

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Law Offices of Crystal Moroney, P.C.,

Plaintiff,

v.

Bureau of Consumer Financial
Protection, *et al.*

Defendants.

Case No. 7:19-cv-11594 (KMK)

| ORAL HEARING REQUESTED |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION AND
APPLICATION FOR RULE TO SHOW CAUSE**

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Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Plaintiff submits this Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction and Application for Rule to Show Cause. The Plaintiff respectfully requests that this Court enjoin the Defendants from continuing their serial investigations against the Law Offices of Crystal Moroney, P.C. until this Court rules on the merits of the Plaintiff's Verified Complaint for Permanent Injunctive and Declaratory Relief (the "Complaint").

PRELIMINARY STATEMENT

The Law Offices of Crystal Moroney, P.C. ("Ms. Moroney's Law Firm" or "she" or "her") urgently needs judicial intervention to preserve the status quo and forestall the irreparable harm being caused by the Bureau of Consumer Financial Protection's (the "Bureau" or "CFPB") and CFPB Director Kathy Kraninger's continuing and systematic violation of the Plaintiff's fundamental right to due process. If the Defendants' unconstitutional abuses of process persist unabated, Ms. Moroney's Law Firm is likely to become insolvent, and she will not be able to seek redress of her grievances in the future, exacerbating the irreparable constitutional harms she continues to suffer. Thus, the Plaintiff respectfully requests that this Court temporarily enjoin the Defendants from conducting investigations into Ms. Moroney's Law Firm—including issuing Civil Investigative Demands (CIDs) to third parties—and to prohibit issuance of future CIDs that target the Plaintiff, while this case is pending.

A preliminary injunction has become necessary because the Defendants are denying the Plaintiff her due process right to be heard in court and to receive a fair trial. Instead of proceeding with the November 8, 2019 Show Cause Hearing to enforce CFPB's June 23, 2017 CID (the "First CID"), the Bureau represented to the Court that it "must" dismiss the case because there was nothing for the Court to resolve, since CFPB voluntarily withdrew the CID.

Alas, CFPB's fabricated mootness claim proved disingenuous and strategic. Within hours of the dismissal, CFPB announced that it would issue another CID in place of the first one (the "Second CID"). CFPB admitted that the Second CID was "substantively the same" as the first. Thus, although the Show Cause Hearing would have resolved *all* the parties' claims and defenses, CFPB's actions have ensured the same issues remain in controversy between the parties. Only this time, the Bureau has further turned the screws on the Plaintiff by serving third-party CIDs upon her clients, targeting the same material at issue in the First CID. This brazen abuse of process is designed both to evade judicial scrutiny and to stymie the Plaintiff's right to be heard.

A preliminary injunction is also necessary because CFPB is facially unconstitutional in its structure and funding. Until Congress cures these constitutional defects, CFPB lacks the lawful authority to wield any governmental power whatsoever, including the powers to investigate the Plaintiff or adjudicate disputes. By nonetheless asserting jurisdiction over Ms. Moroney's Law Firm, CFPB violates the Plaintiff's right to due process because she has a liberty interest in being free from unlawful exertions of governmental power.

The Plaintiff's claims will likely succeed at trial. Documentary and testimonial evidence will show that the Defendants deliberately denied the Plaintiff her day in court and that they are using administrative subpoenas and serial investigations to coerce the Plaintiff without judicial review. The Defendants' tactic of forcing the Plaintiff to defend duplicative and multiple CIDs may bankrupt Ms. Moroney's Law Firm and prevent the Plaintiff from ever being able to seek redress for her grievances against CFPB. Also, the Plaintiff will likely succeed in her claims that the Defendants cannot assert governmental authority of any kind under CFPB's current structure or with its current funding mechanism, since the Southern District of New York has already held CFPB structurally unconstitutional in a separate proceeding. At bottom, the Defendants are not

subject to political accountability, and they have evaded judicial review. Thus, the Plaintiff will suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in the Plaintiff's favor, and an injunction is in the public interest.

In the now-closed November 2019 proceeding between these parties,¹ the Court advised that since there was no action before it, if the Plaintiff "is being harassed, [she should] make the appropriate complaints to the appropriate agencies[.]"² And so, the Plaintiff is here. This Court is the only body with the agency to provide the relief requested by the Plaintiff's Motion for Preliminary Injunction. She has nowhere else to turn. Only this Court can end the Defendants' harassing serial investigations and stop the Defendants from unlawfully exercising administrative subpoena and other authority. Only the equitable power inherent in this Court can prevent further irreparable injury to the Plaintiff and preserve the Court's ability to render a meaningful decision on the weighty constitutional issues this case presents.

STATEMENT OF FACTS

Ms. Moroney's Law Firm will prove at trial that the sum of the Defendants' actions is working to deny the Plaintiff her right to due process which has caused, and continues to cause, at least three irreparable harms. First, the Plaintiff is suffering irreparable harm because the Defendants denied her the right to be heard in court and to a fair trial, so she is now forced to

¹ The instant action is not "related" to the prior proceeding, as that term is used in Rule 13(a)(1) of the Southern and Eastern Districts of New York Local Rules. While the issues in controversy are similar, the actions are not the same since the prior action was one for enforcement brought by CFPB. *See* S. & E. Districts of N.Y. Local R. 13(a)(1)(A). And while there is substantial factual overlap, the weight of their relevancy differs significantly, and additional facts regarding abuse of process postdate the prior proceeding. *See* S. & E. Districts of N.Y. Local R. 13(a)(1)(B). Additionally, because the actions are dissimilar, the parties cannot be subjected to conflicting orders. *See* S. & E. Districts of N.Y. Local R. 13(a)(1)(C). Moreover, there is no duplication of effort, expense, delay, or undue burden on this Court, parties, or witnesses because the prior case was dismissed and the Court only issued one order in that case, and that order was merely to show cause. *See* S. & E. Districts of N.Y. Local R. 13(a)(1)(D).

² Conf. Tr. at 7, *CFPB v. Law Offices of Crystal Moroney*, No. 19-CV-1732 (NSR) (Nov. 21, 2019) (Román, J.).

defend against a duplicative CID. Second, the Plaintiff is suffering irreparable harm to her First Amendment right to petition the government for a redress of her grievances because the Defendants are destroying her business with harassing third-party CIDs. If this damage continues, she may soon become insolvent and unable to vindicate her due process rights in the future. Third, the Plaintiff is suffering irreparable harm because the Defendants are denying her the right to be free from unlawful exertions of governmental power. CFPB is unconstitutional as currently structured and funded, and until both of these constitutional defects are fixed by Congress, CFPB lacks the legal authority to investigate the Plaintiff and adjudicate disputes.

I. The Facts Establish that the Defendants Have Engaged in a Continuing and Systematic Effort to Deny the Plaintiff Her Due Process Right to Be Heard in Court and to Receive a Fair Trial

The Defendants' February 25, 2019 Petition to Enforce Civil Investigative Demand alleged that despite her "partially" complying with their First CID, Ms. Moroney's Law Firm "withheld a number of responses based on its interpretation of certain rules of professional responsibility." Pet. to Enforce Civil Investigative Demand, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, at 2 (Feb. 25, 2019) ("Enforcement Petition") (Exhibit B). In response, Ms. Moroney's Law Firm argued that the CID was invalid because its Notice of Purpose was statutorily insufficient. Resp. to Order to Show Cause, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, at 8-11 (Oct. 3, 2019) (Exhibit C). She also argued that CFPB cannot compel her to produce documents and information protected from disclosure by the attorney-client communication privilege. *Id.* at 13. Perhaps most importantly, she asserted that CFPB is unconstitutional and cannot exercise jurisdiction over her until those constitutional defects are fixed. *Id.* at 2-8.

The Honorable Nelson S. Román ordered CFPB to reply to Ms. Moroney’s Law Firm’s allegations and defenses by October 17, 2019. *See* Order to Show Cause, *CFPB v. Law Offices of Crystal Moroney*, Case No.: 7:19-cv-01732-NSR, at 2-8 (Sept. 10, 2019) (Exhibit D). But CFPB subsequently requested an 18-day extension on the ground that the delay would permit time for the Supreme Court to grant or deny a pending writ of certiorari in the matter of *Seila Law LLC v. CFPB*, 923 F.3d 680 (9th Cir. 2019), which could “inform the Bureau’s response to Respondent’s constitutionality arguments.” Mot. for Ext. of Time to Reply, *CFPB v. Law Offices of Crystal Moroney*, Case No. 7:19-cv-01732-NSR, at 2 (Oct. 11, 2019) (Exhibit E). The Court obliged. Apparently, the extension was not enough, as CFPB requested a second extension after the Supreme Court granted certiorari because “senior Bureau leadership [needed] additional time to complete its review.” 2d Mot. for Ext. of Time to Reply, *CFPB v. Law Offices of Crystal Moroney*, Case No. 7:19-cv-01732-NSR, at 2 (Nov. 1, 2019) (Exhibit F). Again, the Court obliged.

Three days after the second extension, and four days before the Show Cause Hearing, CFPB filed a Notice of Petitioner’s Withdrawal of the Civil Investigative Demand and Suggestion of Mootness. It asserted that “the CID has now been withdrawn, this action is moot, and the Court must dismiss it for lack of subject-matter jurisdiction.” Not. of Pet’r’s Withdrawal of Civil Investigative Demand & Suggestion of Mootness, *CFPB v. Law Offices of Crystal Moroney*, Case No. 7:19-cv-01732-NSR, at 1 (Nov. 1, 2019) (Exhibit G). At the time, neither the Court nor Ms. Moroney’s Law Firm could have predicted that within hours of the Court’s dismissal and canceling of the Show Cause Hearing, CFPB would announce its intention to serve a Second CID on Ms. Moroney’s Law Firm. E-mail from Vanessa Assae-Bille, CFPB Sr. Lit. Counsel to Ronald Canter, Counsel to Respondent (Nov. 7, 04:15 p.m. EST) (Exhibit H).

Believing it to be precluded from taking further action, the Court explained that the case had “already been dismissed. There is nothing before me[,]” despite that CFPB admitted that the Second CID was “substantively the same” as the first. Conf. Tr. at 6-7, *CFPB v. Law Offices of Crystal Moroney*, No. 19-CV-1732 (NSR) (Nov. 21, 2019) (Exhibit I).

II. The Facts Establish that the Defendants’ Continuing and Systematic Effort to Deny the Plaintiff Due Process Has also Jeopardized Her First Amendment Right to Petition the Government for a Redress of Grievances

Ms. Moroney’s Law Firm was ready to argue the merits of her claims and defenses against CFPB’s Enforcement Petition at the Show Cause Hearing. She had expended nearly \$75,000 in fees and costs associated with negotiations, compliance, and defense of the First CID. Moreover, maintaining and growing her business during the two-and-a-half-year investigation was virtually impossible due to the time required to manage and comply with the CID process and the business uncertainty inherent in open government investigations.³

Duplicative expenses and continued uncertainty are not the only factors that could push Ms. Moroney’s Law Firm into insolvency. Just weeks after CFPB manufactured mootness, CFPB further turned the financial screws on Ms. Moroney’s Law Firm by issuing CIDs to her clients demanding the very same documents in controversy at the enforcement proceeding—attorney-client privileged material. The Plaintiff stood ready to litigate that privilege issue, and if CFPB believed that it truly had a right to those documents, it could and should have allowed the Court to proceed with the hearing. Instead, CFPB did an end-run around the Court by

³ The costly and unnecessary delays in the Enforcement Petition proceedings did not start when the Court scheduled the Show Cause Hearing. CFPB issued the First CID to Ms. Moroney’s Law Firm on June 23, 2017. After various meetings and negotiations, on January 9, 2018, CFPB informed her that it intended to enforce the First CID unless she violated her Rule 1.6 duty of confidentiality. She refused to breach her duty, but CFPB did not file its Enforcement Petition until February 25, 2019—more than one year later. It did not serve Ms. Moroney’s Law Firm, however, until the Court issued an Order to Show Cause on September 10, 2019—more than half a year after filing the Enforcement Petition. While these delays proved costly for the Plaintiff and prejudiced her ability to manage her business and defend against CFPB’s accusations, it is not clear at this pre-discovery phase of the instant litigation whether CFPB’s delays were deliberate.

evading the hearing and then demanding the documents from the Plaintiff's clients. If the Defendants' harassing tactics continue, the Plaintiff's good reputation will be in tatters, and Ms. Moroney's Law Firm may be forced into insolvency and left unable to vindicate her due process rights in the future.

III. Defendants Have Engaged in a Continuing and Systematic Effort to Subject the Plaintiff to Unlawful Governmental Power and Thereby also to Deny Her the Due Process of Law

That CFPB would abuse process to further its own ends is less surprising when one considers that its Director is not controlled, supervised, or even monitored by anyone else in the United States government. CFPB's enabling statute is Title X of the Consumer Financial Protection Act, also known as the Dodd-Frank Act. Among other things, Dodd-Frank vests executive and administrative functions in the Bureau, including "implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions[.]" 12 U.S.C. § 5492(a)(10). CFPB is an "independent bureau" within the Federal Reserve System. 12 U.S.C. § 5491(a). Yet, it is an agency ostensibly under the auspices of the executive branch of the federal government. 5 U.S.C. § 105.

There are two pernicious facts related to the Bureau's structure and funding that are particularly relevant to this Motion for Preliminary Injunction. First, the President of the United States appoints the Director with the advice and consent of the United States Senate to a term of five years. 12 U.S.C. § 5491(b)(2) & (c)(1). Despite that CFPB is an executive agency, the President may remove the Director only for inefficiency, neglect of duty, or malfeasance in office. 12 U.S.C. § 5491(c)(3). Thus, the President cannot control CFPB's legislative recommendations, testimony, or comments on legislation submitted to Congress. 12 U.S.C.

§ 5492(c)(4). Congress hermetically sealed off CFPB and its Director from the President’s control, violating the Appointments and Take Care Clauses.

Second, CFPB does not receive appropriations from Congress. Each year or each quarter, upon letter request from CFPB’s Director, the Federal Reserve Board of Governors transfers a portion of funds from the combined earnings of the Federal Reserve System to finance CFPB’s operations. 12 U.S.C. § 5497(a)(1). The amount of CFPB’s funding is determined solely by the Director without oversight or input from the Board of Governors or the President. *Id.* Moreover, the Bureau’s funding is not reviewable by Congress. 12 U.S.C. § 5497(a)(2). Even the Committees on Appropriations of the House of Representatives and the Senate are barred from exercising funding oversight. *Id.* Thus, Congress has unconstitutionally divested itself of its exclusive responsibility to fund governmental operations, violating the Constitution’s vesting of legislative powers in Congress and the Nondelegation Doctrine. U.S. Const. art. I, § 9 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law[.]”) and U.S. Const. art. I, § 1 (“All legislative Powers herein granted shall be vested in a Congress[.]”).

The Defendants themselves have admitted that “the statutory restriction on the President’s authority to remove the Bureau’s Director is unconstitutional[.]” *See* Brief for Resp. Sup. Vacatur, *Seila Law LLC v. CFPB*, S. Ct. No. 19-7, at 8 (Dec. 9, 2019) (CFPB brief arguing that the for-cause removal of CFPB’s Director is unconstitutional but arguing that the removal provision is severable from the remainder of Title X) (Exhibit J). While the Defendants appear not to have opined on their funding mechanism, their admission that they are structurally unconstitutional is significant. Despite this fatal constitutional defect, they continue to investigate Ms. Moroney’s Law Firm and harass her clients. By knowingly asserting federal

enforcement power without the accountability required by the Constitution, CFPB violated, and continues to violate, the Plaintiff's constitutional freedom, including her right to due process.

ARGUMENT

This Court has the authority to issue preliminary injunctive relief. Fed. R. Civ. P. 65. It may enjoin government action “to protect rights safeguarded by the Constitution[.]” *Bell v. Hood*, 327, U.S. 678, 684 (1946). A preliminary injunction should be granted if the Plaintiff demonstrates: (1) a likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; and (3) that the balance of equities and the public interest favor an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction order should be fashioned in the manner most conducive to preserving the parties' state of affairs so the Court may subsequently render a meaningful decision on the merits. *See Warner Vision Entm't v. Empire of Carolina, Inc.*, 101 F.3d 259, 261-62 (2d Cir. 1985).

I. Ms. Moroney's Law Firm Is Likely to Succeed on the Merits

Where a party seeks to enjoin the enforcement of governmental action, the movant may not invoke the “fair ground for litigation standard” but must show “likelihood of success.” *See Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 70 (2d Cir. 1996). Ms. Moroney's Law Firm's allegations meet this threshold requirement regarding her claims that (a) the Defendants have violated and continue to violate her right to due process; and (b) CFPB is unconstitutional in structure and funding, so it cannot exercise jurisdiction over the Plaintiff.

A. The Plaintiff Is Likely to Succeed on the Merits of Her Claim that the Defendants Have Violated and Continue to Violate Her Right to Due Process

The United States Constitution guarantees that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Plaintiff is likely to prevail on the due process violations alleged in her Complaint. An opportunity “to be heard in

one’s defense” is essential to the due process of law. *Boddie v. Conn.*, 401 U.S. 371, 377-78 (1971) (quoting *Hovey v. Elliott*, 167 U.S. 409, 417 (1897)). See also *Int’l House v. NLRB*, 676 F.2d 906, 911 (2d Cir. 1982). But the fundamental right to be heard in federal court “is not (or at least *should* not be) subject to manipulation by parties[.]” *Diamonds.net LLC v. IDEX Online, Ltd.*, 590 F. Supp. 2d 593, 596 (S.D.N.Y. 2008) (emphasis in original). Thus, parties should not “contrive to moot cases that otherwise would be likely to produce unfavorable precedents.” See *id.* (quoting Richard J. Fallon *et al.*, *Hart and Wechsler’s The Federal Courts and the Federal System*, at 204 (5th ed. 2003) (internal quotations omitted)).

The constitutional harm to the Plaintiff’s right to due process originated not in the withdrawal of the First CID *per se*, but in the Defendants’ lack of candor in their assertion that the withdrawal genuinely disposed of the issues in controversy. Since the Defendants announced a Second CID within hours of the Court’s dismissal, and since the Second CID is—in the words of CFPB itself—“substantively the same” as the first, it strains credulity to suggest that the Defendants’ mootness assertion was anything but a contrivance to dismiss a case that was likely to produce an unfavorable precedent.

Moreover, the Constitution permits only courts, not executive or other agencies, to issue subpoenas and similar coercive demands or orders for information. Philip Hamburger, *Is Administrative Law Unlawful?* 262 (Univ. Chi. Press 2014). The courts have nonetheless permitted agencies to issue such orders, and although this has been much abused by agencies, the abuses have thus far been limited somewhat because agencies are subject to a combination of partial political accountability and judicial review. CFPB now seeks to be free of both modes of accountability. From the outset, it has been structured to be unaccountable to the President (as its single Director is removable only for cause) and unaccountable to Congress (as it does not

receive regular appropriations for its operations). And now it is using multiple CIDs, to the Plaintiff and her clients, to escape judicial review. Each escape from accountability—whether from the President, Congress, or the courts—is profoundly unconstitutional, and together they produce a constitutional nightmare. It is the duty of the judiciary to curtail these unconstitutional efforts to evade accountability and to protect Americans from unlawful coercive demands for information.

The Plaintiff is likely to succeed on her due process claims because were it not for the Defendants' manufactured mootness, Ms. Moroney's Law Firm stood ready to defend her withholding of documents for reason of attorney-client privilege, to assert that the CID's Notice of Purpose was deficient, and to assert that CFPB is unconstitutional and cannot exercise jurisdiction over her. By nearly simultaneously issuing a Second CID, the Defendants denied the Plaintiff her right to be heard on the same issues that are still in controversy today.⁴ The law does not countenance such blatant manipulation of a party's access to federal courts. *See, e.g., NYCLU v. Grandeau*, 305 F. Supp. 2d 327, 331-32 (S.D.N.Y. 2004) (holding that, among other things, a government agency's contingent voluntary cessation does not moot a case).

Additionally, the Defendants are waging an asymmetrical war of attrition against Ms. Moroney's Law Firm. They know that her finances are strained and that she stands at the brink of insolvency after a two-and-a-half-year *first* investigation which cost her almost \$75,000 in fees and costs associated with negotiations, compliance, and defense. CFPB continues to pursue the Plaintiff only because it successfully evaded judicial scrutiny the first time around. Thus, the Defendants' harassing and punitive investigative tactics employed after canceling the Show

⁴ The Plaintiff notes that the First CID's deficient Notice of Purpose changed after the Defendants manufactured mootness, but that is the only material change.

Cause Hearing, further increase the likelihood that the Plaintiff will succeed on the merits of her due process claims.

B. The Plaintiff Is Likely to Succeed on the Merits of Her Claims that CFPB Is Unconstitutional

The Plaintiff is likely to succeed on her claim that CFPB is unconstitutional and therefore has no jurisdiction for two reasons—the first being that the Defendants themselves have admitted that “the statutory restriction on the President’s authority to remove the Bureau’s Director is unconstitutional[.]” *See* Brief for Resp. Sup. Vacatur, *Seila Law LLC v. CFPB*, at 8. Though the CFPB brief argues that the removal provision is severable from the remainder of Title X, its admission of the unconstitutionality of the limitation on removal is by itself relevant here, as this defect limits the CFPB’s accountability under the Take Care Clause for its due process violations.

The second reason that the Plaintiff is likely to succeed on her claim that CFPB is unconstitutional and therefore without jurisdiction is that the Southern District of New York has already held CFPB unconstitutional. In *CFPB v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729 (S.D.N.Y. 2018), the Honorable Loretta A. Preska held that the Bureau “is unconstitutionally structured because it is an independent agency that exercises substantial executive power and is headed by a single Director.” 332 F. Supp. 3d at 785. Furthermore, she concluded that the constitutionally offensive provisions are not severable, as a court does not have the power to amend a statute, nor does a severability clause give a court the “license to cut out the heart of a statute.” *Id.* (internal citations and quotations omitted). Thus, the Court held instead that CFPB lacks authority to bring enforcement actions as it is currently constituted. *Id.* (quoting *Fed. Election Comm’n v. NRA Political Victory Fund*, 6 F.3d 821, 822 (D.C. Cir. 1993)).

Indeed, the Plaintiff will almost certainly succeed on this claim because “proper judicial comity would require [the court] to follow [its colleague’s] ruling, even if [this court] did not agree with it.” *Brusselback v. Cago Corp.*, 24 F. Supp. 524, 531 (S.D.N.Y. 1938). Intra-district judicial comity necessitates following the horizontal precedent established by the Manhattan Division of this Court. *See Am. Scantic Line, Inc. v. United States*, 27 F. Supp. 271, 272 (S.D.N.Y. 1938).

The Plaintiff’s further allegation that CFPB’s funding mechanism is separately unconstitutional is also likely to succeed because the constitutional analysis proceeds in the same manner as *RD Legal Funding*’s analysis of the single-Director structure. In *RD Legal Funding*, Judge Preska adopted Sections I-IV of then-Judge Kavanaugh’s dissent in *PHH Corp. v. RD Legal Funding, LLC*, 332 F. Supp. 3d at 784 (citing *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018)). She explained that a proper analysis of federal agencies’ authority begins with considerations of history, liberty, and presidential authority. *Id.* Thus, this Court is likely to find that governmental operations cannot be funded without “[a]ppropriations made by [l]aw,” and since Title X does not fund CFPB through the constitutionally prescribed process of enactment via bicameralism and presentment, it is unconstitutionally funded. *Compare* U.S. Const. art. I, §§ 9, 1 & 7 with 12 U.S.C. § 5497. Circumventing this constitutionally prescribed process contravenes the President’s constitutional duty upon presentment of appropriations bills, as well as Congress’. *See* U.S. Const. art. I, § 7. Alexander Hamilton explained that such a funding process is antithetical to the constitutional design:

The design of the Constitution in this [Appropriations Clause] provision was, as I conceive, to secure these important ends,—that the *purpose*, the *limit*, and the fund of every expenditure should be ascertained by a previous law. The public security is complete in this particular, if no money can be expended, but for *an object*, to an extent, and *out of a fund*, which the laws have prescribed.

Alexander Hamilton, *Explanation* (Nov. 11, 1795) in *The Works of Alexander Hamilton*, Vol. VII, (John C. Hamilton ed., S.D.N.Y. Clerk 1851) (emphasis in original). CFPB's financial independence is precisely what the Founders prohibited in Article I, § 9.

II. The Plaintiff Is Suffering Irreparable Harm that Will Continue Absent an Injunction

“[W]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2948, at 440 (1973) (internal quotations omitted)). In the Second Circuit, alleged violations of a constitutional right usually trigger findings of irreparable harm. *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). The only exception to this rule occurs where an injured party may be made whole with monetary damages, but such an exception is not presented here in the context of a violation of procedural due process rights. *See S. Lyme Prop. Owners Ass'n v. Town of Old Lyme*, 121 F. Supp. 2d 195, 204 (D. Conn. 2000). Since a federal agency is immune from monetary damages, the harm it causes is irreparable. *See New York State Trawlers Ass'n v. Jorling*, 764 F. Supp. 24, 25-26 (E.D.N.Y. 1991) (holding that where Eleventh Amendment sovereign immunity forecloses collecting monetary damages, the harm is irreparable) (citing *United States v. New York*, 708 F.2d 92, 94 (2d Cir. 1983)).

The Plaintiff has alleged that she has a substantial liberty interest in being heard and receiving a fair trial, but the Defendants have prevented and continue to prevent her from exercising this due process right. *See, e.g.*, Compl. ¶ 56. She has alleged that she has a substantial liberty interest in being free from unlawful assertions of governmental power, but CFPB has violated this due process right by exercising jurisdiction over her despite its

unconstitutional structural and funding defects. *See, e.g.*, Compl. ¶¶ 57, 70 & 82. The Plaintiff has also alleged that she has a substantial liberty interest in being free from governmental harassment, intimidation, and ploys to destroy her reputation and business, but the Defendants continue to abuse the investigative process. *See, e.g.*, Compl. ¶ 58. These are quintessential irreparable constitutional harms that call for equitable remedies.

Moreover, the harm the Plaintiff is suffering will be irreparable if she becomes insolvent. The Plaintiff's First Amendment right to petition the government for a redress of her grievances is in jeopardy. She may not be able to vindicate her due process rights in the near future. "A showing of a *possible* violation of constitutional rights constitutes irreparable harm justifying a preliminary injunction." *Able v. United States*, 847 F. Supp. 1038, 1043 (E.D.N.Y. 1994) (emphasis added). Ms. Moroney's Law Firm has spent nearly \$75,000 in legal fees and costs—to say nothing of the strain on her time and attention as a small-business owner—responding to the First CID and preparing for a trial that CFPB aborted. She has absorbed the impact of these costs by reducing her own yearly salary by nearly one-third, but the legal bills continue to mount after the Defendants evaded judicial scrutiny. She has been forced to lay off nearly 50% of her staff since the start of the Defendants' investigations, she has not been able to manage or grow her business, and now the Defendants are publicizing their duplicative investigation to her clients, ruining her reputation and further damaging her business. Ms. Moroney's Law Firm will probably not survive to petition the government to redress her grievances against CFPB if the Defendants' abuse of process continues.

III. The Balance of the Equities and the Public Interest Favor a Preliminary Injunction

The balance of the equities and the public interest merge when a plaintiff seeks a preliminary injunction against the government. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Ms. Moroney's Law Firm is suffering irreparable harm under the shadow of the Second CID and the third-party CIDs. Given the Defendants' dilatory approach to conducting the first investigation and the withdrawal of its own Enforcement Petition, it is apparent that the Defendants will not be harmed if this Court issues a preliminary injunction while this case is pending. After all, CFPB announced that it would ask the district court to enforce the First CID in October 2017, but the Defendants waited **14 months** to file their Enforcement Petition and waited more than **6 additional months** to serve the Plaintiff.

Moreover, if the Defendants believed that resolving the controversy with Ms. Moroney's Law Firm was an urgent matter, they would not have deliberately mooted the case. A court order regarding whether the Plaintiff had a duty to disclose privileged material, for instance, would have settled a current dispute between the parties (in relation to the simultaneously issued Second CID) regarding the Plaintiff's duty of disclosure to CFPB. By choosing not to proceed with the Show Cause Hearing, CFPB delayed resolution of this critical issue by months, if not years.⁵ Thus, the balance of equities weighs heavily in favor of Ms. Moroney's Law Firm.

Indeed, "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *Planned Parenthood of N.Y. City, Inc. v. HHS*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) (quoting *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal quotations omitted)). Ensuring the lawful existence and operation of administrative government is precisely why the Plaintiff asks this Court to issue a preliminary injunction to preserve the status quo and forestall continuing irreparable constitutional harms.

⁵ "Years" may seem like an exaggeration, but it took CFPB two-and-a-half years from issuance of the First CID to reach the November 2019 Show Cause Hearing.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests that this Court enjoin the Defendants from (1) asserting jurisdiction over the Plaintiff; (2) conducting investigations into Ms. Moroney's Law Firm, including investigations directed toward third parties where the Plaintiff is the target; and (3) from issuing future CIDs that target the Plaintiff directly or through third parties, while this case is pending, and for any other relief that the Court may deem just and proper.

Respectfully submitted,

**LAW OFFICES OF CRYSTAL
MORONEY, P.C.**



Dated: January 21, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system upon all counsel of record in the above-captioned case. Courtesy copies will also be emailed to the Defendants.



Michael P. DeGrandis

INDEX OF EXHIBITS

Exhibit	Description
A	Affidavit of Crystal G. Moroney, Esq.
B	CFPB's Petition to Enforce Civil Investigative Demand (Feb. 25, 2019)
C	Moroney Law Firm's Response to Order to Show Cause (Oct. 3, 2019)
D	Order to Show Cause (Sept. 10, 2019)
E	CFPB's Motion for Extension of Time to Reply (Oct. 11, 2019)
F	CFPB's Second Motion for Extension of Time to Reply (Nov. 1, 2019)
G	CFPB's Notice of Withdrawal of CID & Suggestion of Mootness (Nov. 4, 2019)
H	CFPB's E-Mail to Ron Canter re: Reissuance of CID (Nov. 7, 2019)
I	Status Conference Hearing Transcript (Nov. 21, 2019)
J	CFPB's Brief for Resp. Supporting Vacatur, U.S. Supreme Court (Dec. 9, 2019)
K	Verified Complaint (Dec. 18, 2019) (as required by <i>Indiv. R. of Practice II(B)</i>)