, Mr. Mulvaney is removable by the President at will. The CFPA's removal provision by its terms applies only to "the Director," not to an Acting Director. 12 U.S.C. § 5491(c)(3). And the Vacancies Reform Act does not limit the President's ability to designate a different person as Acting Director, and thereby remove Mr. Mulvaney from that role. As the Department of Justice's Office of Legal Counsel explained, "Congress does not, by purporting to give tenure protection to a Senate-confirmed officer, afford similar protection to an individual who temporarily performs the functions and duties of that office when it is vacant." *Designating an Acting Director of the Bureau of Consumer Financial Protection*, 41 Op. O.L.C. ___, 2017 WL 6419154, Slip Op. at 10 (Nov. 25, 2017) (citing *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996), which holds that an officer who may be removed only for cause is removable at will if that officer holds over beyond the officer's designated term).

Because Acting Director Mulvaney is removable at will and has ratified the decision to bring this case, Defendants cannot obtain dismissal on the ground that this case was *initially* filed by an agency led by a Director removable only for cause. Acting Director Mulvaney’s ratification cured any constitutional problem with this case’s initiation. Courts have consistently held that a properly constituted government agency may cure a constitutional problem with previous agency actions by ratifying prior actions that the agency took when its structure or composition was constitutionally flawed. *See Wilkes-Barre Hosp. Co, LLC v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (“Ratification can remedy defects arising from the decisions of improperly appointed officials.”); *Advanced Disposal Servs. East, Inc. v. NLRB*, 820 F.3d 592, 602 (3d Cir. 2016) (concluding that ratifications by properly appointed officials were “sufficient to cure” problem with board appointments that previously left agency without authority to act); *CFPB v. Gordon*, 819 F.3d 1179, 1192 (9th Cir. 2016) (holding that Bureau Director’s “ratification, done after he was properly appointed as Director, resolves any Appointments Clause deficiencies” present at the time enforcement action was filed); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704 (D.C. Cir. 1996) (holding that “FEC’s post-reconstitution ratification of its prior decisions” was “an adequate remedy for” an earlier constitutional defect in the agency’s structure at time enforcement action was initiated). Acting Director Mulvaney has done just that. Because Acting Director Mulvaney’s ratification of the decision to bring this enforcement action remedied any constitutional problem with the initiation of this case, defendants’ motion for judgment on the pleadings on that basis must be denied.

Should the Court request it, the Bureau stands ready to provide supplemental briefing on this additional ground for denying defendants' motion for judgment on the pleadings.

Dated: February 5, 2018 Respectfully submitted,

CONSUMER FINANCIAL
PROTECTION BUREAU

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Enforcement Director

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI NORTHERN
DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

vs.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
individually

Defendants

CIVIL ACTION
NO. 3:16-cv-
00356-WHB-JCG

**DECLARATION OF MICK MULVANEY, THE
ACTING DIRECTOR OF PLAINTIFF
CONSUMER FINANCIAL PROTECTION
BUREAU, REGARDING RATIFICATION**

I, Mick Mulvaney, declare as follows, pursuant to 28 U.S.C. § 1746:

1) On November 24, 2017, upon the resignation of the Consumer Financial Protection Bureau's (Bureau) former Director, Richard Cordray, President Trump, acting pursuant to the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d, designated me the Bureau's Acting Director.

2) In my capacity as the Bureau's Acting Director, I have reviewed the Bureau's decision to file a lawsuit against All American Check Cashing, Inc., Mid-

State Finance, Inc., and Michael E. Gray. The Bureau's decision to initiate this case was originally authorized by former Director Cordray on November 3, 2015.

3) After having been briefed by the Bureau's Office of Enforcement regarding this case, I ratified the Bureau's decision to file a lawsuit against All American Check Cashing, Inc., Mid-State Finance, Inc., and Michael E. Gray.

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

Executed on February __, 2018.

MICK MULVANEY
Acting Director
Consumer Financial Protec-
tion Bureau

APPENDIX F

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU

Plaintiff

v.

ALL AMERICAN CHECK CASHING,
INC.; MID-STATE FINANCE, INC.;
and MICHAEL E. GRAY,
individually

Defendants

Case No. 3:16-cv-
356-WHB-JCG

**DECLARATION OF ROBIN H. RASMUSSEN
PURSUANT TO 28 U.S.C. § 1746**

I, Robin H. Rasmussen, declare and state as follows:

1. I am an attorney at law duly licensed to practice in the State of Mississippi and I am counsel for All American Check Cashing, Inc., Mid-State Finance, Inc. and Michael E. Gray (collectively, "All American") in litigation with the Mississippi Department of Banking and Consumer Finance in Mississippi state court. *See All American Check Cashing, Inc. v. Corley*, Cause No. 25CH1:17-cv-000699, Chancery Court of the First Judicial District of Hinds County, Mississippi.

2. On June 8, 2017, All American and the Mississippi Department of Banking and Consumer Finance entered into a settlement agreement resolving the state court litigation referenced in paragraph 1.

3. Attached as Exhibit A is a true and correct copy of the settlement agreement.

29a

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 14th day of June, 2017 in Memphis, Tennessee.

Robin H. Rasmussen

30a

EXHIBIT A

**IN THE CHANCERY COURT OF THE FIRST
JUDICIAL DISTRICT OF HINDS
COUNTY, MISSISSIPPI**

ALL AMERICAN CHECK
CASHING, INC., a Mississippi
Corporation, and MID-STATE
FINANCE, INC., a Mississippi
Corporation, and Michael E.
Gray, Individually

Plaintiff

v.

CHARLOTTE CORLEY, in her
capacity as Commissioner of
the Mississippi Department of
Banking and Consumer
Finance, and THE MISSISSIPPI
DEPARTMENT OF BANKING AND
CONSUMER FINANCE, a
Mississippi state agency,

Defendants

CASE NO G-
2017-699 S/2

**SETTLEMENT AND ABSOLUTE RELEASE
WITH COVENANTS**

KNOW ALL PERSONS BY THESE PRESENTS,
that the undersigned, CHARLOTTE CORLEY, IN
HER OFFICIAL CAPACITY AS COMMISSIONER,
MISSISSIPPI DEPARTMENT OF BANKING AND
CONSUMER FINANCE AND THE MISSISSIPPI
DEPARTMENT OF BANKING AND CONSUMER
FINANCE, for and in consideration of the agreement

of Plaintiffs, ALL AMERICAN CHECK CASHING INC, MID-STATE FINANCE, INC., their respective corporate affiliates, and all of their respective agents, representatives, employees, officers and insurers, and MICHAEL E. GRAY INDIVIDUALLY, to undertake and/or refrain from the following actions and to pay the following cash, the sufficiency of which is hereby acknowledged, does hereby fully, completely and finally remise, release, acquit, discharge, and hold harmless All American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray Individually, and their insurers, heirs, owners, successors, trustees, designees, representatives, assigns, principals, agents, servants, employees, associates, divisions, stockholders, directors, officers, and/or associated or affiliated companies or entities (hereafter collectively called All American) of and from any and all claims, demands, actions, causes of action, suits, regulatory actions, enforcement actions and damages of every kind and nature whatsoever arising out of the operation by All American Check Cashing Inc., Mid-State Finance, Inc., and any of their associated or affiliated companies or entities, of payday, check cashing and title pledge businesses in the State of Mississippi.

In return for the following agreement, American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray Individually, and their insurers, heirs, owners, successors, trustees, designees, representatives, assigns, principals, agents, servants, employees, associates, divisions, stockholders, directors, officers, and/or associated or affiliated companies or entities fully, completely and finally remise, release, acquit, discharge, and hold harmless Charlotte Corley, in her official capacity as Commissioner, Mississippi Department of Banking and Consumer Finance, and

the Mississippi Department of Banking and Consumer Finance of and from any and all claims, demands, actions, causes of action, suits, and damages of every kind and nature whatsoever arising out of the operation by All American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray Individually, and any of their associated or affiliated companies or entities, of payday, check cashing and title pledge businesses in the State of Mississippi.

Consideration from Charlotte Corley, in her official capacity as Commissioner, Mississippi Department of Banking and Consumer Finance and the Mississippi Department of Banking and Consumer Finance, [sic]

1. In return for the actions stated above and in Paragraph 4, Charlotte Corley, in her official capacity as Commissioner, Mississippi Department of Banking and Consumer Finance, hereby agrees to reduce the amount of the civil penalties imposed by the May 11, 2017, Administrative Order from \$1,617,000.00 to \$889,350.00 (3234 x \$275.00) to be paid \$500,000.00 immediately and the remainder to be paid within 45 days of the effective date of this Agreement.

Attorney Review

2. All American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray Individually are represented by counsel.

ALL AMERICAN CHECK CASHING INC., MID-STATE FINANCE, INC., AND MICHAEL E. GRAY INDIVIDUALLY HAVE BEEN GIVEN AMPLE TIME AND OPPORTUNITY TO SUBMIT THIS AGREEMENT FOR REVIEW TO ANOTHER ATTORNEY OF THEIR CHOICE AND SHOULD THEY FAIL TO DO SO, THEY AGREE THAT THEY HAVE KNOWINGLY WAIVED THEIR RIGHT TO HAVE THEIR CURRENT OR AN

INDEPENDENT ATTORNEY REVIEW THIS AGREEMENT ON THEIR BEHALF.

All American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray Individually Covenants

3. In return for the consideration listed in Paragraph 1, All American Check Cashing Inc., Mid-State Finance, Inc., All American Title Loans, LLC, and Michael E. Gray Individually

(a) agree to the absolute release with covenants recited in the first paragraph of this agreement; and

(b) agree, covenant, and warrant to dismiss with prejudice within three business days any litigation now pending against the Defendants or any of the Defendants' current or former employees.

(c) agree, covenant, and warrant that they and their employees shall delete the Facebook and YouTube, [sic] posts and ads related to the Mississippi Department of Banking and Consumer Finance and/or any of the Department's employees and shall immediately remove the Company website; and that they shall not engage in any future disparagement or retaliation of any sort against anyone involved with this Action.

(d) agree, covenant, and warrant that All American Check Cashing Inc., Mid-State Finance, Inc. shall pay refunds of \$134,609.00 to the 703 customers identified to the Department in the June 15, 2015, Response to Report of Examination and/or escheat same to the State Treasurer and shall provide proof of compliance.

(e) agree, covenant, and warrant that All American Check Cashing Inc., Mid-State Finance, Inc. shall pay fines of \$889,350.00 calculated at \$275.00 for each of the 3,234 violations of the Mississippi Check Cashers

and Title Pledge Acts. (3,234 violations X \$275.00) to be paid as follows: \$500,000.00 immediately and the remainder to be paid within 45 days of the effective date of this Agreement. This consideration is completed as to all three Appellants whether paid by one, two or all three Appellants,

(f) agree, covenant, and warrant that they, their management and legal or personal representatives shall not attempt to re-litigate in any forum the claims that were asserted in this action or which could have been asserted in this action or which were asserted or could have been asserted in the administrative hearing of this matter, in the chancery court complaint filed against the Defendants in July 2016 and dismissed in September 2016, styled as *All American Check Cashing Inc. a MS Corporation et al v. Corley et al* Case: 25CH1:16-cv-001003 or in the federal court action now pending as *All American v. Corley*, Case 3:16-cv-00055-TSL-RHW in the U.S. District Court for the Southern District of Mississippi.

(g) agree, covenant, and warrant that they have not assigned, transferred or in any way encumbered the claims that they have made in this action and the other actions filed against the Commissioner and the Department and its employees.

(h) agree [sic] covenant and warrant that Michael E. Gray, his agents and or any entity owned by him or his agents in whole or in part, shall not apply directly or indirectly for licensure in any industry regulated by the Mississippi Department of Banking or Consumer Finance.

5. In executing and delivering this release, All American Check Cashing Inc., Mid-State Finance, Inc., and Michael E. Gray, Individually, further rely wholly

upon their own judgment, knowledge, and belief as to the nature, extent, and duration of any claims they may sustain in the future, as the result of the operation of check cashing, payday and title loan companies in the State of Mississippi and their regulation by the Mississippi State Department of Banking and Consumer Finance, and that they are legally competent to execute this release and accept full responsibility therefor.

6. Should it develop that there are any mistakes in this release instrument, whether mutual or unilateral, whether patent or latent, which cause this release instrument to be defective or less than complete, Charlotte Corley, in her official capacity as Commissioner, Mississippi Department of Banking and Consumer Finance and the Mississippi Department of Banking and Consumer Finance, for and in consideration of the agreement of Plaintiffs, All American Check Cashing Inc., Mid-State Finance, Inc., their respective corporate affiliates, and all of their respective agents, representatives, employees, officers and insurers, and Michael E. Gray Individually, further agree to execute any and all instruments and do any and all things necessary to effectuate a full, final, and complete release.

7. This mutual release is not an admission of liability or fault by any party. The parties shall not directly or indirectly disparage or retaliate against anyone involved with this action.

8. The Department will hold the existing All American Check Cashing Inc., Mid-State Finance, Inc., and All American Title Loans LLC performance bonds for a period of three years.

9. The terms of this Absolute Release in pertinent part are included in the Agreed Order of Dismissal to be submitted to the Hinds County Chancery Court and entered as soon as this Absolute Release is signed and notarized by all parties thereto. The terms of this Agreement and those in the Agreed Order are enforceable via summary proceedings in Hinds County Chancery Court.

10. The parties to this Absolute Release agree that this instrument of release may be signed in counterparts, each of which shall be an original and all of which together shall constitute the same and one instrument.

This the ____ day of June, 2017.

All American Check Cashing Inc.

By _____
Owner, Michael E. Gray

MidState Finance, Inc.

By _____
Owner, Michael E. Gray

Michael E. Gray, Individually

All American Title Loans LLC.

By _____

38a

Charlotte Corley in her official capacity
as Commissioner of the Mississippi Department
of Banking and Consumer Finance

Mississippi Department
of Banking and Consumer Finance

By _____
Stephen Schelver
General Counsel, Mississippi Department
of Banking and Consumer Finance

(continued on next page)

STATE OF MISSISSIPPI
COUNTY OF MADISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this the ____ day of June, 2017, within my jurisdiction, the within named MICHAEL E. GRAY, who acknowledged to me that he is the CEO and sole owner of All American Check Cashing Inc., a Mississippi corporation, and MidState Finance Inc., and that for and on behalf of said corporations, and as the act and deed of said corporations, he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

SWORN to and subscribed before me, this the ____ day of June, 2017.

NOTARY PUBLIC

My Commission Expires:

(continued on next page)

STATE OF MISSISSIPPI
COUNTY OF MADISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this the ____ day of June, 2017, within my jurisdiction, the within named MICHAEL E. GRAY, who acknowledged to me that he is sole member of All American Title Loans LLC, a Mississippi Limited Liability Company, and that for and on behalf of said Limited Liability Company and as the act and deed of said Limited Liability Company he executed the above and foregoing instrument, after first having been duly authorized by said Limited Liability Company so to do.

SWORN to and subscribed before me, this the ____ day of June, 2017.

NOTARY PUBLIC

My Commission Expires:

(continued on next page)

41a

STATE OF MISSISSIPPI
COUNTY OF MADISON

PERSONALLY appeared before me, the undersigned authority in and for the aforesaid jurisdiction, MICHAEL E. GRAY, who, being first duly sworn, stated on his oath that he did carefully read, sign, and deliver the foregoing release instrument on the date set forth herein and for the reasons therein stated.

SWORN to and subscribed before me, this the _____ day of June, 2017.

NOTARY PUBLIC

My Commission Expires:

(continued on next page)

STATE OF MISSISSIPPI
COUNTY OF HINDS

PERSONALLY appeared before me, the undersigned authority in and for the aforesaid jurisdiction, CHARLOTTE CORLEY, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE MISSISSIPPI DEPARTMENT OF BANKING AND CONSUMER FINANCE, who, being first duly sworn, stated on her oath she had obtained any necessary approvals and had full authority to so act on behalf of the Mississippi Department of Banking and Consumer Finance, and that she did carefully read, sign, and deliver the foregoing release instrument on the date set forth herein and for the reasons therein stated.

SWORN to and subscribed before me, this the _____ day of June, 2017.

NOTARY PUBLIC

My Commission Expires:

(continued on next page)

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the said county and state, on this the ____ day of June, 2017, within my jurisdiction, the within named Stephen F. Schelver, who acknowledged to me that he is General Counsel for the Mississippi Department of Banking and Consumer Finance, a Mississippi state agency, and that for and on behalf of said agency, and as the act and deed of said agency, he executed the above and foregoing instrument, after first having been duly authorized by said so to do.

SWORN to and subscribed before me, this the ____ day of June, 2017.

NOTARY PUBLIC

My Commission Expires:

APPENDIX G

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

Consumer Financial Protection
Bureau,

Plaintiffs,

v.

ALL AMERICAN CHECK
CASHING, INC.; MID-STATE
FINANCE, INC.; AND MICHAEL E.
GRAY, INDIVIDUALLY,

Defendants.

Case No.

**COMPLAINT
FOR
PERMANENT
INJUNCTION
AND OTHER
RELIEF**

Plaintiff, the Consumer Financial Protection Bureau (“Bureau”), alleges the following against All American Check Cashing, Inc. and Mid-State Finance, Inc. (together, “AACC”) and Michael E. Gray (“Mr. Gray”) (together, “Defendants”):

INTRODUCTION

1. The Bureau brings this action based on Defendants’ violations of Sections 1031(a), 1036(a), and 1054(a) of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a), and 5564(a), in connection with their offering and providing of payday loans and check cashing services.

2. The Bureau seeks permanent injunctive relief, restitution, refunds, disgorgement, damages, civil money penalties, and other relief for Defendants' violations of Federal consumer financial law.

JURISDICTION AND VENUE

3. The Court has subject-matter jurisdiction over this action because it is brought under Federal consumer financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

4. Venue is proper in this District because Defendants are located, reside, and do business in this District and because a substantial part of the events or omissions giving rise to the claims occurred here. 28 U.S.C. § 1391(b) and (c), and 12 U.S.C. § 5564(f).

PLAINTIFF

5. The Bureau is an agency of the United States charged with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. 12 U.S.C. § 5491(a). The Bureau has independent litigating authority to enforce Federal consumer financial laws, including the CFPA. 12 U.S.C. § 5564(a) and (b), 12 U.S.C. § 5531(a).

DEFENDANTS

6. All American Check Cashing, Inc. is a Mississippi corporation with its principal place of business at 505 Cobblestone Court, Suite B, Madison, MS, 39110. All American Check Cashing, Inc. has approximately 50 stores located in Mississippi, Alabama, and Louisiana, the majority of which are in Mississippi. At all times material to this complaint, All American

Check Cashing, Inc. has offered and provided short-term, high-cost loans (“payday loans”) and check cashing to consumers. These products and services are “consumer financial product[s] or service[s]” as defined under the CFPA. 12 U.S.C. § 5481(5), (15). All American Check Cashing, Inc. is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6). At all times material to this complaint, All American Check Cashing, Inc. has transacted business in the Southern District of Mississippi.

7. Mid-State Finance, Inc., d/b/a Thrifty Check Advance, is a Mississippi corporation with its principal place of business at 505 Cobblestone Court, Suite B, Madison, MS, 39110. Mid-State Finance, Inc. has at least one store, in Pearl, Mississippi. At all times material to this complaint, Mid-State Finance, Inc. has offered and provided payday loans and check cashing to consumers. These products and services are “consumer financial product[s] or service[s]” under the CFPA. 12 U.S.C. § 5481(5), (15). Mid-State Finance, Inc. is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6). At all times material to this complaint, Mid-State Finance, Inc. has transacted business in the Southern District of Mississippi.

8. Mr. Gray is the president and sole owner of All American Check Cashing, Inc. and Mid-State Finance, Inc. (together, “AACC”). Mr. Gray resides in Madison, Mississippi. Mr. Gray founded All American Check Cashing, Inc. in 1999, and purchased Mid-State Finance, Inc. approximately ten years later. At all times material to this Complaint, acting alone or in concert with others, Mr. Gray formulated, directed, controlled, or participated in the acts and practices of AACC, including the acts and practices set forth in

this Complaint. At all times material to this Complaint, Mr. Gray has been a director, officer, or employee charged with managerial responsibility at AACC. Mr. Gray has also materially participated in the conduct of AACC's affairs, including the development and approval of the practices complained of herein. Mr. Gray is a "related person" and a "covered person" under the CFPA. 12 U.S.C. § 5481(6), (25). At all times material to this Complaint, Mr. Gray has transacted business in the Southern District of Mississippi.

AACC'S CHECK CASHING BUSINESS

9. AACC began offering check cashing services in Mississippi in March 1999, in Louisiana in July 2012, and in Alabama in October 2013.

10. AACC charges consumers a fee to cash their checks. In Mississippi and Alabama, AACC's policy is to charge consumers 3% of the amount of the check to cash government-issued checks, and 5% of the amount of the check to cash other checks. In Louisiana, AACC's policy is to charge consumers 2% of the amount of the check to cash government-issued checks, and 5% of the amount of the check to cash other checks. In addition, in all states, AACC's policy is to charge a minimum fee of \$5. There are businesses and financial institutions located near AACC stores that charge consumers lower fees to cash a check.

11. AACC's check cashing business has been lucrative. In recent years, AACC has cashed about 12,000 to 17,000 checks and collected more than approximately \$1 million in check cashing fees, annually.

AACC's policy and practice of refusing to disclose the check cashing fee to consumers

12. Because the check cashing fees are fixed, when a consumer presents a check to AACC to cash, the AACC employee knows the fee structure (e.g. 3% or 5%). To determine the particular fee percentage a consumer will pay, the only information the AACC employee needs to know is whether or not the check is a government check, which the employee can almost always determine by looking at the face of the check. In addition, if the employee calculates the fee or knows that the \$5 minimum applies, the employee also knows the dollar amount of the fee.

13. AACC prohibits employees from orally disclosing to consumers the fee structure (e.g. 3% or 5%), the fee percentage that applies to a transaction (e.g. 3%), or the dollar amount of the fee, at any point during a check cashing transaction, even when a consumer asks the employee what the fee is.

14. AACC's policy and training documents instruct employees to "[n]ever tell the customer the fee" and "[n]ever quote the fee or the percentage to the customer[.]"

15. AACC regularly trains and monitors its employees to ensure that they adhere to this prohibition. For example, AACC provides a training presentation to new employees instructing them to "NEVER TELL THE CUSTOMER THE FEE."

16. In a January 5, 2013 email, Mr. Gray listed the check cashing methods and systems he created, including: "NEVER spout off the fee in dollars or in percent."

17. When a consumer presents AACC with a check, AACC instructs its employees to "verify" the

check by calling the issuer to confirm the check's authenticity and to "process" the check by entering data from the check into a store computer and preparing the cash and receipt for the consumer. AACC requires its employees to verify and process the check and provide the cash and receipt to the consumer without ever disclosing the fee or obtaining the consumer's consent to the transaction, even when a consumer asks how much it costs to cash a check.

18. When a consumer asks how much it costs to cash a check, AACC requires employees to deflect the question long enough to verify and process the check. For example, AACC instructs employees to say that the employees are not sure what the fee is and need to take additional steps to determine the fee, such as putting information in the store's computer, processing the check, or verifying the check. AACC also trains employees to falsely state "I will let you know [the fee] in just a moment," or state that the fee depends on the company that issued the check.

19. In both Mississippi and Louisiana, two of the jurisdictions within which AACC operates, the law provides for certain disclosures related to fees for check cashing services. At all times relevant to the allegations in this Complaint, AACC and Gray formulated and carried out a program aimed at subverting these consumer protections.

20. Mississippi law requires that consumers sign an acknowledgment of the fees charged when cashing a check. The receipt that AACC provides to consumers to sign at the end of the transaction lists the fee charged, but AACC requires employees to "[c]ount money out over receipt" to block the consumer's view of the fee. Employees sometimes use other items to cover the fee, such as small giveaways. AACC also

instructs employees to minimize the amount of time that the consumer can see the receipt before signing it. AACC instructs its employees to “keep [the] receipt away from customer as much as possible,” “keep the [receipt] for [the consumer] to sign on the counter for only a second,” and “remove [the] receipt and check as quickly as possible.” One former supervisor stated, “Employees at the stores I supervised asked customers to sign the receipt after the money was counted out over the receipt, so customers would not have a clear view of the fees listed on the receipt before signing it.” Even if the consumer sees the fee on the receipt, the receipt lists the “Fee Charged” and the “Date Cashed” in the past tense, indicating that the transaction has been completed and the fee already charged.

21. In both Mississippi and Louisiana, AACC is required to display a sign listing the fee percentages that AACC charges to cash checks. AACC does not permit employees to direct a consumer’s attention to the sign, even if the consumer asks about the amount of the fee. In fact, AACC seeks to prevent consumers from seeing the sign. In AACC stores, the sign is placed under the counter. Per company policy, AACC employees must direct consumers to a seat in the lobby while their check is being verified and processed, and ensure that the consumer’s time at the counter is as minimal as possible. The information on the sign can be difficult to read from the lobby. One former employee stated that he was told by a store manager to keep the consumer’s time at the counter as short as possible “to minimize the chance that the customer would see the fees listed on the sign under the counter[.]”

22. AACC also trains employees to distract consumers from finding out the fee by engaging in small talk, providing consumers with information not relevant to the transaction, showing them the cash, and providing small, free gifts. During one training, AACC instructed employees to ensure “[c]onstant information [is] given to customer” so that “they are overwhelmed with info.” AACC’s goal is to distract consumers as much as possible so that transactions can be completed without consumers learning the fee.

23. One consumer described AACC’s failure to disclose its check cashing fee as follows:

I went into All American Check Cashing... to cash my tax refund check which was roughly \$4100. Upon asking how much the fee would be I was told that it wouldnt be expensive. There were no signs in the... building telling customers how much their services were. So, once my check was cashed, the guy... brung me my money. While he was counting the money, I kept asking how much did yall charge because he kept my ID over the amount charged and everytime I would move the ID he would grab it back so I wouldnt see the fee. I was charged \$200+!!!! Im very upset that I was overcharged...On top of that, they provided no paperwork. Something has got to be done.

**AACC's policy and practice of making it
difficult for consumers to cancel or reverse a
check cashing transaction**

24. AACC compounds its obfuscation of check cashing fees by making it difficult or impossible for consumers to cancel or reverse a check cashing transaction if and when they do learn the fee. AACC does this by, among other things, making misrepresentations about the consumer's ability to cancel or reverse a transaction, and taking steps during processing that make it difficult or impossible for the consumer to cash a check elsewhere.

25. According to one former supervisor, "the only time you ever have the transaction voided... is if the customer is pretty much kicking and screaming, fussing, cussing[.]"

26. In some cases, AACC makes false or misleading representations to discourage consumers from cancelling or reversing a transaction. For example, employees sometimes falsely say that because of steps taken by AACC during processing, the consumer cannot reverse the transaction and cash the check elsewhere, even when the consumer could, in fact, reverse the transaction and cash the check elsewhere. Employees also foster the misimpression that if the check is taken to a bank, then the bank will hold the check for a long period of time — further delaying consumers' access to their funds — when the AACC employees do not know whether or not this is true. Employees also tell consumers that it will take a long time to void or reverse a transaction, when this is not true.

27. In some instances, the steps AACC takes while processing a check actually do make it difficult or impossible for the consumer to cash the check elsewhere,

and thus AACC locks the consumer into the transaction. For example, when processing a check, employees sometimes apply a stamp to the back of the check — such as, “FOR DEPOSIT ONLY: ALL AMERICAN CHECK CASHING INC” — that prevents or interferes with the consumer’s ability to cash the check elsewhere. Some employees stamp a consumer’s check and then, if the consumer becomes upset about fee, tell the consumer that the consumer cannot cash that check elsewhere.

28. AACC also uses physical custody of the check to control consumers and to compel consumers to pay the fee even if they object. Training documents instruct employees to “[a]lways keep the check” because doing so “[k]eeps [the employee] in control of the situation” so the “[c]ustomer can’t just walk out and leave without talking to you.”

Creation and implementation of AACC’s check cashing policies

29. AACC and Mr. Gray promoted the check cashing policies and procedures described in Paragraphs 12 to 28. Mr. Gray created, or specifically approved, many of these policies and procedures. These policies and procedures are widely implemented at AACC.

30. AACC and Mr. Gray devote substantial resources to ensure that employees at every store strictly follow the check cashing policies and procedures in every transaction. For example, AACC performs regular audits of its stores to ensure that employees follow its check cashing policies. In addition, a supervisor visits stores to conduct demonstrations and practice sessions with employees on how to cash a check according to the policies and procedures set forth in Paragraphs 12 to 28.

31. AACC and Mr. Gray provide store managers and supervisors with incentives to ensure they follow AACC's check cashing policies and procedures. For example, managers and supervisors can increase their monthly bonuses by increasing check cashing fees collected at their stores.

32. As a result of the check cashing practices and policies, described in Paragraphs 12 to 28, consumers who do not know the fee for cashing a check are prevented or hindered from discovering it and prevented or hindered from stopping or reversing a transaction if they do learn the check cashing fee and seek to cancel the transaction.

AACC'S PAYDAY LENDING BUSINESS

33. AACC offers payday loans to consumers in its stores in Mississippi, Louisiana, and Alabama. AACC began offering payday loans in Mississippi in March 1999, in Louisiana in July 2012, and in Alabama in October 2013.

34. AACC provides payday loans to consumers who receive benefits or paychecks once a month ("monthly consumers"). Monthly consumers include individuals who receive government benefits, such as Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), and individuals paid by their employers once per month.

35. Unlike many of its competitors, AACC does not provide 30-day loans to monthly consumers. Instead, AACC has provided these consumers with multiple two-week loans over the course of the month. By borrowing from AACC, these consumers pay more in fees for the same or less net cash received during the

month. Nevertheless, AACC has deceptively represented to consumers that borrowing from AACC in this manner is more financially beneficial than, or at least financially equivalent to, taking out a 30-day loan from one of AACC's competitors.

Regulatory background

36. In Mississippi, AACC offers two payday loan products: a two-week loan of \$100 for a \$20 fee, and a two-week loan of \$200 for a \$40 fee. AACC does not offer loans above \$250 because, although the maximum permissible fee under Mississippi state law is slightly higher (\$21.95 for every \$ 100 loaned), Mississippi law requires that loans in excess of \$250 have a loan term of 28 to 30 days. Miss. Code. § 75-67-519(1), (4).

37. Mississippi law prohibits lenders from “rolling over” a consumer’s loan, *i.e.* providing the consumer with a new loan to pay back an outstanding loan from the same lender. Miss. Code. § 75-67-519(5).

38. In Louisiana, although a payday loan term can be up to 30 days, AACC offers only two-week loans. Lenders may not roll over loans in Louisiana, although a lender may accept a partial payment of 25% of the amount advanced plus the fee and then enter into a new transaction for the remaining balance. La. Rev. Stat. §§ 9:3578.3(2)(b); 9:3578.6(7).

39. In Alabama, although a payday loan term can be up to 31 days, AACC offers only two-week loans. Under Alabama law, one rollover is permitted for a maximum of two continuous transactions. Ala. Code §§ 5-18A-13(c); 5-18A-12(b).

40. AACC has regularly rolled over consumers’ loans, even when it is illegal to do so under state law.

AACC’s practice of lending to consumers who are paid monthly, or “1st and 3rd lending”

41. Instead of a 30-day loan, AACC has provided monthly consumers with one or more two-week loans during the course of a single month, typically in the beginning of the month and in the middle of the month. AACC often refers to this lending practice as “Lending on the 1st and 3rd” or “Loaning on the 1st and 3rd,” in part because many monthly consumers regularly come into an AACC store in the beginning of the month — on the 1st or the 3rd day of the month. AACC has also referred to this practice as the “Monthly Lending Program.”

42. Since at least 2011, AACC has implemented Lending on the 1st and 3rd (“1st and 3rd lending” or “1st and 3rd lending program”) in Mississippi, Alabama, and Louisiana.

43. In implementing 1st and 3rd lending, AACC frequently has used consumer’s loan(s) in the middle of the month to pay back the consumer’s loan(s) from the beginning of the month, *i.e.* rolled over the loan(s). AACC has often loaned monthly consumers more in the middle of the month than in the beginning of the month.

44. By borrowing from AACC through 1st and 3rd lending rather than taking out a 30-day loan from a competitor, consumers pay more in fees for the same or less net cash received during the month.

45. On multiple occasions, AACC distributed a training document to employees describing 1st and 3rd lending, which was also posted on the company’s intranet. AACC used the document to instruct employees on how to implement 1st and 3rd lending, including during breakout sessions at company-wide

meetings. The document uses the following example of how to implement 1st and 3rd lending for a consumer in Mississippi:

- a. At the beginning of the month, when Mary comes to the store to pay off her loans, employees “[i]mmediately start selling her on getting part of her money back today.”
- b. Mary takes out a two-week loan for \$200. This loan has a \$40 fee.
- c. In the middle of the month, Mary brings in \$40. She then takes out two two-week loans of \$200 each. Mary combines the \$40 that she brought in with \$200 from one of the loans to pay back the loan and fee from the beginning of the month. In other words, the loan from the beginning of the month is rolled over. Mary leaves with the \$200 from the second loan.
- d. At the beginning of the next month, after receiving her monthly income, Mary pays the \$480 due (\$400 in principal plus an \$80 fee from the two loans from the middle of the month).

46. In the example in Paragraph 45, the consumer pays \$120 in fees during the course of the month in return for leaving the store with a total of \$400: \$200 in the beginning of the month and \$200 in the middle of the month. As shown in the chart below, AACC charged the consumer significantly more fees through 1st and 3rd lending than the consumer would have paid for a 30-day loan of \$400 from a competitor.

	\$400 to consumer from one 30-day loan	\$400 to consumer from three two-week loans
Fee in beginning of month	\$87.80 (for \$400 loan)	\$40 (for \$200 loan)
Fees in middle of month	None	\$40 (for \$200 loan to pay back first loan) \$40 (for an additional \$200 loan)
Total fees	\$87.80	\$120
Total cash received	\$400 (all in beginning)	\$400 (\$200 in beginning, \$200 in middle)

47. The exact implementation of 1st and 3rd lending has varied. For example, some monthly consumers have borrowed \$100 or \$300 in the beginning of the month, rather than \$200. In addition, monthly consumers sometimes have brought in nothing at all or the entire amount due mid-month. In all these circumstances, monthly consumers still pay more in fees for the same or less net cash received than if they had borrowed a 30-day loan from a competitor. An AACC supervisor highlighted how costly AACC 1st and 3rd lending is compared to competitor 30-day loans:

The most common implementation of [1st and 3rd lending] that I saw was that the customer would borrow \$300 at the beginning of the month and then return in the middle of the month without any

money. The customer would borrow an additional \$400 in the middle of the month and use \$360 to pay back the loan (\$300) plus the fee (\$60) from the beginning of the month. The customer would then leave the store with the remaining cash, which was \$40. The customer would owe \$480 at the beginning of the next month. In this situation, the customer paid \$140 in fees during the month. If the customer had taken out a 30-day loan for \$400 from a competitor instead, the customer would have paid only \$87.80 in fees.

AACC made deceptive statements to consumers in implementing 1st and 3rd lending

48. AACC has represented to consumers that borrowing pursuant to 1st and 3rd lending was more financially beneficial than, or at least financially equivalent to, taking out a 30-day loan from one of AACC's competitors. For example, AACC has represented to consumers that "the fees are higher for competitors that offer [loans for] 30 days" and that "[c]ompetitors that offer 30 day advances are not able to help their customers twice a month like All American[.]" AACC has told consumers that AACC was "helping" or "looking out for" them by providing them with money in the middle of the month.

49. In fact, 1st and 3rd lending is not more financially beneficial for monthly consumers compared to a 30-day loan. In all variations of 1st and 3rd lending, monthly consumers pay AACC more in fees for the same or less net cash received over the course of the

month than they would have paid for a 30-day loan from a competitor.

50. Consumers do not understand that they paid higher fees for the same or less net cash received by borrowing twice a month from AACC compared with obtaining a 30-day loan from a competitor.

51. AACC also has misrepresented the amount and number of fees associated with 1st and 3rd lending. For example, AACC sometimes has told monthly consumers that, after receiving a loan, consumers could return in the middle of the month and receive more cash, but does not explain that consumers would also pay a fee at that time. As a result, some consumers have not understood that AACC charges them an extra fee when they obtain additional money in the middle of the month.

52. AACC has made these deceptive statements to encourage consumers to participate in 1st and 3rd lending, which AACC has described internally as a “huge income booster” due to the extra fees it has enabled AACC to extract from monthly consumers. AACC has instructed employees to sell 1st and 3rd lending aggressively to consumers. In one email to all the stores, a supervisor included the following cartoon depicting an AACC employee pressuring a consumer to participate in 1st and 3rd lending:



53. Mr. Gray has promoted the use of deceptive statements at AACC. For example, he circulated a 1st and 3rd training document that included the deceptive statements described in Paragraph 48, and instructed employees to implement it. Mr. Gray also has instructed employees to be aggressive in urging consumers to participate in 1st and 3rd lending.

AACC RETAINED OVERPAYMENTS MADE BY CONSUMERS

54. Consumers sometimes make overpayments to AACC when paying back a loan. Some of the overpayments are small, but in some instances, consumers overpay by hundreds of dollars. Overpayments occur when, for example, a consumer pays back a loan in cash at a store, and AACC has already requested an electronic fund transfer (EFT) from the consumer's bank. If AACC successfully obtains a payment through the EFT, then the consumer pays back the

loan twice instead of once: first in cash, and then through the EFT.

55. From at least 2011 until at least 2014, AACC did not take affirmative steps to notify consumers when they made an overpayment or to refund overpayments to consumers, even though AACC could do so by sending an EFT to the consumer's bank account or a paper check to the consumer's home.

56. In addition, on a regular basis, AACC deleted the credit balances from consumers' accounts, making it more difficult for store employees to identify and provide refunds to consumers.

57. Mr. Gray knew of and directed AACC's practice of retaining overpayments by consumers and deleting credit balances from their accounts.

58. As a result of its refund policies and practices, AACC failed to provide refunds to hundreds of consumers.

ROLE OF INDIVIDUAL DEFENDANT
MICHAEL E. GRAY

59. Mr. Gray was aware of the unlawful policies, procedures, and practices described herein, promoted them, directed others to implement them, and personally created some of them.

60. Mr. Gray has ultimate authority over AACC's products, policies, procedures, and strategic decisions, including with respect to lending, check cashing, and providing refunds to consumers.

61. Mr. Gray has received personal financial gain from the illegal practices discussed herein. Mr. Gray withdraws money from AACC at will with no formal process or predetermined regularity.

**VIOLATIONS OF THE CONSUMER FINAN-
CIAL PROTECTION ACT**

62. Sections 1031 and 1036 of the CFPA prohibit a “covered person” from committing or engaging in any “unfair, deceptive or abusive act or practice” in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). Defendants are “covered person[s]” within the meaning of the CFPA. 12 U.S.C. § 5481(6), (25).

63. An act or practice is unfair if the act or practice causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers; and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).

64. An act or practice is deceptive if there is a material representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances.

65. An act or practice is abusive if it (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service, or (2) takes unreasonable advantage of (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer. 12 U.S.C. § 5531(d).

**DEFENDANTS' UNLAWFUL CHECK CASHING
PRACTICES**

Abusive Acts and Practices in Check Cashing

Count I

66. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

67. In numerous instances, in connection with offering and providing check cashing to consumers, Defendants have materially interfered with the ability of consumers to understand a term or condition of their check cashing services by having a policy to never tell the consumer the fee — even when the consumer asks, blocking the fee amount listed on the receipt, minimizing the amount of time the consumer has to see the receipt, interfering with the consumer's ability to see the sign listing fee percentages, making false or misleading statements to consumers about the availability of information about the fee, and making false or misleading statements to consumers about their ability to cancel or reverse the transaction or to cash their check elsewhere.

68. Defendants' acts and practices in connection with check cashing constitute abusive acts or practices in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and (d)(i), 5536(a)(1)(B).

Count II

69. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

70. In numerous instances, in connection with offering and providing check cashing to consumers, Defendants have taken unreasonable advantage of the

inability of consumers to protect their interests in selecting or using Defendants' check cashing services by pressuring or coercing consumers to cash their checks at AACC, including by retaining custody of the check to prevent consumers from leaving, processing the check without the consumer's consent, applying an AACC stamp to the back of the check during processing to impair the consumer's ability to cash the check elsewhere, and making misrepresentations about the consumer's ability to cancel or reverse the transaction or cash the check elsewhere.

71. Defendants' acts and practices in connection with check cashing constitute abusive acts or practices in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and (d)(2)(B), 5536(a)(1)(B).

Deceptive Acts and Practices in Check Cashing

Count III

72. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

73. In numerous instances, in connection with offering and providing check cashing to consumers, Defendants have represented to consumers that:

- a. Information about the fee for cashing a check is not available; and
- b. It is difficult or time-consuming to cancel or reverse a check cashing transaction, and steps taken by AACC during processing prevent consumers from cashing their checks elsewhere.

74. In truth and in fact, in numerous instances:

- a. Information about the fee for cashing a check is available. This information includes: the fee structure (e.g. 3% or 5%), the fee percentage that applies to a transaction (e.g. 3%), or the dollar amount of the fee; and
- b. It is not difficult or time-consuming to cancel or reverse a check cashing transaction and, in some cases, the steps taken by AACCC to process the check do not prevent consumers from cashing their checks elsewhere.

75. Defendants' representations described in Paragraph 73 are false and misleading, and constitute deceptive acts or practices in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C §§ 5531(a), 5536(a)(1)(B).

Unfair Acts and Practices in Check Cashing

Count IV

76. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

77. In numerous instances, Defendants' check cashing acts and practices described herein have caused or were likely to cause substantial injury to consumers, including but not limited to the payment of fees in amounts that were not authorized by consumers and for which consumers did not bargain.

78. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or to competition.

79. Defendants' acts and practices as described in Paragraph 77 constitute unfair acts or practices in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C §§ 5531(a) and (c), 5536(a)(1)(B).

**DEFENDANTS' UNLAWFUL 1ST AND 3RD
LENDING PRACTICES**

**Deceptive Acts and Practices in 1st and 3rd
Lending**

Count V

80. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

81. In numerous instances, in connection with offering and providing payday loans to monthly consumers, Defendants have represented to consumers directly or indirectly, expressly or by implication, that borrowing pursuant to "1st and 3rd lending" was more financially beneficial than or equivalent to obtaining a 30-day loan from a competitor.

82. In truth and in fact, "1st and 3rd lending" is not more financially beneficial than or equivalent to obtaining a 30-day loan from a competitor because consumers borrowing pursuant to "1st and 3rd lending" pay higher fees for the same amount of or less net cash received over the course of the month compared to 30-day loans offered by competitors.

83. Defendants' representations described in Paragraph 81 are false and misleading, and constitute deceptive acts or practices in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C §§ 5531(a), 5536(a)(1)(B).

**DEFENDANTS' UNLAWFUL PRACTICES
RELATING TO OVERPAYMENTS**

**Unfair Acts and Practices in Connection with
Overpayments by Consumers**

Count VI

84. The Bureau incorporates the allegations in Paragraphs 1 through 65 by reference.

85. In numerous instances, Defendants have not notified or refunded consumers when consumers have made an overpayment.

86. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or to competition.

87. Defendants' acts and practices as described in Paragraph 85 constitute unfair acts or practices in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C §§ 5531(a) and (c), 5536(a)(1)(B).

CONSUMER INJURY

88. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the CFPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

89. The CFPA empowers this Court to grant any appropriate legal or equitable relief including, without limitation, a permanent or temporary injunction, rescission or reformation of contracts, the refund of moneys paid, restitution, disgorgement or compensation for unjust enrichment, payments of damages or other monetary relief, limits on the activities or functions of Defendants, and civil money penalties. 12 U.S.C. § 5565(a), (c). In addition, the Bureau may recover its costs in connection with the action, if it is the prevailing party. 12 U.S.C. § 5565(b).

PRAYER FOR RELIEF

90. Wherefore, the Bureau requests that the Court:

- a. Award Plaintiff such injunctive and ancillary relief as may be necessary to enjoin Defendants from harming consumers, including but not limited to limits on activities or functions of Defendants;
- b. Permanently enjoin Defendants from committing future violations of the CFPA;
- c. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the CFPA, including, but not limited to, rescission or reformation of contracts, the refund of moneys paid, restitution, disgorgement or compensation for unjust enrichment, and payment of damages or other monetary relief;
- d. Award Plaintiff civil money penalties; and

70a

- e. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: May 11, 2016

71a

Respectfully submitted,

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APPENDIX H

U.S. Const. art. II, § 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

12 U.S.C. § 5491. Establishment of the Bureau of Consumer Financial Protection**(a) Bureau established**

There is established in the Federal Reserve System, an independent bureau to be known as the “Bureau of Consumer Financial Protection”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau shall be considered an Executive agency, as defined in section 105 of title 5. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.

(b) Director and Deputy Director

(1) In general

There is established the position of the Director, who shall serve as the head of the Bureau.

(2) Appointment

Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) Qualification

The President shall nominate the Director from among individuals who are citizens of the United States.

(4) Compensation

The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5.

(5) Deputy Director

There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) Term

(1) In general

The Director shall serve for a term of 5 years.

(2) Expiration of term

An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) Removal for cause

The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) Service restriction

No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) Offices

The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

12 U.S.C. § 5492. Executive and administrative powers

(a) Powers of the Bureau

The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and See References in Text note below.

(11) performing such other functions as may be authorized or required by law.

(b) Delegation of authority

The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) Autonomy of the Bureau

(1) Coordination with the Board of Governors

Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons

subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) Autonomy

Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act [§12 U.S.C. 221 et seq.], the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) Rules and orders

No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) Recommendations and testimony

No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

(5) Clarification of autonomy of the Bureau in legal proceedings

The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.

12 U.S.C. § 5302. Severability

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.