

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Northern Division**

CONSUMER FINANCIAL PROTECTION BUREAU,

Plaintiff,

Case No. 3:16-cv-00356-DPJ-RHWR

v.

ALL AMERICAN CHECK CASHING, INC.;
MID-STATE FINANCE, INC.; and
MICHAEL E. GRAY, individually,

Defendants.

JOINT MOTION TO SET BRIEFING SCHEDULE

Plaintiff Consumer Financial Protection Bureau (“CFPB”) and Defendants All American Check Cashing, Inc., Mid-State Finance, Inc., and Michael E. Gray (collectively, “Defendants”) jointly move this Court to set a supplemental briefing schedule for a renewed Motion for Judgment on the Pleadings pursuant to Rule 12(c) that Defendants intend to file, which will allow the parties to address Defendants’ remaining constitutional challenges. The parties respectfully request oral argument on the motion. The Bureau also requests that the Court consider the pending summary judgment motion, which is fully briefed. In support of this motion, the parties submit the following:

1. On May 11, 2016, the CFPB filed this enforcement action against Defendants. *See* Dkt. 1. On May 24, 2017, Defendants filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). *See* Dkt. 144. In March 2018, this Court denied Defendants’ motion, *see* Dkt. 236, but certified for interlocutory appeal the question whether “the

structure of the [CFPB] violate[s] Article II of the Constitution and the Constitution's separation of powers," Dkt. 240, at 3–4.

2. On May 2, 2022, the en banc Fifth Circuit vacated this Court's order denying the Motion for Judgment on the Pleadings, citing the Supreme Court's decision in *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020), which held that the CFPB Director's removal protection was unconstitutional. *See CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 220 (5th Cir. 2022) (en banc) (per curiam). The en banc Fifth Circuit remanded the case "for such proceedings as the district court, in its wide discretion, may find appropriate ... including, without limitation, any other constitutional challenges." *Id.* The Fifth Circuit's mandate issued on June 24, 2022.

3. Accordingly, the parties respectfully request that this Court enter the following briefing schedule:

- a. Defendants shall file a renewed Motion for Judgment on the Pleadings and an accompanying memorandum in support of that Motion on or before **July 22, 2022**;
- b. The CFPB shall respond to Defendants' renewed Motion on or before **August 22, 2022**; and
- c. Defendants shall submit their reply in support of their renewed Motion on or before **September 12, 2022**.

4. These deadlines will afford the parties sufficient time to address the substantial legal developments that have occurred since Defendants filed their initial Rule 12(c) Motion over five years ago—including the Supreme Court's decisions in *Seila Law*, 140 S. Ct. 2183, and *Collins v. Yellen*, 141 S. Ct. 1761 (2021), as well as Judge Jones's concurrence to the Fifth Circuit's

per curiam decision in this case, *see All Am. Check Cashing*, 33 F.4th at 220–42 (Jones, J., concurring).

5. On August 4, 2017, the CFPB filed a motion for summary judgment, supporting exhibits, and a supporting memorandum. *See* Dkt. 201-213. On September 15, 2017, Defendants filed a response, supporting exhibits, and a supporting memorandum, *see* Dkt. 221-222, and on September 27, 2017, the CFPB filed a reply, *see* Dkt. 225. The Bureau submits that no further briefing is required.

Dated: June 27, 2022

/s/ Emily Sachs

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I caused the foregoing motion to be electronically filed with the Clerk of this Court and served all counsel of record via this Court's CM/ECF system.

/s/ Lochlan F. Shelfer

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