

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

COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA, LTD., and
CONSUMER SERVICE ALLIANCE OF
TEXAS,

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU and KATHLEEN KRANINGER,
in her official capacity as Director, Consumer
Financial Protection Bureau,

Defendants.

Civil Action No. 1:18-cv-295

**JOINT STATUS REPORT AND JOINT MOTION TO LIFT STAY OF LITIGATION
AND TO ENLARGE THE TIME AND PAGE LIMITS ON ANTICIPATED UPCOMING
BRIEFING**

Plaintiffs Community Financial Services Association of America, Ltd., and Consumer Service Alliance of Texas, together with Defendants the Consumer Financial Protection Bureau and Kathleen Kraninger, in her official capacity as Director of the Bureau, (collectively, the “Parties”) submit this Joint Status Report to inform the Court of recent developments relevant to this litigation. In light of these developments, the Parties also jointly move to lift the stay of this action entered on June 12, 2018 (ECF No. 29).

Plaintiffs filed this action to challenge the Bureau’s “Payday, Vehicle Title, and Certain High-Cost Installment Loans” rule, issued on November 17, 2017 (“2017 Payday Rule” or “2017 Rule”), 82 Fed. Reg. 54472 (Nov. 17, 2017). That Rule contained two primary components— (1) underwriting provisions requiring lenders to assess borrowers’ ability to repay before making

covered loans and (2) payments provisions governing lenders' withdrawing payments for covered loans from consumers' bank accounts. Among other claims, Plaintiffs contend that the Rule must be set aside because the Bureau was unconstitutionally structured when it promulgated the Rule because its single Director was removable by the President only for cause. Compl. ¶¶ 68-76 (ECF No. 1).

In June 2018, the Court stayed the action pending further order of the Court in light of the Bureau's plans to engage in a rulemaking to reconsider aspects of the 2017 Rule. ECF No. 29. The Court also later stayed the compliance date for the entire 2017 Rule, which had originally been set as August 19, 2019, *see* 82 Fed. Reg. at 54472. ECF No. 53.

On June 29, 2020, the United States Supreme Court decided *Seila Law LLC v. Consumer Financial Protection Bureau*, holding that that Bureau's leadership by a single independent Director violated the separation of powers and invalidating the statutory restriction on the President's power to remove the Director. 140 S. Ct. 2183, 2207, 2209-11 (2020). In response to that decision, on July 7, 2020, the Bureau issued a notice announcing that "[t]he Bureau, through its Director, hereby affirms and ratifies the payment provisions of the 2017 Final Rule." Bureau of Consumer Financial Protection, Payday, Vehicle Title, and Certain High-Cost Installment Loans; Ratification of Payment Provisions, *available at* https://files.consumerfinance.gov/f/documents/cfpb_ratification_payment-provisions_2020-07.pdf (published at 85 Fed. Reg. 41,905 (July 13, 2020)). Defendants take the position that this ratification cures any constitutional defect with the 2017 Payday Rule. Plaintiffs take the position that this ratification is legally insufficient to cure the constitutional defects in the 2017 Payday Rule.

On the same day, the Bureau issued a final rule revoking the underwriting provisions of the 2017 Payday Rule. Bureau of Consumer Financial Protection, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Final Rule, *available at* https://files.consumerfinance.gov/f/documents/cfpb_payday_final-rule-2020-revocation.pdf (published at 85 Fed. Reg. 44,382 (July 22, 2020)). The 2020 Rule leaves the payments provisions of the 2017 Payday Rule in place. The Bureau has no current plans to initiate any rulemaking to revise those provisions.

Given the completion of this rulemaking process, and the Supreme Court's resolution of *Seila Law*, the Parties agree that there is no longer any basis for this action to remain stayed. The Parties accordingly jointly move for the stay of litigation to be lifted.

Once the stay of the litigation is lifted, Defendants anticipate promptly filing a motion to lift the stay of the compliance date for the payments provisions of the 2017 Rule, on the ground that staying the compliance date is no longer warranted in light of the Supreme Court's decision in *Seila Law* and the Bureau Director's subsequent ratification of the payments provisions. Plaintiffs intend to oppose that motion on the ground, among others, that a continued stay is necessary to prevent irreparable injury pending conclusion of judicial review, *see* 5 U.S.C. § 705. Plaintiffs believe that good cause exists for an extension of the page and time limits for non-dispositive motions set forth in the Local Rule CV-10 given the complexity of the issues involved, and the need to explain the relevant legal background, cogently discuss the merits, and address Plaintiffs' claims of irreparable harm. Defendants do not object to reasonable extensions. The parties therefore respectfully request that the Court extend the briefing deadlines so that Plaintiffs' opposition to Defendants' motion to lift the stay of the compliance date will be due 14 days after the filing of Defendants' motion, and Defendants' reply will be due 14 days after the filing of Plaintiffs' opposition. In addition, the parties request that the page limits be

enlarged to permit 25 pages for Plaintiffs' opposition and to permit Defendants a total of 30 pages, combined, for their motion and reply. The parties agree that this request for an extension of the time and page limits is without prejudice to either party seeking any additional extension under the applicable rules.

The parties further anticipate that this action can be finally resolved on cross-motions for summary judgment. The parties have not reached agreement on when the briefing schedule for those cross-motions should be set and accordingly offer two alternative proposals to the Court:

Plaintiffs' Proposal: Plaintiffs submit that it is premature to set a briefing schedule for cross-motions for summary judgment because the appropriate timetable for resolution of those motions will depend on how the Court rules on Defendants' forthcoming motion to lift the stay of the compliance date, and related proceedings that may follow from the Court's ruling (such as a motion for a preliminary injunction). Plaintiffs have an interest in resolving the merits of their challenge to the payments provisions before those provisions take effect. Thus, in order to intelligently negotiate a timeline for summary judgment (including, potentially, an expedited timeline), Plaintiffs first need to know when the provisions will take effect, which will turn on whether the Court lifts the stay of the compliance date and how much time Plaintiffs' members are given to bring their business operations into compliance. Moreover, there is no need to order the parties to negotiate over this contingent situation at this juncture, given the other proceedings that must occur first.

Defendants' Proposal: Defendants submit that there is no reason to await the Court's resolution of the Defendants' anticipated motion to lift the stay of the compliance date, or any other proceedings involving any claim by Plaintiffs for preliminary relief, before beginning the summary judgment briefing that will allow for final resolution of this case. Cross-motions for

summary judgment will be necessary to finally resolve this case, and although Plaintiffs state that they have an interest in “resolving the merits of their challenge to the payments provisions *before* those provisions take effect,” it is unclear how *delaying* summary judgment briefing will serve that interest in expeditious resolution of their challenge. Defendants accordingly propose that the Court order the parties to negotiate a schedule for briefing cross-motions for summary judgment and to jointly propose a schedule—or, if no agreement can be reached, to provide the parties’ respective proposals—to the Court within 14 days of the Court’s order lifting the stay of litigation.

Dated: July 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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[PROPOSED] ORDER

Before the court in the above styled and numbered case is the parties' Joint Motion to Lift Stay of Litigation, filed July 24, 2020. Having considered the motion, the case file, and the applicable law,

IT IS ORDERED that the joint motion to lift stay of litigation is **GRANTED**, and the stay of this action entered on June 12, 2018, is lifted.

IT IS FURTHER ORDERED that the joint motion to enlarge the time and page limits for the briefing on Defendants' anticipated motion to lift the stay of the compliance date is **GRANTED**. Plaintiffs' opposition to that motion shall be filed not later than 14 days after the filing of Defendants' motion, and Defendants' reply shall be filed not later than 14 days after the filing of Plaintiffs' opposition. In addition, Plaintiffs' opposition shall not exceed 25 pages, and Defendants' motion and reply, combined, shall not exceed a total of 30 pages.

[This final paragraph reflects Defendants' proposal. Plaintiffs object to this paragraph of the proposed order.] The parties shall meet and confer to attempt to reach agreement on a

schedule and reasonable page limits for cross-motions for summary judgment and shall submit a joint proposal, or the parties' respective proposals, to the Court within 14 days of the date of this order.

SIGNED this ____ day of _____.

THE HONORABLE LEE YEADEL
UNITED STATES DISTRICT JUDGE