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July 13, 2020

Catherine O'Hagan Wolfe, Esq.  
Clerk of Court  
United States Court of Appeals  
for the Second Circuit  
40 Foley Square  
New York, NY 10007

*Re:* RD Legal's response to CFPB's July 10, 2020 FRAP 28(j) letter in *Consumer Financial Protection Bureau v. RD Legal Funding, LLC*, Nos. 18-2743(L), 18-3033(CON), 13-2860(XAP), 18-3156(XAP)

Dear Ms. Wolfe:

The CFPB's FRAP 28(j) letter is its latest attempt to ratify this unconstitutional proceeding. (ECF 237-1.)

In rejecting the CFPB's *first* attempted ratification, the District Court recognized that ratification is an issue of agency law and correctly held that the attempted ratification failed to "address accurately the constitutional issue raised in this case, which concerns the structure and authority of the CFPB itself, not the authority of an agent to make decisions on the CFPB's behalf." (SA105-06) (rejecting same inapposite Appointments Clause cases cited by CFPB).

Because the CFPB did not appeal the District Court's ratification ruling, it has *waived* that issue and cannot revive it through *seriatim* Rule 28(j) letters.

Even if agency principles applied and the issue were not waived, however, for a ratification to be effective "it is essential that the party ratifying [i.e., the principal] should be able" (1) "to do the act ratified at the time the act was done," and (2) "also at the time the ratification was made." *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 98 (1994) (citation and emphasis omitted). That is not the case here.

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In *Seila Law*, the Supreme Court conclusively decided the CFPB’s leadership structure was unconstitutional. Slip Op. at 30. Because an unconstitutionally structured agency “lacks authority to bring [an] enforcement action,” *FEC v. NRA Political Victory Fund*, 6 F.3d 821, 822 (D.C. Cir. 1993), the CFPB (i.e., *the principal*) could not “do the act ratified at the time the act was done.” *NRA Political Victory Fund*, 513 U.S. at 98. Moreover, the Director (i.e., *the agent*) cannot now ratify either the enforcement action—which would be time-barred because the case was filed more than three years ago, in February 2017, 12 U.S.C. § 5564(g)(1)—or this appeal because the time to appeal has long lapsed, *NRA Political Victory Fund*, 513 U.S. at 98 (ratification of appeal ineffective after time to appeal lapsed).

Finally, this Court should reject the renewed mischaracterization of the cross-appeal as “interlocutory.” RD Legal cross-appealed from a final judgment (ECF 184 at 11-13), and respectfully requests the Court schedule oral argument.

Sincerely,

A handwritten signature in cursive script that reads "Michael D. Roth".

Michael D. Roth  
Partner