

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA, LTD. *et al.*,

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU *et al.*,

Defendants.

Civil Action No. 1:18-cv-295

**PLAINTIFFS' UNOPPOSED MOTION
TO LIFT THE STAY OF LITIGATION**

Plaintiffs respectfully move the Court to lift the stay of litigation that is currently in place, to allow Plaintiffs to file a motion for preliminary injunction against the Payday Rule.

Plaintiffs filed this lawsuit seeking to set aside the Payday Rule before its substantive requirements go into effect on August 19, 2019 (the "compliance date"). The Bureau has announced that it intends to reconsider the Payday Rule through notice-and-comment rulemaking, but has noted that it does not expect that rulemaking to be complete before the compliance date. Moreover, it is impossible to know what the result of that rulemaking will be. To avoid the burdens of potentially unnecessary litigation, while protecting Plaintiffs' members from the burdens of the rule, the parties jointly moved for a stay of the Payday Rule's compliance date together with a stay of the litigation pending the forthcoming rulemaking. This Court granted the stay of litigation, but denied the stay of the Rule's compliance date. Plaintiffs then filed an unopposed motion for reconsideration of the denial of the stay of the compliance date, explaining that the parties had not intended to stay the litigation without staying the compliance date, and that without a stay of the compliance date, Plaintiffs' members would be

facing irreparable injury and thus would have “no tenable option other than to file a motion for preliminary injunction (and a lift of the litigation stay).” Dkt. 30 at 3. The Court denied the motion for reconsideration and left the litigation stay in place without delaying the Rule’s compliance date. *See* Dkt. 36

Because the Rule’s compliance date has not been stayed, Plaintiffs now have no choice but to pursue a preliminary injunction. Without injunctive relief, many of Plaintiffs’ members will suffer irreparable injuries as they continue the expensive process of preparing for compliance with the Rule’s requirements, to guard against the possibility of penalties in case the Rule is not repealed before its effective date. Other members will be forced out of business in the coming months. To avoid the burdens of a rule that they allege to be unlawful, Plaintiffs have a right to timely, pre-enforcement judicial review of their claims. *See MedImmune, Inc. v. Genentech, Inc.*, 549 US 118, 128–29 (2007) (“where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat”); *Abbott Labs. v. Gardner*, 387 U.S. 136, 153 (1967) (“access to the courts ... must be permitted” under the APA for pre-enforcement challenges to federal regulations); 5 U.S.C. § 702. Accordingly, this Court should lift the stay of litigation and allow Plaintiffs’ challenge to the Payday Rule to proceed.

Plaintiffs have conferred with Defendants regarding this motion. Defendants have stated that they do not oppose the motion provided that Plaintiffs agree that Defendants continue to be relieved of their obligation to file an answer in this action pending further order of the Court. Plaintiffs agree to this request.

Dated: September 14, 2018

Respectfully submitted,

/s/ Laura Jane Durfee

MICHAEL A. CARVIN
D.C. Bar No. 366784
Admitted *pro hac vice*
macarvin@jonesday.com
CHRISTIAN G. VERGONIS
D.C. Bar No. 483293
Admitted *pro hac vice*
cvergonis@jonesday.com

JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

LAURA JANE DURFEE
Texas Bar No. 24069653
ldurfee@jonesday.com
JONES DAY
2727 North Hardwood Street
Dallas, TX 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Laura Jane Durfee
Laura Jane Durfee