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CHARLES J. OGLETREE, JR.
DIANE L. HOUK

December 13, 2017

Via ECF

Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Lower East Side People's Federal Credit Union v. Trump, et al.*
17 Civ. 9536

Dear Judge Gardephe:

We represent plaintiff in the above-captioned matter. We respectfully request that the Court adopt plaintiff's proposed briefing schedule, for a number of reasons.

First, this is a matter of some urgency. Every day, an *ultra vires* Acting Director is radically remaking an agency that he has no legal authority to lead, harming the plaintiff Credit Union (which CFPB regulates) and its thousands of members. Contrary to Mr. Takemoto's letter, Plaintiff moved with speed in this case. After securing counsel, plaintiff filed the Complaint on December 6, just a few business days after Mr. Mulvaney's purported appointment. Within only five days of filing, we managed to prepare and file a substantial preliminary injunction by order to show cause. This reflected the urgency of this case, and the necessity to restore law to the CFPB and remove this *ultra vires* Acting Director as soon as possible.

Contrary to defendants' extremely misleading letter, we made every effort to reach out and confer with defense counsel. On December 7, we served the Complaint on the SDNY U.S. Attorney's Office, the Attorney General in Washington D.C., and both defendants at their work addresses. Dkt. # 9. On December 8, we additionally emailed DOJ counsel in Washington, D.C. in the *English* matter, served the complaint on them, and asked whether or not they would be appearing in this action. Ex. 1. DC counsel, including Mr. Takemoto, ignored our

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inquiry on December 8, 9, 10, and 11. On December 11, we delivered the Order to Show Cause and supporting papers to the Court, requesting an expedited briefing schedule. We complied with the clerk's office's rules prohibiting us from electronically filing that submission on December 11. On December 12, the Court requested that we file a proposed briefing schedule on ECF, which we did. *See* Dkt. #10. Also on December 12, I called DC counsel (Brett Shumate, lead counsel in the *English* case), and left a voicemail, again asking whether or not DC counsel planned to appear in the case. Again hearing no response, on December 12 at 12:55 p.m. I emailed DC counsel, served them all of the preliminary injunction papers, and wrote: "We do not yet know whether you or your colleagues in the SDNY will be handling this case. Please see the attached letter and preliminary injunction papers filed on ECF. I think it would be a good idea if someone at DOJ appeared in this case." Ex. 1.

Finally, late yesterday afternoon, one of the DC counsel called, said DC counsel (not SDNY counsel) would appear in this case, and proposed the December 22/29 briefing schedule, with which we did not agree. However, counsel made no mention of any motion to dismiss, or of a consolidated briefing schedule, or of briefing that continues into February 2018. They failed to confer on all of these issues and proposals.

Defendants complain that we did not confer with defense counsel; however, we cannot confer with lawyers who neither respond to email (or voice mail) nor let us know whether or not they will even be appearing in the case.

In any event, defendants' December 22/29 proposal is unnecessary and unreasonable. Defendants will already be briefing substantially the same issues on December 18 in *English*, and their hundreds of able lawyers are more than capable of filing two briefs in a single day. In addition, as I mentioned to defense counsel on the phone, to the extent it truly is a hardship to file two briefs in one day, we would agree to filing of the opposition on December 19 at 9am, and our reply on December 20 at 5pm. This would still allow for oral argument on December 20 or 21, to the extent the Court desires oral argument and is available on one of those dates.

The defense proposal, however, moves plaintiff's reply into Christmas week (when plaintiff's counsel had planned to be out of town) and punts the entire motion into January 2018, all while Mr. Mulvaney continues his mission to destroy an agency he has no legal right to direct.

For these reasons, and those set forth in the preliminary injunction papers, plaintiff respectfully requests a briefing schedule of December 18 (opposition)/December 19 (reply), or if necessary to accommodate defendants, December 19 at 9am (opposition)/December 20 at 5pm (reply).

Respectfully Submitted,

/s

Ilann M. Maazel

Exhibit 1

Ilann M. Maazel

From: Ilann M. Maazel
Sent: Tuesday, December 12, 2017 12:55 PM
To: matthew.j.berns@usdoj.gov; brett.a.shumate@usdoj.gov; benjamin.takemoto@usdoj.gov
Cc: Debbie Greenberger; Ilann M. Maazel
Subject: RE: Lower East Side Credit Union v. Trump
Attachments: Credit Union. IMM Letter Motion to Expedite Proposed Briefing Schedule,pdf; LES Credit Union. Ex. A to IMM Letter - Order to Show Cause for PI Mtn,pdf; LES Credit Union. Ex. B to IMM Letter - IMM Decl. w- Exs. i-s-o OSC forpdf; LES Credit Union. Ex. C to IMM Letter - Levy Decl. i-s-o OSC for PI Mtn,....pdf; LES Credit Union. Ex. D to IMM Letter - MOL i-s-o Motion for Preliminary....pdf

We do not yet know whether you or your colleagues in the SDNY will be handling this case. Please see the attached letter and preliminary injunction papers filed on ECF. I think it would be a good idea if someone at DOJ appeared in this case.

-Ilann Maazel

Ilann M. Maazel

Partner
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From: Debbie Greenberger
Sent: Friday, December 08, 2017 9:44 PM
To: matthew.j.berns@usdoj.gov; brett.a.shumate@usdoj.gov; benjamin.takemoto@usdoj.gov
Cc: Ilann M. Maazel
Subject: Lower East Side Credit Union v. Trump

Counsel:

We filed the above-captioned action in the SDNY earlier this week challenging Mr. Mulvaney's appointment and served it on your office (attached as a courtesy). Will you be appearing in our action?

Thank you and have a nice weekend,

Debbie Greenberger
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