UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. J.G. WENTWORTH, LLC, Respondent.	Case No. _____

MEMORANDUM IN SUPPORT OF
PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND

The Consumer Financial Protection Bureau (Bureau) petitions this Court for an order requiring J.G. Wentworth, LLC (JGW) to comply with the civil investigative demand (CID) issued to it on September 11, 2015, and modified on March 9, 2016.[1] Specifically, the Bureau seeks to enforce the CID as modified. CIDs are a type of investigative, administrative subpoena and proceedings to enforce them are initiated by a petition and an order to show cause.[2] Because the Bureau has authority to issue the CID and the Court has authority to enforce it, the Bureau respectfully requests that this Court direct JGW to show cause as to why it cannot comply with the CID and, thereafter, enter an order enforcing it.

[1] Ex. A, Decl. of Carmen L. Christopher dated May 20, 2016 (Christopher Decl.) at ¶ 4; Ex. B, CID; Ex. G, CID Modification Letter to JGW dated March 9, 2016 (Modification Letter).
[2] *See FTC v. Manufacturers Hanover Consumer Servs., Inc*., 543 F. Supp. 1071, 1072-73 (E.D.P.A. 1982).

JURISDICTION AND VENUE

The Consumer Financial Protection Act of 2010 (CFPA) gives the Bureau authority to issue CIDs and enforce them in district court.[3] When an entity fails to comply with a CID, the CFPA and its enabling regulations authorize the Bureau to petition the district court in "any judicial district in which [that entity] resides, is found, or transacts business" for an order to enforce the CID.[4] Venue in this Court is proper because JGW is located in and transacts business in this District.

STATEMENT OF FACTS

On September 11, 2015, the Bureau issued a CID to JGW, a company that provides lump-sum payments to consumers in exchange for repayment over time from the consumers' structured-settlement income streams. The CID was issued as part of a nonpublic investigation concerning possible violations of the CFPA or other Federal consumer financial laws.[5] The CID required JGW to respond to fourteen document requests, seven interrogatories, and two written-report requests for transactional data and customer information.[6] On September 21 and 29, 2015, counsel for the Bureau and JGW discussed the CID and the company's anticipated steps to comply with it.[7] On October 1, 2015, however, JGW submitted a petition to set aside the Bureau's CID (Petition).[8]

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[3] 12 U.S.C. §§ 5562(c)(1), (e).
[4] 12 C.F.R. § 1080.10(b)(1); 12 U.S.C. § 5562(e)(1).
[5] Ex. B, CID at p. 1 (Notification of Purpose).
[6] *Id.*
[7] Ex A. Christopher Decl. at ¶ 5; Ex. C, JGW Letter to the Bureau dated October 1, 2015, at p. 1.
[8] Ex. D JGW Petition to Set Aside CID (Redacted Version).

The Bureau's Director denied the Petition on February 11, 2016, and directed JGW to produce "all responsive documents, items, and information within its possession, custody, or control that are covered by the CID" by March 3, 2016.[9] The Director also invited JGW to engage in further discussions with enforcement staff about modifying the CID.[10] Thereafter, counsels for both parties engaged in discussions about the scope and timeframe for the company's compliance with the CID.[11] On March 3, 2016, JGW sent the Bureau a written modification request to limit the documents, information, and data sought by the Bureau and to extend production deadlines.[12] The Bureau granted JGW's requests in a modification letter dated March 9, 2016.[13] The modified CID required JGW to produce certain materials by March 11, 2016, and to provide written reports and specified information about responsive electronic mail by May 2, 2016.[14] JGW made three limited productions on March 3, 8, and 11 to comply with the March 11, 2016, deadline.[15]

On April 26, 2016, counsels for the Bureau and JGW discussed further modifying the CID to narrow the transactional data and customer information sought through written reports and to comply with the May 2, 2016, deadline.[16] In particular, Bureau counsel offered to limit the data production to twenty-four fields of data readily available in a company

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[9] Ex. E, Bureau Director's Decision and Order on Petition by JGW to Modify or Set Aside CID at p. 4.
[10] *Id*.
[11] Christopher Decl. at ¶ 8.
[12] Ex. F, JGW Modification Request Letter dated March 3, 2016, at pp. 1-4.
[13] Ex. G, Modification Letter—this letter sets forth modifications to the CID and it is this modified CID that the Bureau now seeks to enforce.
[14] *Id.*
[15] Ex. A, Christopher Decl. at ¶ 9.
[16] *Id*. at 10.

database.[17] During those discussions, JGW informed the Bureau that it no longer intended to produce any additional documents or information because it contends that the Bureau does not have jurisdiction to issue the CID.[18] According to counsel, JGW believes that it does not provide a consumer financial product or service, that it is not subject to the CFPA, and that it need not comply with the CID.[19] After a subsequent discussion with Bureau staff, JGW confirmed in a letter dated May 6, 2016, that it would not produce the materials sought by the Bureau in the modified CID as it had agreed to do. [20] As of June 6, 2016, JGW had not complied with the modified CID.

ARGUMENT

Long-standing doctrine dictates that administrative agencies must be given wide latitude in asserting their power to investigate by subpoena.[21] The standard for enforcing an investigative, administrative subpoena, including a CID,[22] is well settled. To enforce an administrative subpoena, the district court must only determine that (1) the inquiry is within the authority of the agency, (2) the demand is not too indefinite, and (3) the information sought is reasonably relevant.[23] All three criteria are readily met here.

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[17] *Id*.
[18] Ex. A, Christopher Decl. at ¶ 10.
[19] *See* Ex. H, JGW Letter to the Bureau dated May 6, 2016, at p. 2.
[20] *Id.*
[21] *FTC v. KenRoberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001).
[22] *Manufacturers Hanover Consumer Servs.*, 543 F. Supp. at 1073 ("A CID is analogous to an investigative subpoena); *Morgan Drexen, Inc. v. CFPB*, 979 F. Supp. 2d. 104, 107 (D.D.C. 2013) (stating that a civil investigative demand is a form of administrative subpoena).
[23] *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *United States v. Oncology Servs. Corp*., 60 F.3d 1015, 1020 (3rd Cir. 1995).

First, the CID falls squarely within the Bureau's authority. The CFPA broadly authorizes the Bureau to investigate violations of any Federal consumer financial laws and to issue a CID to "any person" whom the Bureau "has reason to believe . . . may be in possession, custody, or control of . . . any information, relevant to a violation."[24] An agency such as the Bureau "has a power of inquisition [and it] can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not."[25] Moreover, "as a general proposition, agencies should remain free to determine, in the first instance, the scope of their own jurisdiction when issuing investigative subpoenas."[26] By way of the CID, the Bureau seeks to determine whether persons involved in advancing funds in exchange for the rights to future payments from structured settlements or annuities have been engaged in acts or practices that violate the CFPA—the statute the Bureau is charged with enforcing—or any other Federal consumer financial law.[27]

Second, the CID is not too indefinite. Under the CFPA, a CID must describe responsive documents and information with such "definiteness and certainty" so as to allow the recipient to identify and produce the requested materials.[28] The CID plainly identified the desired materials, gave a date for production, and provided a Notification of Purpose apprising JGW of the intent of the Bureau's investigation.[29] The Bureau even modified the

[24] 12 U.S.C. §§ 5481(14), 5561(5), 5562(c).
[25] *See Morton Salt Co.*, 338 U.S. at 642-43; *FDIC v. Wentz*, 55 F.3d 905, 908 (3rd Cir. 1995).
[26] *KenRoberts Co.*, 276 F.3d at 586.
[27] Ex. 1, CID (Notification of Purpose).
[28] 12 U.S.C. § 5562(c)(3), (4), and (5).
[29] Ex. A, CID at p. 1-7.

CID to limit the materials requested and extend the production deadline.[30] JGW has never claimed that it cannot identify or produce the requested materials. It simply refuses to produce even written reports consisting of readily available transaction data and customer information that can be easily produced from a company database.

Third, the information sought is reasonably relevant. Courts traditionally give wide latitude in determining relevance in the context of an administrative subpoena, which must be enforced if the documents sought could be pertinent to a legitimate agency inquiry.[31] An agency request is relevant so long as it is "not plainly incompetent or irrelevant to any lawful purpose" of the agency.[32] Here, the Bureau seeks materials as part of its investigation into whether the CFPA or other Federal consumer financial laws have been violated in connection with the acquisition of structured settlement or annuity payments from consumers. The materials sought by the Bureau, including transaction data and customer information, are essential to that inquiry.

CONCLUSION

The Court should grant the Bureau's petition and order JGW to show cause as to why it cannot comply with the CID. Further, after giving JGW an opportunity to be heard, the Court should order JGW to comply with the CID within 10 days of the Court's order, or at such later date as the Court or the Bureau may establish.

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[30] Ex. G, Modification Letter.
[31] *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507-09 (1943); *see also Morton Salt Co.*, 338 U.S. at 652; *United States v. O'Neill*, 619 F.2d 222, 228 (3d Cir. 1980).
[32] *Endicott Johnson Corp.*, 317 U.S. at 509; *see also Oncology Servs. Corp.*, 60 F.3d at 1020.

Dated: June 6, 2016

Respectfully submitted,

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