



1700 G Street NW, Washington, D.C. 20552

VIA CM/ECF

July 10, 2020

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

Re: *Consumer Financial Protection Bureau v. RD Legal Funding, LLC*, No. 18-2743(L)

Dear Ms. Wolfe:

The Consumer Financial Protection Bureau writes to notify the Court that the Bureau's Director ratified the enforcement action at issue here on July 8, 2020. The Director's declaration of ratification is attached.

As the Bureau previously informed the Court, on June 29, 2020, the Supreme Court issued its decision in *Seila Law LLC v. CFPB*, --- S. Ct. ----, 2020 WL 3492641. The Court agreed with the Bureau that the Consumer Financial Protection Act provision purporting to limit the President's ability to remove the Bureau's Director (1) unconstitutionally impedes the President's executive authority under Article II of the Constitution, and (2) is severable from the remainder of

the Act. *Id.* at *4-5. As a result, the Bureau's Director is now removable by the President at will.

Following the decision in *Seila*, the Director ratified this enforcement action. In light of that ratification by an official fully accountable to the President, there is no question that the Bureau can proceed with this enforcement action.¹ *See CFPB v. Gordon*, 819 F.3d 1179, 1190-91 (9th Cir. 2016) (holding that ratification by properly appointed official "cures any Article II deficiencies" with action's initial approval by unconstitutionally appointed official); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 708-09 (D.C. Cir. 1996) (concluding that it was "neither necessary nor appropriate" to dismiss enforcement action filed by unconstitutionally structured agency where agency ratified action after becoming properly structured). Indeed, dismissing a lawsuit that an official fully accountable to the President has approved would undermine, not respect, the executive authority that Article II protects.

The Court should accordingly reverse the judgment of dismissal and remand for this enforcement action to proceed. And it should do so without addressing Defendants' improper cross-appeal challenging the interlocutory conclusion that the Bureau's complaint states valid claims. *See* ECF No. 177 at 31-33.

Respectfully submitted,

/s/ Christopher Deal

Christopher Deal

Senior Litigation Counsel

¹ Contrary to Defendants' contention (ECF No. 235 at 1-2), the Bureau's position on the 2017 ratification by Acting Director Mulvaney could not have abandoned reliance on a future ratification issued after the Supreme Court resolved the constitutional defect with the Bureau's statute. *See also* ECF No. 114 at 53-54.

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552
(202) 435-9582 (telephone)
(202) 435-7024 (facsimile)
christopher.deal@cfpb.gov

**DECLARATION OF KATHLEEN L. KRANINGER,
DIRECTOR OF PLAINTIFF-APPELLANT-CROSS-
APPELLEE CONSUMER FINANCIAL
PROTECTION BUREAU, REGARDING
RATIFICATION**

I, Kathleen L. Kraninger, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the Director of the Consumer Financial Protection Bureau. I have served in that capacity since December 11, 2018. I was nominated to this position by the President on June 20, 2018 and confirmed by the Senate on December 6, 2018.

2. In February 2017, the Bureau filed a lawsuit against Defendants RD Legal Funding, LLC, RD Legal Funding Partners, LP, RD Legal Finance, LLC, and Roni Dersovitz. *See CFPB v. RD Legal Funding, LLC*, No. 1:17-cv-00890 (S.D.N.Y.). After the district court dismissed the Bureau's lawsuit, the Bureau filed a notice of appeal in the case in September 2018.

3. On June 29, 2020, the Supreme Court issued a decision in *Seila Law LLC v. CFPB*, No. 19-7, 2020 WL 3492641 (U.S. June 29, 2020). That decision held that a provision of the Bureau's organic statute that permitted the President to remove the Bureau's Director only for "inefficiency, neglect of duty, or malfeasance in office" was unconstitutional. The Court accordingly severed that provision from the statute. In light of this decision, I understand that the President may now remove me with or without cause.

4. In my capacity as the Bureau's Director, I have considered the basis for the Bureau's decisions to file the lawsuit against Defendants and to appeal the district court's dismissal of that action.

5. On behalf of the Bureau, I hereby ratify the decisions to file the lawsuit against Defendants and to appeal the district court's dismissal of that action.

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

Executed on 7/08, 2020.

A handwritten signature in black ink, appearing to read "Kathleen L. Kraninger", written over a horizontal line.

Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau