UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GOOGLE PAYMENT CORPORATION
1600 Amphitheatre Parkway
Mountain View, CA 94043,

Plaintiff,

- against -

CONSUMER FINANCIAL PROTECTION BUREAU
1700 G Street NW
Washington, DC 20552,

and

ROHIT CHOPRA, in his official capacity as Director of the Consumer Financial Protection Bureau,
1700 G Street NW
Washington, DC 20552,

Defendants.

COMPLAINT

Plaintiff Google Payment Corporation ("GPC"), for its complaint against defendants the Consumer Financial Protection Bureau (the "CFPB" or "Bureau") and Rohit Chopra, in his official capacity as Director of the Consumer Financial Protection Bureau, alleges as follows:

INTRODUCTION

1. GPC is a subsidiary of Google LLC that offers a limited set of payment products. The payment product at issue here, a peer-to-peer (P2P) payment product available through the U.S. Google Pay app, was retired in June of this year to simplify the user experience and for other business reasons.

2. On November 8, 2024, the CFPB issued the challenged order, designating GPC for "supervision"—a burdensome form of regulation that would subject GPC to on-site examinations and requests for confidential documents and information—based on alleged "risks to consumers." *See* CFPB Supervision Decision and Order (the "Order," attached as Exhibit A). The CFPB conceded that the Order was not a determination that GPC violated any laws or engaged in any wrongdoing. Instead, the Bureau based its finding of "risks to consumers" entirely on allegations from a small number of unsubstantiated user complaints involving the retired P2P product.

3. The CFPB's decision suffers from numerous legal defects. Contrary to well-settled canons of statutory interpretation, the CFPB claims that supervision is warranted so long as it can allege that some risks to consumers existed *in the past*, "regardless of what products [an entity] presently offers" and even when there is no "possibility of harm in the future." Order 15. But Congress did not authorize the CFPB to designate a company for ongoing supervision based on a product it no longer offers. Congress intended the CFPB's risk-based supervision authority as a mechanism to address current or future risks to consumers—which are not present, or even possible, here. *See, e.g.*, 12 U.S.C. § 5514(a)(1)(c). As a matter of common sense, a product that no longer exists is incapable of posing such risks.

4. Even putting aside the CFPB's incorrect view that it may rely entirely on a retired product, the CFPB committed legal error by setting what it admitted was an exceedingly low bar for what counts as sufficient "risks to consumers" warranting supervision. Rather than reserving its supervisory authority for material risks, the CFPB erroneously claimed the authority to supervise based on any quantum of risk, including de minimis or routine risks inherent in the offering of any consumer financial product. It also claimed the authority to supervise based on risks unrelated to the Federal consumer financial laws. The CFPB contends that congressional

silence granted it authority to determine whether the quantum or character of risks purportedly posed by a covered person's conduct warrant supervision. Order 2. This argument runs headlong into the major-questions doctrine. *Whitman* v. *American Trucking Associations*, 531 U.S. 457, 468 (2001) (citation omitted). It also requires reading the statute to provide the agency with standardless discretion to impose supervision, an unconstitutional reading that would violate the non-delegation doctrine. *See Gundy* v. *United States*, 588 U.S. 128, 135-136 (2019). Under any reasonable standard, the CFPB failed to provide sufficient evidence that GPC *ever* posed "risks to consumers."

5. The CFPB based its decision on just 26 cherry-picked and unverified complaints regarding GPC's now-retired P2P product across a three-year period, which is an infinitesimally small number of complaints in comparison to "millions of payment transactions" the CFPB concluded the product facilitated during that same time period. Supplemental Brief of Initiating Official at 17 (Aug. 31, 2023) ("CFPB Supp. Br."). The Bureau made no effort to assess whether the quantity of complaints, even if they were verified, was significant or material in light of the number of transactions processed. In any event, GPC submitted detailed evidence—including information from its internal systems as to which the CFPB did not have access—showing why none of the complaints demonstrates "risks to consumers." For example, a number of the complaints were determined to be mistaken after a thorough investigation by GPC, and, in some other instances, customers simply chose not to respond to GPC's follow-up requests for information needed to investigate their concerns. But in a clear violation of administrative law principles, the CFPB simply ignored that evidence in its decision.

6. The agency also erred in giving no weight to GPC's affirmative evidence. This includes evidence of GPC's comprehensive compliance program; its frequent and ongoing

oversight and examination by numerous state regulators; and a report by an expert consulting firm concluding that GPC appropriately investigates consumer complaints and "meaningfully engage[s] with consumers to resolve their concerns" and that the complaints at issue do not indicate risks to consumers warranting supervision.

7. In disregarding GPC's evidence and giving itself opportunities to allege *new* risks up through the conclusion of the administrative proceeding, the CFPB also repeatedly violated its own procedural rules and its statutory obligation to give GPC a "reasonable opportunity" to respond to the CFPB's allegations of risk. 12 U.S.C. § 5514(a)(1)(c).

8. Compounding these violations, the CFPB threatened GPC that it would publicize the designation of the company as posing "risks to consumers" if it exercised its statutory right to contest the agency's allegations, while offering confidentiality if GPC elected simply to consent to supervision. This coercive threat is now CFPB policy towards any company that it accuses of posing "risks to consumers." Further, after the CFPB provided its designation order to GPC on a confidential basis, on information and belief, the upcoming publication of the Order was leaked to the media, without GPC's knowledge or consent, and at a time when GPC was not permitted to discuss the confidential order publicly and thus could not respond to press inquiries or address inaccuracies regarding the nature or scope of supervision. This leak further magnified the potential reputational harm of the Order.

9. The CFPB's conduct violates multiple restrictions on agency action. Under its interpretation, *any* covered person that *ever* engaged in conduct that the Bureau determines in its discretion to have posed *any* alleged risk to consumers is subject to the full weight of the CFPB's supervisory authority. Order 2, 14-16. And any company that declines the CFPB's request that it consent to supervision—and instead chooses to exercise its statutory right to contest the CFPB's

allegations of "risks to consumers"—will be met with the publication of CFPB's designation order. This position sends a chilling and damaging message to all companies seeking to innovate in the consumer financial services space. For these and other reasons, GPC respectfully requests that this Court set aside the CFPB's unlawful order.

JURISDICTION AND VENUE

10. This action arises under the United States Constitution and the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq*. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because the administrative proceeding against plaintiff occurred substantially in the District of Columbia, and defendants are an agency and an officer of the United States resident in this judicial district acting in their official capacities.

PARTIES

12. Plaintiff Google Payment Corporation is a Delaware corporation headquartered in Mountain View, California. GPC is a wholly owned subsidiary of Google LLC, which is a wholly owned subsidiary of Alphabet, Inc., a publicly traded company.

13. Defendants are the Consumer Financial Protection Bureau and Rohit Chopra, in his official capacity as Director of the Consumer Financial Protection Bureau. The Consumer Financial Protection Bureau is a federal administrative agency headquartered in Washington, D.C. Defendant Chopra acted under color of law at all relevant times.

FACTS

A. Background

1. Google Pay and Google Pay Balance

14. When the CFPB first initiated its proceeding to designate GPC for supervision in March 2023, GPC offered three purportedly relevant payment products: a peer-to-peer (P2P)

payment product, a stored-value product known as Google Pay Balance, and the "Google Pay Balance Card." *See* Declaration of Ronnette Grant ¶¶ 5, 8 (May 19, 2023) ("Grant Decl."). These three products were accessible in an application called "Google Pay." As described below, GPC notified the CFPB on June 7, 2024 that the Google Pay app and its P2P product had been successfully retired.

15. Until its retirement, the P2P product allowed users to send and receive funds from other Google Pay users who are U.S. residents. *See id.* ¶ 6; *id.*, Exhibit A (Google Pay/Google Payments Additional Terms of Service (U.S.)), ¶ B.1.1(a). The P2P product was intended for personal transactions between users. *Id.* ¶ B.1.1. These transactions could be funded with ACH-enabled checking or savings accounts, with certain debit cards, or with the Google Pay Balance. *Id.* ¶ B.1.1(b).

16. Google Pay Balance is GPC's stored-value product. Before the retirement of the Google Pay app and the P2P product, Google Pay Balance could be used to fund P2P transactions; could be funded by transferring money from an accepted debit card, an ACH-enabled checking account, or an ACH-enabled savings account; and could receive funds from P2P transactions. Grant Decl. ¶ 7. Users could also withdraw funds from Google Pay Balance to a bank account (for no charge) or with a debit card (more rapidly but with a small fee). *See* Grant Decl., Exhibit B (Google Pay Balance Long Form Disclosures). Following the retirement, users are able to withdraw any remaining funds in their Google Pay Balance to a bank account or spend the balance using a preexisting Google Pay Balance Card, but they cannot add additional funds to their balance or send or receive funds in P2P transfers. *See* Response to Supplemental Brief of Initiating Official at 5 (Feb. 2, 2024) ("GPC Resp. to Supp. Br.").

17. The Google Pay Balance Card is a virtual card issued for use in digital form that allows users to spend their Google Pay Balance when making contactless purchases at physical stores that accept Google Pay, or in-app or online purchases. *See* Grant Decl. ¶ 8.

18. As noted, on June 7, 2024, GPC retired the U.S. version of the Google Pay app and the P2P product. GPC notified users of the upcoming retirement months in advance (in February 2024) and through multiple channels (including blog posts, emails, and notifications within the Google Pay app). Since then, users can no longer use the Google Pay app or the P2P product. Users can instead spend their remaining Google Pay Balance using Google Wallet's Tap and Pay function or by using a Google Pay Balance Card; users can also withdraw the funds through Google Pay's web interface.

19. GPC does not offer products known as "Tap and Pay," the "GPay Button," or Google Wallet, all of which are the responsibility of Google LLC. *See* Grant Decl. ¶¶ 10-11. These products were thus beyond the scope of the CFPB's Notice of Reasonable Cause, which began this proceeding and was directed only at GPC. *Compare* Notice of Reasonable Cause at 1 (Mar. 20, 2023) ("Notice"), *with* CFPB Supp. Br., 10 n.28. The Bureau has so conceded. *See* ¶ 49, *infra*. Although the Bureau suggests that GPC is "opportunistically invok[ing] the corporate form," Order 8 n.52, the Bureau provides no evidence to support that gratuitous allegation. GPC brought the distinction between GPC and Google LLC to the Bureau's attention early in this proceeding, but the Bureau elected to remain focused on GPC and its P2P product.

2. GPC's Compliance Program and Examination by State Regulators.

20. GPC has an extensive compliance program and is regularly examined by state regulators. As explained in a detailed declaration filed with the CFPB early in this proceeding, GPC's compliance program is supported by a team of compliance professionals with years of experience, including at financial regulatory agencies and major financial institutions. The

compliance program maintains policies, procedures, and a training program, which are regularly refreshed, to ensure compliance with applicable statutes and regulations. Among other things, the compliance program ensures that GPC complies with the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, and that GPC does not commit unfair, deceptive, or abusive acts and practices. The compliance program helps ensure that the process for reviewing consumer complaints—which can be filed with GPC through a number of channels—is well-managed and complies with applicable law.

21. Among other components, GPC's compliance program includes:

a. An annual "enterprise risk assessment" calibrated to detecting "known and emerging risks across GPC," the results of which "are shared with the GPC Board." Grant Decl. ¶ 25.

b. A "continuous risk monitoring program" that "generates data to support . . . the risk management team." *Id.* ¶ 26.

c. Internal audits, led by "a dedicated internal audit partner team that focuses on payments products." *Id.* ¶ 27.

22. In connection with the retirement of the P2P product, GPC "prepared a comprehensive wind-down process plan to ensure customers have the ability to withdraw funds and otherwise adjust to" GPC's retirement of the Google Pay app. *See* Declaration of Ronnette Grant ¶¶ 5-6 (Feb. 2, 2024) ("Grant Supp. Decl.").

23. As GPC also explained to the CFPB in this proceeding, GPC is subject to extensive and frequent examinations by numerous state regulators, which license GPC as a money transmitter. Grant Decl. ¶¶ 4, 31. These regulators assess GPC's compliance with state and federal regulations in single-state or multi-state examinations. *Id.* ¶¶ 31-33. Between five and 10

states examine GPC annually, with over 15 different states examining GPC in recent years. *Id.* ¶ 31. These examinations review GPC's financial condition, compliance oversight, cybersecurity and controls, and, most notably, compliance with state and federal requirements. *Id.* ¶ 31. Over the last five years, there have been no deficiencies noted in complaint handling or other state or federal consumer-protection areas. *Id.* ¶ 33.

24. GPC's compliance team "also works with in-house legal counsel as well as the Consumer Support Escalations Team to handle any consumer complaints received directly from state agencies." Grant Decl. ¶ 40.

3. The CFPB's Supervisory Authority.

25. In the wake of the 2008 financial crisis, Congress enacted, as part of the Dodd-Frank Act, the Consumer Financial Protection Act. Pub. L. 111-203, 124 Stat. 1955 (2010). The statute established the CFPB as an agency tasked with "enforc[ing] Federal consumer financial law." 12 U.S.C. § 5511(a); *see also id.* §§ 5481-5603.

26. The Bureau has authority under 12 U.S.C. § 5515 to supervise banks and credit unions with more than $10 billion in assets.

27. The Bureau has authority under 12 U.S.C. § 5516 to engage in more limited examination of banks and credit unions with less than $10 billion in assets.

28. The Bureau also has authority under 12 U.S.C. § 5514(a) to supervise *nonbank entities* in certain limited circumstances. Historically, states have supervised certain categories of nonbank providers of consumer financial products and services. Contrary to the Bureau's unconstitutional reading of the statute, Congress carefully delineated the scope of supervisory authority when granting it to a federal agency for the first time. *First*, Congress authorized the CFPB to supervise nonbank entities that offer certain products or services related to mortgage lending, student loans, or payday loans. *See id.* § 5514(a)(1)(A), (D), (E). *Second*, Congress

authorized the CFPB to, "by rule," identify a "market" for "consumer financial products or services" and supervise the "larger participant[s]" within that market. *Id.* § 5514(a)(1)(B). *Third*, Congress authorized the CFPB to supervise a company if the agency has "reasonable cause" to find, "after notice . . . and a reasonable opportunity . . . to respond," that the company "is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services." *Id.* § 5514(a)(1)(C). In other words, when the CFPB undertakes to designate a particular company for *risk-based* supervision, the statute requires it both to follow certain procedural rules (*i.e.*, provide "notice" and a "reasonable opportunity" to respond) and also to clear a substantive bar (*i.e.*, "reasonable cause" to determine that the company "poses risks to consumers"). *Id*.

29. These procedural and substantive protections exist because supervision—which was traditionally reserved for banks—is extremely intrusive and burdensome. Contrary to the CFPB's claim that supervision brings only "limited consequences," Order 3, the statute provides that the CFPB "shall require reports and conduct examinations" of supervised entities, *id*. § 5514(b)(1), and the CFPB claims the authority to "[g]o onsite to observe, conduct interviews, and review additional documents and information." *See Supervision and Examination Manual, Overview* at 5 (Jan. 2023), http://tinyurl.com/ExaminationManual ("Examination Manual"). The Bureau even claims the right to obtain attorney-client privileged information from supervised companies. *See* Confidential Treatment of Privileged Information, 77 Fed. Reg. 15,286 (Mar. 15, 2012). And depending on the findings from the examinations, the supervisors may refer a company for "public enforcement action," whether through the Bureau's administrative enforcement proceedings or in a civil action in federal district court. *See* Examination Manual, Overview, at 6-7. Additionally, under a recently issued CFPB regulation, all nonbank entities

under the CFPB's supervisory authority are required to submit certain information to a "public registry" maintained by the CFPB. *See* Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders, 89 Fed. Reg. 56,028 (July 8, 2024).

30. In 2013, the Bureau promulgated a procedural rule governing risk-based supervision proceedings. *See* Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40,352 (Jul. 3, 2013) (codified as amended at 12 C.F.R. pt. 1091). That procedural rule required the Bureau to issue a "Notice of Reasonable Cause" to a nonbank entity it believed to be engaging in behavior warranting risk-based supervision. 12 C.F.R. § 1091.102(a) (2013). The rule required that such notice contain a sufficient "description of the basis for the assertion that the Bureau may have reasonable cause to determine" that risk-based supervision is warranted, "including a summary of the documents, records, or other items relied on by the initiating official to issue a Notice." *Id.* § 1091.103(a)(1). The rule also outlined the requirements for the nonbank entity's written response, the procedure to request a supplemental oral response, and the timeline for the Associate Director and the Director of the Bureau to make a decision. *Id.* § 1091.108. The Bureau explained in the 2013 version of the rule that, in evaluating risks to consumers, "it expects to consider . . . whether a nonbank covered person has engaged in conduct that would pose risks to consumers because, for example, it involves potentially unfair, deceptive, or abusive acts or practices, or because *the conduct otherwise potentially violates applicable Federal consumer financial law.*" 78 Fed. Reg. at 40,357 (emphasis added). The rule was concerned with "potential law violations or harms to consumers," not de minimis past risks that covered persons had already resolved. *Id.* at 40,358. The 2013 version of the rule did not prescribe any procedure or authority

for the Bureau to submit supplemental briefing or additional evidence beyond the initial notice. *See id.* § 1091.102.

31. Even after the 2013 procedural rule, the Bureau did not invoke its authority for nearly a decade longer, openly describing the authority as "dormant" as late as 2022. *See* Consumer Financial Protection Bureau, *CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers* (Apr. 25, 2022), http://tinyurl.com/CFPBDormantAuthority. The day after the CFPB announced that it would invoke this authority, it singled out particular companies as a target, with the Bureau's Director testifying that the Bureau was preparing for the "the era of Big Tech" companies' entrance into the market for "consumer payments." *Written Testimony of Director Rohit Chopra Before the Senate Committee on Banking, Housing, and Urban Affairs* 4-5 (Apr. 26, 2022).

32. At that time, in preparation to use the dormant authority, the Bureau amended the procedural rule to allow for public release of supervisory designations based on "risks to consumers"—despite the fact that a hallmark of supervision is its confidentiality and the CFPB had previously protected the identities of its supervised entities and the CFPB's findings about their business and compliance practices. *Compare* Procedural Rule To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40,352, 40,370 (July 3, 2013) ("information relating to a proceeding shall be deemed confidential supervisory information"), *with* Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders, 87 Fed. Reg. 70,703 (Nov. 21, 2022) (allowing public release of designations at the Director's discretion). As the Bureau's behavior in this case illustrates, the Bureau has elected to use the threat of publicity as a cudgel to pressure companies to forgo their statutory right to contest supervision.

B. Procedural History

1. Notice of Reasonable Cause.

33. GPC received a Notice of Reasonable Cause from the Bureau on March 20, 2023. Notice 1.

34. The Notice alleged that the Bureau had reasonable cause to supervise GPC based on (1) GPC's "size" in the mobile wallet transactions market; (2) the income of GPC users, which the Bureau suggested was "likely lower income"; (3) GPC's "supervisory history," i.e. that GPC had not previously been subjected to federal oversight (ignoring GPC's history of state supervision); (4) GPC's "error resolution policies," alleging that GPC "disclaim[ed] any error resolution obligations to consumers under Regulation E," a regulation governing (among other things) certain erroneous transfers of electronic funds; and (5) the risk of "fraud, scams, and unauthorized transactions," suggesting that "Google Pay may be used as a tool in a variety of different scams," and citing, as evidence, no specific complaints against GPC but only the agency's public database of *all* complaints against *thousands* of companies going back to 2011. Notice 3-5, 5 n.30. Notably, the CFPB later abandoned most of these grounds for subjecting GPC to supervision.

35. Although the Notice targeted GPC, the CFPB ascribed certain of these alleged unsubstantiated and speculative risks to products that were offered not by GPC but rather by Google LLC. *See id.* at 2-3. These products included Tap-and-Pay, Google Wallet, and the GPay Button.

36. Although the CFPB had obtained extensive information in response to a "market monitoring" order in 2021 about payment products offered by Google and its subsidiary GPC, the CFPB tellingly did not cite any of that evidence in its Notice or allege that any of that evidence supported the view that GPC posed risks to consumers. *See CFPB Orders Tech Giants To Turn*

Over Information on their Payment System Plans, CFPB (Oct. 21, 2021), https://tinyurl.com/MarketMonitoring.

37. The Notice also indicated that GPC could "voluntarily consent[] to the Bureau's supervisory jurisdiction." Notice 6. One supposed benefit of voluntary consent was included in the Notice: Voluntary supervision would last for an initial period of two years (rather than indefinitely). But the CFPB also offered an unwritten inducement: In a meeting shortly before issuance of the Notice, officials from the CFPB told GPC that they would recommend that a supervision order be kept confidential if GPC would consent to supervision. The implicit threat was clear: If GPC exercised its statutory and constitutional rights to contest supervision, the CFPB would release to the public the reputationally damaging finding that GPC's products pose "risks to consumers." The CFPB later formalized this threat.

2. GPC's Response to the Notice.

38. GPC timely responded to the Notice on May 19, 2023.

39. Among other things GPC argued that the Notice failed to establish "reasonable cause" to exercise supervisory authority by failing to provide a plausible interpretation of the statutory standard for supervision and failing to identify sufficient evidence that GPC engages in conduct that poses risks to consumers. Response to Notice at 1-2 (May 19, 2023) ("GPC Resp.").

40. GPC explained that the Dodd-Frank Act did not allow the CFPB to supervise a nonbank entity based on *any* risks of *any* kind to consumers. Rather, the statute contemplated that this special authority would be reserved for risks to consumers beyond those that were inherent or routine in offering any consumer financial product or service. *Id.* at 5-11. Congress instead intended that this supervisory tool—which focused on particular companies, rather than categories of companies—would be used for entities that posed non-routine, material risks to consumers. And, further, these risks had to relate to potential or actual violations of the specific provisions of

Federal consumer financial laws that the CFPB is tasked with implementing. *See id*. Given that, as the CFPB has stated, all consumer financial products and services pose some risk to consumers, a contrary interpretation would assume that Congress had delegated implausibly broad power to the agency. *See id.* at 8-11 (citing the major-questions and non-delegation doctrines).

41. GPC's response explained that, under any plausible interpretation of the statutory standard, the Notice failed to identify any risks to consumers that would justify supervision.

42. For example, (1) on "size," the Notice never identified a "rational connection" between any evidence of GPC's size and any particular risk to consumers in the United States, GPC Resp. at 16; (2) on the income of GPC users, the Bureau's purported evidence regarding "vulnerable populations" confused Google LLC's Wallet App with the GPC P2P product at issue and was therefore inapposite, *id.* at 18; (3) on supervisory history, a "lack of past federal supervision" could not justify supervision unless "the Bureau [were] entitled to supervise any entity that has not yet been supervised," *id.* at 12; (4) on error resolution, the Bureau simply misread GPC's policies in concluding that the company "disclaimed" error resolution obligations under Regulation E, *see id.* at 14-15; and (5) on fraud, scams, and unauthorized transactions, in addition to failing to identify what GPC conduct posed a risk to consumers, the Bureau's reference to the entire CFPB database of complaints against any entity failed to provide notice of which complaints indicated a risk to consumers, and none "indicate[d] a material risk to consumers arising out of violations of Federal consumer financial law." *Id.* at 21.

43. GPC also provided a report by independent third-party consulting firm Treliant, which has extensive experience in consumer financial protection. Treliant reviewed all complaints submitted to the CFPB regarding GPC in the relevant timeframe, along with related documentation. *Id.* at 86a-91a. Treliant determined that "GPC was responsive to complaints and

meaningfully engaged with consumers to resolve their concerns;" that "GPC generally handled complaints related to its P2P and Google Pay Balance products appropriately"; that, contrary to the CFPB's suggestion, the vast majority of complaints do not allege an unauthorized transaction, fraud, or scam; and that it "did not see evidence of a material risk to consumers with respect to Federal consumer financial laws." *Id.* at 89a.

44. GPC also objected to the Bureau's coercive position that it would keep the fact of supervision confidential if GPC consented to supervision, but it would publicize the Bureau's finding of "risks to consumers" if GPC elected to exercise its statutory right to contest supervision. GPC Resp. 23 n.11. GPC explained that there was no valid regulatory purpose in providing confidentiality to consenting entities but not to entities asserting their rights.

45. On July 17, 2023, counsel for GPC and the Bureau's Initiating Official made a supplemental oral response before the Acting Associate Director of the CFPB's Division of Supervision, Enforcement and Fair Lending. *See* Supplemental Oral Response Transcript (July 17, 2023). The Associate Director reiterated that there would be "no discovery," no "examination or cross-examination," and that the CFPB could not rely on "any argument or information not included in the Notice of Reasonable Cause." *Id.* at 6. Violating that direction, the Initiating Official for the first time cited specific consumer complaints that supposedly showed a risk to consumers. *See id.* at 43-45. GPC objected to the introduction of new evidence, which was contrary to the Bureau's regulations and the Associate Director's instructions. *Id.* at 56.

3. The Bureau's Supplemental Brief.

46. Ten days later, the Bureau authorized the Initiating Official to provide "additional analysis," which could rely on or analyze "any consumer complaints made to CFPB." *Id.*

47. GPC strenuously objected, explaining that a supplemental filing containing such analysis would violate the Bureau's procedural rules. The Bureau's initial notice was required to

contain a "summary of the documents, records, or other items relied on by the initiating official to issue a Notice." 12 C.F.R. § 1091.103(a)(1) (2013). The Bureau's procedural rules applicable at the time also did not provide for any supplemental briefing, providing only that, after any oral response, the Bureau would issue its decision. *Id.* § 1091.102(a).

48. The Bureau proceeded with the supplemental brief regardless. The Initiating Official's August 31, 2023 supplemental brief bore almost no relation to the initial notice. It focused primarily on GPC's P2P product, articulated a new interpretation of the relevant statutory language, cited to 33 complaints not identified or summarized in the initial Notice, and asserted new theories of risk based on those complaints.

49. The supplemental brief conceded that any issues "related to product features offered by Google LLC, not GPC," were not relevant to the proceeding. CFPB Supp. Br. 10 n.28. That excluded any alleged risks from Tap and Pay, the GPay Button, and Google Wallet. *Id.* It also abandoned several of the supposed risks to consumers contained in its Notice—for instance, lack of past federal supervision and supposed risks to "lower income" consumers. *See* GPC Resp. to Supp. Br. 12. And the Initiating Official's supplemental brief simply ignored, and therefore conceded, GPC's arguments and evidence that its compliance program, the frequent examinations by state regulators, and other federal regulatory mechanisms provided sufficient assurance of compliance with Federal consumer financial law and negated any showing of risks to consumers. *Id.* at 12-13.

50. Although the Initiating Official's brief disclaimed the suggestion that it could impose supervision if the Bureau found "*any* possibility of *any* loss however remote or insignificant" or if the risk was "outside the scope of consumer financial protection law," CFPB Supp. Br. at 8 (emphasis added), beyond this ipse dixit, it offered no coherent articulation of these

limiting principles. The Bureau, in any event, would eventually retreat from these purported limitations in its final order, claiming unilateral discretion to determine the "character and magnitude of the risks" justifying supervision. *See* Order 2.

51. The supplemental brief also alleged new risks to consumers not found in the initial notice. Citing 33 complaints—all but one of which involved the P2P product—the Initiating Official alleged that (1) GPC failed to explain its error-resolution determinations to consumers, conducted insufficient investigations, used template language in its responses, and failed to treat certain misdirected transfers as "errors," CFPB Supp. Br. 11-14; and (2) based solely on the alleged volume of complaints, GPC "may not be taking adequate steps to monitor, prevent, and detect fraud" and was "failing to adequately investigate claims from consumers," *id.* at 15.

4. Further Supplemental Proceedings

52. As GPC was preparing its response to the Initiating Official's supplemental brief, two critical developments eliminated any need for the risk-based proceeding. First, GPC decided for business reasons to retire the U.S. version of the Google Pay app and the P2P product.[1] Second, the CFPB issued a notice of proposed rulemaking to supervise a market for "large participants in a market for general-use digital consumer payment applications." Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80,197 (Nov. 17, 2023). GPC anticipated that the CFPB could take the position that GPC would fall within that market. *See, e.g.*, Stacy Cowley, *Consumer Bureau Seeks to Supervise Digital Payment Apps*,

[1] *See* Joris van Mens, *Simplifying our payment apps in the U.S.*, Google (Feb. 22, 2024), https://tinyurl.com/PaymentAppsUpdate (explaining that GPC retired the Google Pay app's P2P product because "Google Wallet[] . . . is used five times more than the Google Pay app in the U.S.").

N.Y. Times (Nov. 7, 2023), https://tinyurl.com/NYTCFPBRule.[2] In light of these developments, GPC asked the Bureau to hold the proceeding in abeyance, GPC Request for Abeyance at 2-3 (Nov. 22, 2023), but the Bureau denied this request.

53. On February 2, 2024, GPC submitted its timely response to the supplemental brief of the Initiating Official. *See generally* GPC Resp. to Supp. Br. GPC explained that the company for business reasons would be retiring the U.S. version of the Google Pay app and its P2P product. *Id.* at 1. GPC stated that the retirement would eliminate any purported risk to consumers that had previously been alleged by the Initiating Official; GPC further explained that—even without the retirement—the supplemental brief would have failed to show that supervision was warranted. *Id.* at 3-22.

54. GPC demonstrated, through a declaration by its Chief Compliance Officer, that none of the complaints supported the CFPB's allegations of risks to consumers. *Id.* at 13-18. The declaration addressed each complaint, categorized by the alleged risk the complaint was supposed to show. The declaration was able to provide a more accurate assessment of the complaints than the CFPB was able to provide because it relied in part on internal documentation about the investigation of the complaints, which was information not reflected in the CFPB's public database of complaints and therefore unknown to the CFPB. *Id.* at 5a-15a. For example, in certain cases where the Bureau suggested that GPC might not be conducting reasonable investigations of

[2] The final rule was issued on November 21, 2024. *Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications*, CFPB (Nov. 21, 2024), https://tinyurl.com/Digital-LPR (to be codified at 12 C.F.R. pt. 1090). The final rule imposes supervision only on entities who complete over 50 million consumer payment transactions annually, and GPC products could fall beneath that threshold in a given year. The supervision that CFPB attempts to impose here, however, lasts indefinitely. And the supervision imposed by the final rule does not label GPC as a "risk" to consumers, while the supervision imposed here does and thus has greater reputational consequences.

erroneous P2P transfers, GPC explained that some of the consumers who complained had not received refunds because they failed to respond to GPC's requests for the basic information required to evaluate their concerns (thus precluding further investigation). In other cases, GPC not only completed a thorough investigation but had actually refunded the consumer's money (thus completely resolving the consumer's concerns). *Id.* at 10a ¶¶ 40-41. As discussed further below, the CFPB's designation order wholly ignored this evidence.

55. The CFPB then filed a supplemental reply, asserting, among other things, that "past conduct can serve as the sole basis for placing a covered person under supervision"—*even if there is no risk of future harm.* Supplemental Reply Brief of Initiating Official at 6 (Feb. 14, 2024) ("CFPB Supp. Reply"). But the Initiating Official also asserted that, even assuming *arguendo* that the "possibility of future harm is necessary" the risks would persist "through any wind-down." *Id.* The Initiating Official speculated that (1) the wind-down "may not proceed," (2) "[c]onsumers may face unexpected fees in the process of withdrawing funds," and (3) GPC may not have provided a method for "unbanked consumers who funded Google Pay with prepaid cards" to receive their remaining Google Pay Balance funds. *Id.*

56. The supplemental filing also took the position that the CFPB could supervise a company if it had just a "modest" degree of confidence that the company might pose *some* risk to consumers and that the risk identified need not have anything to do with the actual statutes and regulations that the agency is charged with enforcing. *Id.* at 10.

57. At the second supplemental oral response, GPC disproved each of the Initiating Official's newly identified risks. GPC explained that the retirement would certainly occur (as proved true), that any fees for withdrawing funds had already been disclosed and would not materially change during the retirement (and would be reduced after the retirement), and that no

consumers had funded Google Pay with prepaid cards for years, but that in any event unbanked users could request a physical check. *See* 2d Supplemental Oral Response Transcript at 14, 18-20 (Feb. 23, 2024) ("2d Supp. Oral Resp. Tr."). GPC also argued that identifying past risks to consumers was insufficient, particularly where the relevant product was being retired, because the statute requires the agency to conclude that conduct "*poses* risks to consumers" and because supervision is inherently forward-looking. *Id.* at 15-16 (emphasis added).

5. Recommended Determination and Further Supplemental Briefing.

58. On March 1, 2024, the CFPB Director received a recommended determination in this matter. By that point, the matter should have been resolved. Nevertheless, on April 23, 2024, the Bureau reached out once more in search of new evidence and new theories. It ordered GPC to file another supplemental brief (1) identifying any updates relating to the planned product retirement and (2) explaining its position on whether GPC (or its affiliates) is a "service provider" to a bank with regards to various products, including those offered by Google LLC. CFPB Order for Supplemental Briefing (Apr. 23, 2024). GPC filed a supplemental brief explaining that there were no changes or updates to the planned product retirement and that the product retirement was proceeding as planned, and that, among other things, none of the listed products in the April 23 Order renders GPC (or Google LLC) a "service provider" with a depository institution that would allow for supervision under 12 U.S.C. §§ 5515(d) and 5516(e).

59. On June 7, 2024, GPC notified the Bureau that the planned retirement was complete.

C. CFPB's Designation Order

60. Five months later, on November 8, 2024, the Bureau issued its Order designating GPC for supervision. The Bureau published the Order on December 6, 2024. The Order doubled

down on the Bureau's erroneous legal positions; relied on unsupported allegations and speculation; and ignored most of the evidence GPC provided during the administrative process.

a. The Bureau's Legal Conclusions Are Flawed

61. The Bureau began by describing its far-reaching and erroneous interpretation of its supervisory authority. It claimed the right to designate, in its discretion, any nonbank company offering consumer financial products or services for supervision based on any quantum of alleged risk, regardless of its materiality or likelihood. *See* Order 1-3. It stated that "Congress intended to delegate to the CFPB the discretion to determine whether the character and magnitude of the risks posed by a particular covered person's conduct merit supervision." *Id.* at 2. In doing so, it ignored "one of the background legal principles against which all enactments are adopted": "*de minimis non curat lex* ('the law cares not for trifles')." *Wisconsin Department of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). The Bureau's claim of a sweeping delegation of authority necessarily raises two substantial constitutional questions:

62. *First*, the source of that claim is purported congressional *silence*: Ignoring the Supreme Court's major-questions jurisprudence cited by GPC, the Bureau claimed that "Congress's election *not* to use more specific or directive language" was the source of its purportedly unbounded authority. Order 2 (emphasis added); *see also id.* at 16-17. The major-questions doctrine forecloses agencies from claiming "sweeping and consequential authority" based on silence. *West Virginia* v. *EPA*, 597 U.S. 697, 722-723 (2022). "The agency instead must point to 'clear congressional authorization' for the power it claims," *id.*, and the Bureau simply cannot do so. It is "highly unlikely" that Congress intended to provide unbounded "agency discretion" to pick and choose which businesses posing risks of any kind and quantity should be subjected to the heavy artillery of Bureau supervision, and it is "even more unlikely that it would

achieve that through such a subtle device" as the narrow provision at issue here. *MCI Telecommunications Corp.* v. *AT&T*, 512 U.S. 218, 231 (1994).

63. The Bureau's interpretation also unduly "intrud[es] into an area that is the particular domain of state law," which is the well-established and extensive systems of state supervision of money transmitters. *Alabama Association of Realtors* v. *Department of Health and Human Services*, 594 U.S. 758, 764 (2021); *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991) (noting that courts "assume" that Congress does not lightly legislate in "areas traditionally regulated by the States").

64. Contrary to the Bureau's claim, Order 17, the major-questions doctrine is not limited to *individual actions* of vast significance; it applies when the agency *claims authority* of such significance, as it has done here. And applying the Bureau's new legal interpretation of its authority, it could designate for supervision tens of thousands of companies for de minimis alleged risks.

65. The CFPB's previous acknowledgment that no consumer financial product or service presents zero risk renders its claimed authority especially expansive. The Bureau takes the view that any consumer financial product or service is either low, medium, or high risk. *See* Consumer Risk Assessment, CFPB, https://tinyurl.com/consumerriskassessment (last visited Nov. 18, 2024). If the Bureau is empowered to supervise entities presenting any level of alleged risk, the Bureau is claiming the right to supervise any entity that offers *any* consumer financial products or services.

66. The Bureau next erroneously claimed the right to base its supervisory designations on an undefined set of "risks" to consumers, which are untethered to potential or actual violations of the consumer financial protection laws the agency is charged with administering. But the

Bureau's supervisory function is directed to "supervising covered persons *for compliance with Federal consumer financial law*." 12 U.S.C. § 5511(c)(4) (emphasis added); *see also Seila Law LLC* v. *CFPB*, 591 U.S. 197, 206 (2020) (the CPFB has responsibility for "implementing and enforcing a large body of financial consumer protection laws") (internal quotations omitted). The Bureau's expansive approach contrasts with the Bureau's earlier acknowledgement that, before designating an entity for supervision, it would consider whether the entity has engaged in conduct that "potentially violates Federal consumer financial protection law." 78 Fed. Reg. at 40,357.

67. Next, the Bureau sets for itself a "relatively lenient standard[]" of proof for supervision. Order 3. According to the Bureau, the "reasonable cause" standard requires "more than suspicion but less than a preponderance of evidence." *Id.* n.12 (quoting *United States* v. *Chen*, 99 F.3d 1495, 1503 (9th Cir. 1996)).

68. Most strikingly, the Bureau arrogated to itself the power to supervise entities based entirely on products that they no longer offer. It claimed that such authority exists because the statute permits supervision of a covered person that "is engaging, or has engaged, in conduct that poses risks to consumers." *Id.* at 14. But the present perfect tense of "has engaged" does not negate the present tense of "poses." *See Carr* v. *United States*, 560 U.S. 438, 448 (2010) (relying on "Congress' choice of verb tense to ascertain a statute's temporal reach"). The statute may allow past conduct to serve as the basis for supervision, but only when that conduct reveals a *current or future* risk to consumers. Even if GPC's past product had posed risks to consumers (it did not), such product does not *now* indicate risk to consumers because the product in question—the P2P product—*no longer exists*. The CFPB's absurd interpretation is impermissible. *See, e.g. PHH Corp.* v. *CFPB*, 839 F.3d 1, 54 (D.C. Cir. 2016).

69. The Bureau strained to argue in the alternative that there was a risk of future harm: "Google *may* reenter the P2P payment market or engage in *other* [entirely unspecified] conduct that poses similar risks to consumers." Order 15. The Bureau provided no evidence in support of this speculation, nor did it provide any reason to question the GPC's business reasons for retiring the P2P product. As GPC explained to the public on February 22, 2024, it was retiring the P2P product to "simplify the app experience." *See* Joris van Mens, *supra* note 1. The Bureau provided no explanation why GPC would decide to reverse course and resurrect a product that it has publicly stated it no longer needs. The Bureau also suggests that entities could escape supervision by retiring the products that gave rise to the alleged risks the Bureau identified. Order 15. But this is not a case of evasion—GPC retired the P2P product for legitimate business reasons, and the CFPB can present no evidence to the contrary.

70. The Bureau lastly claimed that "the unwinding of Google's P2P payment platform itself poses risks to consumers." *Id.* at 16. GPC previously explained to the Bureau that it had a plan in place to address any consumer concerns, and, in any event, that "unwinding" is complete and cannot be a basis for future supervision. Additionally, the Bureau presents nothing but speculation that "consumers may be confused" as to aspects of the product's retirement. *Id.* Speculation cannot satisfy the CFPB's burden of showing "reasonable cause" to believe that GPC's conduct poses risks to consumers.

71. The Bureau's approach to its "risks to consumers" supervisory authority renders much of the remaining nonbank supervision authority granted to the agency by the Dodd-Frank Act superfluous. If the Bureau were free to exercise supervisory authority based on immaterial past or present risks regardless of whether they are related to the Federal consumer financial laws, there would be no reason to grant the Bureau more specific statutory authority to supervise the

"origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans," the offering or provision of "any private education loan," or the offering or provision of any "payday loan." 12 U.S.C. § 5514(a)(1)(A), (D), (E). Nor, for that matter, would there be reason for the Bureau to go through laborious rulemakings to identify "larger participant[s] of a market for other consumer financial products or services." *Id.* § 5514(a)(1)(B). An interpretation of a statute that renders so much language superfluous is unacceptable. *See, e.g., National Ass'n of Manufacturers* v. *Department of Defense*, 583 U.S. 109, 125 (2018).

72. *Second*, the Bureau's broad interpretation of "risks to consumers," if accepted, would mean that Congress failed to provide an intelligible principle to cabin the Bureau's discretion. To be constitutional, the statute must have an "intelligible principle" to guide the Bureau's exercise of its discretion. *Gundy*, 588 U.S. at 135. An interpretation that authorizes the Bureau to supervise any company that has ever posed any alleged risk of any kind—as long as the company offers something that counts as a "consumer financial product or service" under the broad definition in the statute, *id.* § 5481(5)—would not suffice. The statute must be interpreted to avoid this unconstitutional result. *See Public Citizen* v. *United States Department of Justice*, 491 U.S. 440, 465-466 (1989). The exceedingly thin bounds that the Bureau acknowledges do exist—that there be a finding of risks to consumers of any quantum or kind based on information from any source after notice and opportunity to respond—are procedural limitations, not standards, and do not resolve the constitutional infirmity of the CFPB's approach.

73. In sum, the statutory language, the broader structure of the statute, the major-questions doctrine, the anti-absurdity canon, the non-delegation doctrine, and any common sense

understanding of the purpose of supervision confirm that Congress did not empower the Bureau to designate a company for ongoing supervision based on a retired product, nor is it entitled to base supervision on any quantum or type of risks to consumers as determined in the Director's discretion. The Bureau's Order is therefore statutorily and constitutionally infirm.

b. The Bureau's Factual Findings Are Deficient

74. Even if risks pertaining to a retired product were relevant (they are not), the Bureau's determination of past risks was deficient. The Bureau's designation order described 26 consumer complaints that purportedly provided its basis for supervision, but altogether ignored GPC's prior responses to, and evidence regarding, these complaints. By ignoring GPC's evidence and responses, the Bureau made an arbitrary and capricious decision that is not supported by substantial evidence. The Bureau's failure to address GPC's responses is particularly flawed because its responses relied in part on information about the complaints that GPC possessed in its own internal systems and was not available to the CFPB through the CFPB complaints database.

75. For example, the Bureau's decision relied on a complaint as to which GPC had already explained that "GPC did investigate and 'did not see any transactions linked to the payments profile provided,'" and "[t]he consumer did not respond or upload the additional information" requested by GPC. Grant Supp. Decl. ¶ 39; Order 9 nn.54, 55. The Bureau did not address this response or explain how GPC's resolution of that complaint indicated a risk to consumers.

76. The Bureau relies on additional complaints to support its assertions that GPC did not investigate consumer complaints and that GPC failed to provide consumers a sufficient explanation of its conclusions. But GPC previously responded that, for each of these complaints, GPC "explained the status of the investigation" to the consumer. *See* Grant Supp. Decl. ¶ 24. By way of example, for one complaint, GPC explained that its "investigation found no system errors,"

"that the money was successfully transferred to the recipient," and that the transactions were "legitimately from [the user's] account." *Id.* ¶ 26. In fact, "a representative from Google Pay Support discussed the complaint with the consumer, and the consumer reviewed the additional documentation that GPC relied on in conducting its investigation and making its error determination." *Id.* ¶ 35.

77. Additionally, the Bureau relied on two complaints as to which GPC provided evidence that its "investigation found no system errors," "the money was successfully transferred to the recipient," and "the transactions were legitimately from the user's account." *Id.* ¶ 26; Order 9 n.54. The Bureau again stood silent in response.

78. The Bureau relied further on a complaint as to which GPC had previously explained that the user had "violated GPC's terms of service." Grant Supp. Decl. ¶ 25; Order 9 n.55. In yet another, the "consumer did not respond to GPC's request [for information], even though GPC informed the consumer that, without that response, GPC could not continue its investigation." Grant Supp. Decl. ¶ 29; Order 9 nn.56, 57.

79. The Bureau's complete and inexplicable failure to respond in its Order to GPC's arguments and evidence regarding these complaints violates well-settled administrative law principles and renders its decision invalid. *See, e.g.*, *Tesoro Alaska Petroleum Co.* v. *FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000) ("The Commission's failure to respond meaningfully to the evidence renders its decisions arbitrary and capricious. Unless an agency answers objections that on their face appear legitimate, its decision can hardly be said to be reasoned.").

80. The Bureau also cited several complaints in which GPC used similar language in responding to multiple customers. Order 10. The Bureau did not demonstrate any risk to consumers posed by the use of such language. As GPC had previously argued, the Bureau itself

recognizes the value of templates in supporting consistency across examinations. *See, e.g.*, Examination Manual at 2; *Sample letters to dispute information on a credit report* (accessed Feb. 2, 2024), https://tinyurl.com/disputesample. Additionally, the fact that consumers complained or were unsatisfied with the response does not make GPC's explanations inadequate. Regulation E requires institutions to conduct an investigation and provide a written explanation to the consumer when it determines that no error occurred based on the information available, 12 C.F.R. § 1005.11(c), (d)(1), and GPC has satisfied that standard. Even under the Bureau's nonbinding interpretation of the regulation, this explanation need not describe every document, piece of evidence, or other information that GPC relied on in making its determination. *See* Consumer Financial Protection Bureau, Supervisory Highlights, Issue 22 § 2.3.3 (Sept. 2020). The Bureau thus failed to provide any explanation of the connection between the facts it found and the decision it made—much less a reasoned explanation.

81. As a catch-all, the Bureau then claims that it "relied on 267 consumer complaints," Order 19, but to this day, the Bureau has not described its concerns regarding more than 33 such complaints to GPC and has therefore not provided GPC with a meaningful, much less "reasonable," opportunity to respond to them. As the Bureau acknowledges, these complaints are "unverified," and while it argues that no verification requirement exists under the statute, it violates basic principles of fairness and rational agency decision-making to subject an entity to supervision based on complaints that the agency has not investigated or confirmed.

82. Moreover, the CFPB has failed to address the fact that the 33 complaints (or the larger set of 267 complaints) constitutes only a tiny fraction of the "millions" of P2P transactions that GPC processed during the relevant time before prior to the retirement of the product. CFPB

Supp. Br. 17. Under any reasonable interpretation, this number of unverified complaints cannot constitute "reasonable cause" to justify a finding of "risks to consumers."

83. Additionally, contrary to the Bureau's unsupported assertion, Order 11, GPC notifies every consumer that they may reach out to GPC's support team with any questions, concerns, or follow-ups regarding GPC's determination and provides a secure portal for accessing the relevant documentation, should the customer seek to pursue further avenues of recourse. GPC Resp. to Supp. Br. 15, 6a ¶ 23; 2d Supp. Oral Resp. Tr., 39-40. In the Order, the Bureau cited a policy that it mischaracterizes as prohibiting GPC customer support agents from providing additional documentation to customers. Order 11. As GPC has previously explained to the CFPB in detail, the policy merely instructs customer support agents to consult with another team that has access to the appropriate documentation and can upload it to a secure portal. This is an appropriate policy that helps to ensure that confidential customer documentation does not fall into the wrong hands. GPC Resp. to Supp. Br. 22a. The Bureau's decision to ignore GPC's explanation of the policy is another clear violation of administrative law principles. *See Genuine Parts Co*. v. *EPA,* 890 F.3d 304, 346 (D.C. Cir. 2018).

84. The Bureau contends that GPC failed to limit consumers' liability for unauthorized transactions, although it notes that GPC maintained a policy to the contrary. Order 11. The Bureau raised this argument in its supplemental brief without citing any specific complaints that provided a basis for this position. CFPB Supp. Br. 11, 13. The Order cites three specific examples of this complaint, Order 11 nn.68, 69, but as GPC previously explained to the Bureau, GPC investigated each of these complaints and determined that no error or unauthorized transfer had occurred. Grant Supp. Decl. 6 ¶¶ 26, 39 (internal quotation marks and brackets omitted). The Bureau violated the

APA by ignoring this evidence, *Genuine Parts*, 890 F.3d at 346, and financial institutions are not required to limit consumers' liability in these circumstances, *see* 12 C.F.R. § 1005.6(b).

85. The CFPB also erred in brushing off the independent consultant report that GPC submitted to the Bureau. *See* GPC Resp. 86a-91a. Contrary to the Bureau's assertions, the Treliant report explains the methodology it used in reviewing the complaints found in the CFPB database in the relevant time period. Among other things, Treliant consulted information about the complaints that was available in GPC's internal systems. That methodology amply supports Treliant's conclusions that "GPC was responsive to complaints and meaningfully engaged with consumers to resolve their concerns;" that "GPC generally handled complaints related to its P2P and Google Pay Balance products appropriately;" that, contrary to the CFPB's suggestion, the vast majority of complaints reviewed "did not allege fraud, scams, or unauthorized transactions;" and that it "did not see evidence of a material risk to consumers with respect to Federal consumer financial laws." *Id.* at 89a. While the CFPB attempts to fault the Report for not, in the agency's view, adequately substantiating its observation that GPC has a "relatively low amount" of complaints compared to financial institutions of similar size, that observation was based on Treliant's prior experience, which includes "decades of financial institution experience managing customer-facing operations and specialized consulting and advisory roles." *Id.* at 90a. In any event, that finding is not essential to Treliant's qualitative findings about the complaints.

86. Further, although GPC detailed in a declaration the extensive compliance program it had in place, which is administered by experienced compliance professionals and meets the regulatory expectations expressed by CFPB and other regulators, the Bureau rejected this evidence on the ground that it had no reason to defer to the company's "self-serving" description. Order 20. That reasoning suggests that the state of the company's compliance program will never affect the

"risks to consumers" determination because the CFPB will simply regard the company's evidence as self-serving. Under applicable administrative law principles, an agency may not discount relevant evidence in this arbitrary manner.

87. The Bureau also ignored evidence demonstrating GPC's multiple mechanisms to prevent and mitigate third-party fraud, while failing to explain what further steps, in the Bureau's view, GPC could have taken. Before the P2P product's retirement, GPC, among other things, employed "machine learning to identify phishing and other fraud risks," alerted a "user when the user is sending a P2P transfer to someone who is not on that user's contact list," and provided customer education about how to avoid scams and frauds. GPC Resp. 47a. GPC operated a sophisticated risk engine that uses multiple signals to evaluate the fraud risk of a transaction and, depending on the risk identified, denied the transaction or required the user take certain actions before proceeding the transaction. *See* 2d Supp. Oral Resp. Tr. 41. In the event a user lost their phone, GPC enabled technology to "remotely lock the device, log out of a Google account, and erase any virtual payment card data." GPC Resp. 48a. And if someone did gain unauthorized access to the phone, the Google Pay app would nevertheless "require[] authentication to open the app to execute P2P transactions." *Id.* at 47a. Here again, the Bureau's decision simply ignores evidence that "undercuts its judgment." *Genuine Parts Co.*, 890 F.3d at 346.

88. The Bureau also erred in declining to take into account the fact that GPC is already subject to extensive supervision by numerous state regulators, which encompasses federal and state consumer protection requirements. Congress was clear that in "exercis[ing] its authority under [the risk-based supervision provision]," the Bureau must "tak[e] into consideration . . . the extent to which such institutions are subject to oversight by State authorities for consumer protection." 12 U.S.C. § 5514(b)(2). Congress further recognized that the Bureau is bound to

"minimize regulatory burden" by "coordinat[ing] its supervisory activities with . . . State bank regulatory authorities, and [] State agencies," which confirms that state supervision is a factor the Bureau was bound to consider. *Id.* § 5514(b)(3).

89. These failures render the Bureau's decision arbitrary and capricious and unsupported by substantial evidence.

c. The Bureau's Process Was Defective

90. The Bureau lastly contends that it violated neither statutory nor regulatory rules through its repeated expansion of its purported grounds for supervision beyond those set forth in the Notice. Order 21. Not so. "It is axiomatic that an agency must adhere to its own regulations," and nothing in the relevant statute or regulations permits the Bureau to fix, through unauthorized supplemental briefing, a defective notice that fails to provide the evidence forming the basis for the Bureau's alleged supervisory authority. *Exportal Ltda.* v. *United States*, 902 F.2d 45, 49 (D.C. Cir. 1990) (citations omitted). Rather, Bureau rules prohibit the introduction of new evidence beyond the original Notice and Response. *See* 12 C.F.R. §§ 1091.103(a)(1), 1091.105(d), (e).

91. The Bureau's standardless approach also renders any process insufficient. Because the Bureau, prior to its Order, declined to define "risks to consumer" and "reasonable cause," 78 Fed. Reg. at 40,357-40,358, and ultimately adopted an unconstrained interpretation, GPC had no opportunity to argue, by a known standard, that its conduct did not pose risks to consumers. *See ACA International* v. *FCC*, 885 F.3d 687, 700 (D.C. Cir. 2018) (agency action is arbitrary if "it fails to articulate a comprehensible standard for assessing the applicability of a statutory category" (internal quotation marks and citation omitted)).

CLAIMS FOR RELIEF

COUNT I

In Excess of Statutory Authority
5 U.S.C. § 706(2)(C)

92. Plaintiff incorporates by reference the allegations in all the preceding paragraphs.

93. The CFPB's designation is final agency action because no further administrative process is available and because the order subjects GPC to supervision. 5 U.S.C. § 704; *Bennett* v. *Spear*, 520 U.S. 154, 177-178 (1997).

94. GPC is "adversely affected or aggrieved" by this action because it has been publicly designated as posing risks to consumers and will therefore be subjected to burdensome supervision. 5 U.S.C. § 702.

95. GPC is likely to be irreparably harmed by the designation because, among other things, supervision is burdensome and costly, has negative reputational consequences, and, among other things, the CFPB claims the authority to obtain attorney-client privileged information during the process of supervision.

96. To exercise supervisory authority, the CFPB must have "reasonable cause to determine" that the person "is engaging, or has engaged, in conduct that *poses* risks to consumers with regard to the offering or provision of consumer financial products or services." 12 U.S.C. § 5514(a)(1)(C) (emphasis added).

97. The relevant "risks to consumers" within the meaning of the statute refer to those current or future risks that arise out of the potential or actual violations of Federal consumer financial laws, because the Bureau has been tasked only with "implementing and enforcing a large body of financial consumer protection laws." *Seila Law*, 591 U.S. at 206 (internal quotation marks and brackets omitted and emphasis added) (citing 12 U.S.C. § 5511(a)).

98. The relevant "risks to consumers" within the meaning of the statute must go beyond minimal or routine alleged risks to consumers inherent in the offering of consumer financial products or services. To be supervised for "risks to consumers," Congress envisioned that the risks found by the CFPB must reach a level of materiality or significance. Whatever the formulation, the presence of any quantum of risk is insufficient. Nor may the risks be speculative.

99. To justify supervision under § 5514(a)(1)(C), defendants must therefore identify a material risk of harm arising out of potential or actual violations of Federal consumer financial law.

100. To the extent that defendants assert authority to supervise *any* company creating *any* risk of *any* kind whenever that company offers "consumer financial product or service," that interpretation would be contrary to the text and structure of the CFPB, would intrude on traditional areas of state regulation, would violate the major-questions doctrine, would violate the non-delegation doctrine for lack of an intelligible principle to guide the Bureau's discretion, and would be contrary to the constitutional-avoidance and anti-absurdity canons. *See West Virginia*, 597 U.S. at 722-723; *Alabama Association of Realtors*, 594 U.S. at 764; *Gundy* v. *United States*, 588 U.S. 128, 149 (2019) (Gorsuch, J., dissenting); *McNeill* v. *United States*, 563 U.S. 816, 822 (2011); *Public Citizen*, 491 U.S. at 465-466.

101. Because defendants' designation does not identify any conduct that "*poses*" a current or future risk of harm to consumers, it is in excess of statutory authority. Defendants cannot impose supervision based on a retired product.

102. Because defendants' designation of GPC is based on an unreasonable interpretation of the statute, its action is in excess of statutory authority.

103. Because defendants' designation fails to identify "risks to consumers" that are material and that arise out of violations or potential violations of Federal consumer financial law, its action is in excess of statutory authority.

104. Defendants' designation of GPC is therefore in excess of statutory authority and must be set aside. 5 U.S.C. § 706(2)(C).

COUNT II

Arbitrary and Capricious
5 U.S.C. § 706(2)(A)

105. Plaintiff incorporates by reference the allegations in all the preceding paragraphs.

106. Defendants' decision was arbitrary and capricious because, among other things, defendants have:

a. unreasonably designated GPC for supervision even though the P2P product—the only product that is within scope and alleged to pose risks to consumers—had been retired;

b. repeatedly changed the asserted basis for its position that GPC poses a risk to consumers each time that GPC had an opportunity to respond to new alleged risks;

c. refused to place the matter in abeyance while GPC provides status reports regarding the status of the retirement;

d. failed to articulate a reasonable or discernable standard that the Bureau would apply in determining whether a particular company poses risks to consumers;

e. failed to explain why any of the alleged risks to consumers would constitute a sufficient risk arising out of a potential or actual violation of any Federal consumer financial law;

f. ignored evidence and arguments advanced by GPC about the product retirement, the lack of risks to consumers, GPC's compliance program, state regulatory regimes, GPC's efforts to reduce fraud, and the statutory language;

g. accepted the unverified allegations in a small number of consumer complaints, and knowingly ignored GPC's specific evidence contradicting such complaints, in some instances, and showing how the complaints were properly resolved, in others;

h. failed to explain why the advantages of supervision outweigh the substantial costs to GPC, particularly in light of the product retirement;

i. violated the Bureau's own procedural rules by, among other things, failing to include all bases for supervision in the Notice, failing to summarize the documents upon which the agency relied, and providing additional opportunities for the Initiating Official to identify risks to consumers;

j. failed to articulate why the Bureau would proceed with a risk-based designation rather than a larger-participant rulemaking;

k. threatened to publicize the risk-based designation unless GPC agreed to forfeit its statutory and regulatory right to contest the basis for supervision, and

l. otherwise reached the final decision in a manner that was arbitrary and capricious, for the reasons given in Counts 1, 3, 4, and 5.

107. Because the designation of GPC was arbitrary and capricious in multiple ways, it must be set aside. 5 U.S.C. § 706(2)(A).

COUNT III

Without Observance of Procedure Required by Law
5 U.S.C. § 706(2)(D)

108. Plaintiff incorporates by reference the allegations in all the preceding paragraphs.

109. Defendants failed to provide plaintiff with a "reasonable opportunity to respond" to the Notice of Reasonable Cause by failing to provide a standard by which defendants determine "reasonable cause" of "risks to consumers," failing to rely on specific evidence, and failing to show a nexus between the evidence and defendants' standard. 12 U.S.C. § 5514(a)(1)(C).

110. Defendants violated the Bureau's own regulations in providing the Initiating Official an opportunity to file a supplemental brief raising numerous new arguments and evidence.

111. Defendants unreasonably departed from the Bureau's own procedures by repeatedly articulating new theories of wrongdoing in support of a finding that GPC poses risks to consumers.

112. Defendants' Order relies on facts, documents, and arguments not found in the Notice of Reasonable Cause.

113. Because the designation was issued "without observance of procedure required by law," it must be set aside. 5 U.S.C. § 706(2)(D).

COUNT IV

Unsupported by Substantial Evidence
5 U.S.C. § 706(2)(E)

114. Plaintiff incorporates by reference the allegations in all the preceding paragraphs.

115. There was insufficient evidence in the record to support any conclusion that GPC poses risks to consumers or posed risks to consumers in the past. The record evidence was speculative, rebutted, linked solely to a retired product, ignored contrary evidence, and introduced belatedly in violation of procedural requirements.

116. Because the designation was "unsupported by substantial evidence," it must be set aside. 5 U.S.C. § 706(2)(E).

PRAYER FOR RELIEF

Plaintiffs respectfully pray that this Court enter an order and judgment:

1. Vacating and setting aside the designation;

2. Declaring that the Bureau's designation is arbitrary and capricious, in excess of statutory authority, without observance of procedure required by law, and unsupported by substantial evidence;

3. Preliminarily and permanently enjoining defendants and any relevant officers, employees, and agents from commencing supervision, or enforcing, implementing, applying, or taking any action whatsoever under, or in reliance on, the designation;

4. Awarding plaintiff the costs of this litigation, including reasonable attorney's fees; and

5. Entering such other and further relief as this Court may deem just and proper.

Dated: December 6, 2024

Respectfully submitted,

By: */s/ Kannon K. Shanmugam*

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Exhibit A

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

In the Matter of: Google Payment Corp.	Supervisory Designation Proceeding File No. 2024-CFPB-SUP-0001

DECISION AND ORDER (PUBLIC VERSION)

The matter before the Consumer Financial Protection Bureau (CFPB or Bureau) is a supervisory designation proceeding. Unlike an administrative enforcement proceeding, which entails findings of fact and conclusions of law on whether an entity violated federal consumer financial protection laws, this matter is different. The proceeding addresses whether the CFPB has reasonable cause to determine that the conduct of a covered person under the Consumer Financial Protection Act "poses risks to consumers with regard to the offering or provision of consumer financial products or services," for the purpose of designating the entity for supervision.[1]

Importantly, the question of whether an entity poses such risks does not require a determination of whether the entity is violating laws or regulations. There are multiple indicia that Google Payment Corporation (Google) meets the standard for supervision under the CFPA. For the reasons set forth below, a supervisory designation is warranted and is so ordered.

I. Background

A. Statutory Framework

Congress charged the CFPB with "ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[2] One of the key tools that Congress gave the CFPB is the authority to supervise certain nonbank financial companies under CFPA section 1024.[3] This order describes the relevant statutory framework in detail.

1. CFPA Section 1024(a)(1): Who Is Supervised

Section 1024(a)(1) establishes five categories of nonbank financial companies that are subject to CFPB supervision. Relevant to this proceeding, section 1024(a)(1)(C) authorizes CFPB supervision of:

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[1] *See* Consumer Financial Protection Act of 2010 (CFPA) § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)). Congress enacted the CFPA as title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[2] *Id.* § 1021(a) (codified at 12 U.S.C. § 5511(a)).
[3] *Id.* § 1024 (codified at 12 U.S.C. § 5514).

> any [nonbank] covered person who … the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) ["Collecting and Tracking Complaints"] or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.[4]

This provision contains several key terms, many of which are defined in the statute itself. The term "consumer financial product or service" includes a range of enumerated activities.[5] A "covered person" is "any person that engages in offering or providing a consumer financial product or service."[6] The term "consumer" is defined as "an individual or an agent, trustee, or representative acting on behalf of an individual."[7]

"Risk" is not defined in the statute but is a familiar term referring to "the possibility of loss or injury."[8] In contrast to other Dodd-Frank Act provisions,[9] CFPA section 1024(a)(1)(C) does not specify the character or magnitude of "risks to consumers" that is required to subject a covered person to supervision. Instead, Congress empowered the CFPB to determine whether the risks to consumers posed by a covered person's conduct warrant supervisory oversight. Congress cabined this discretion with the requirements that the CFPB (1) identify risks to consumers, which it has reasonable cause to determine exist; (2) notify the entity of those risks; and (3) give the entity a reasonable chance to respond. Moreover, final CFPB agency action may not be arbitrary or capricious.[10] Congress's election not to use more specific or directive language in CFPA section 1024(a)(1)(C), however, indicates that Congress intended to delegate to the CFPB the discretion to determine whether the character and magnitude of the risks posed by a particular covered person's conduct merit supervision.

Section 1024(a)(1)(C) only requires that the CFPB have "reasonable cause to determine" that the covered person's conduct poses risks to consumers.[11] Whatever the precise meaning of "reasonable cause," it must be less demanding than the default preponderance-of-the-evidence

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[4] *Id.* § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).
[5] *Id.* § 1002(5), (15) (codified at 12 U.S.C. § 5481(5), (15)).
[6] *Id.* § 1002(6) (codified at 12 U.S.C. § 5481(6)). Certain affiliates of a covered person are also deemed covered persons. *Id.*
[7] *Id.* § 1002(4) (codified at 12 U.S.C. § 5481(4)).
[8] *Risk, Merriam-Webster's Collegiate Dictionary* (11th ed. 2009); *accord Risk*, *Black's Law Dictionary* (11th ed. 2019) ("the chance of injury, damage, or loss").
[9] *See* 12 U.S.C. § 5466(f)(1) (requiring reasonable cause to conclude that an "*imminent* risk of *substantial* harm" exists (emphasis added)); *id.* § 5467(e)(2)(A)(iv)(II) (requiring "reasonable cause to believe that the financial institution's noncompliance … poses a *substantial* risk to other financial institutions, critical markets, or the broader financial system" (emphasis added)); *id.* § 5467(e)(2)(B)(iii)(II) (requiring "reasonable cause to believe that the financial institution's noncompliance … poses *significant* liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States" (emphasis added)).
[10] *See* 5 U.S.C. § 706(2)(A).
[11] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

standard generally applicable in noncriminal matters.[12] If Congress had intended for the default preponderance standard to apply, there would have been no need to insert the phrase "reasonable cause" in section 1024(a)(1)(C), and if Congress had intended a standard more demanding than the preponderance standard, such as the "clear and convincing" evidence standard, it would have used language different than "reasonable cause," which resembles the relatively lenient standards of "reasonable suspicion" or "probable cause" from criminal-procedure case law.[13]

Congress's decision in section 1024(a)(1)(C) to grant the CFPB discretion in designating covered persons for supervision, and to make the exercise of that discretion subject to a relatively lenient burden of persuasion ("reasonable cause"), reflects the limited consequences of a section 1024(a)(1)(C) determination. As explained further below, such a determination merely means that the CFPB may periodically "require reports" from, and "conduct examinations" of, the covered person.[14] It does not necessarily entail a finding that the covered person has violated any law. Nor does it impose any monetary penalties or new legal requirements (other than the requirement to provide reports or participate in examinations in accordance with lawful supervisory directives). It does not even definitively label the covered person as a "risky" business; it merely indicates that the CFPB has "reasonable cause" to determine that the covered person's conduct poses risks to consumers.[15] The relatively low bar for subjecting a covered person to supervision under section 1024(a)(1)(C) reflects the relatively limited impact of such a determination on the entity.

2. CFPA Section 1024(b)(1): Purposes of Supervision

CFPA section 1024(b)(1) sets out the purposes of CFPB supervision of nonbank covered persons:

> The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—
> (A) assessing compliance with the requirements of Federal consumer financial law;
> (B) obtaining information about the activities and compliance systems or procedures of such person; and

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[12] *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 253 (1989) (plurality op.) (discussing the "[c]onventional rule[]" that "parties to civil litigation need only prove their case by a preponderance of the evidence"); *accord, e.g., Conley v. United States,* 5 F.4th 781, 794-95 (7th Cir. 2021); *see also United States v. Chen*, 99 F.3d 1495, 1503 (9th Cir. 1996) (explaining, in the context of applying the crime-fraud exception to attorney-client privilege, that "[r]easonable cause is more than suspicion but less than a preponderance of evidence").

[13] *See, e.g., Kansas v. Glover,* 140 S. Ct. 1183, 1187-88 (2020); *Kaley v. United States*, 571 U.S. 320, 338 (2014); *Florida v. Harris*, 568 U.S. 237, 243-44 (2013). Congress has defined the term "reasonable cause to believe" in the context of other statutory provisions. *See* 12 U.S.C. § 4003(c)(1) ("For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person."); *id.* § 5006(d)(2)(C) (providing that a bank "has reasonable cause to believe that [a] claim is fraudulent" where the facts "would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent"). It is unclear whether any meaningful difference exists between those definitions and the concepts of "reasonable suspicion" or "probable cause." Regardless, Congress chose not to import those definitions from other statutes into CFPA section 1024(a)(1)(C).

[14] *See* CFPA § 1024(b)(1) (codified at 12 U.S.C. § 5514(b)(1)).

[15] *Id.* § 1024(a)(1)(C) (codified at 12 U.S.C. § 1024(a)(1)(C)); *see also* Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40359 (July 3, 2013) ("Supervision alone does not impose any penalty on a person, does not deprive it of any property, and does not restrict its ability to engage in a viable business.").

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.[16]

Accordingly, under paragraph (A), one of the purposes of CFPB supervision is assessing compliance with Federal consumer financial law. "Federal consumer financial law" covers the provisions of the CFPA, such as the CFPA's prohibition on unfair, deceptive, or abusive acts or practices, as well as various other laws that the CFPB administers, such as the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E.[17]

Congress, however, did not limit the CFPB's supervisory authority to assessing compliance with Federal consumer financial law under paragraph (A); it added paragraphs (B) and (C) as well. With respect to paragraph (C), Congress recognized that risks to consumers are not necessarily limited to violations of the laws administered by the CFPB—many of which had been found wanting in the 2008 financial crisis.[18] Instead, the CFPB was charged with using supervisory reports and examinations to detect a range of potential harms to consumers.

3. CFPA Section 1024(b)(2): Mandate for "Risk-Based Supervision Program"

Section 1024(b)(2), titled "Risk-Based Supervision Program," provides that the Bureau's exercise of its supervisory authority under paragraph (b)(1) should be:

> based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—
> (A) the asset size of the covered person;
> (B) the volume of transactions involving consumer financial products or services in which the covered person engages;
> (C) the risks to consumers created by the provision of such consumer financial products or services;
> (D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and
> (E) any other factors that the Bureau determines to be relevant to a class of covered persons.[19]

This risk assessment governs when the CFPB is deciding how to exercise its supervisory authority under section 1024(b)(1)—not, as here, when the CFPB is making a threshold determination to designate an entity for supervision under section 1024(a)(1)(C). Nevertheless,

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[16] CFPA § 1024(b)(1) (codified at 12 U.S.C. § 5514(b)(1)). The CFPB also has certain additional supervision-related authorities under CFPA § 1024(b)(7) (codified at 12 U.S.C. § 5514(b)(7)).
[17] CFPA §§ 1002(12), (14), 1031, 1036 (codified at 12 U.S.C. § 5481(12), (14), 5531, 5536).
[18] The conclusion that Congress did not intend to limit the objectives of CFPB supervision under CFPA section 1024 to identifying legal violations is bolstered by the contrast between the use of "risks" in section 1024 and the use of "violate" or "violation" in the CFPA's enforcement provisions. *See, e.g.*, CFPA § 1051(1), (5) (codified at 12 U.S.C. § 5561(1), (5)); CFPA § 1052(c)(1) (codified at 12 U.S.C. § 5562(c)(1)); *id.* § 1054(a) (codified at 12 U.S.C. § 5564(a)); *id.* § 1055(c)(1) (codified at 12 U.S.C. § 5565(c)(1)). The enforcement provisions demonstrate that if Congress had intended for the CFPB to consider only whether a covered person may have violated the law in making designations under section 1024(a)(1)(C), "Congress knew how to draft" the provision to accomplish that objective. *City of Chicago v. Env't Def. Fund*, 511 U.S. 328, 337-38 (1994) (citation omitted).
[19] CFPA § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)).

because section 1024(b)(2), like section 1024(a)(1)(C), is focused on assessing risks to consumers, the CFPB "may consider the (b)(2) factors to the extent applicable in making a reasonable-cause determination" under section 1024(a)(1)(C).[20]

4. Distinction Between Supervision and Enforcement

Under the CFPA, the CFPB's enforcement authority is governed by a separate set of provisions from its supervisory authority. The CFPB can issue civil investigative demands, which are a type of administrative subpoena.[21] After an investigation concludes, the CFPB may bring an enforcement action in federal district court or an administrative enforcement proceeding.[22] The CFPB's enforcement authority extends, with certain exceptions, to "any person" who "violates a Federal consumer financial law."[23] Accordingly, a defendant in a CFPB enforcement action is not necessarily a supervised entity.

If CFPB supervisory examiners identify a violation of Federal consumer financial law by a supervised entity, these examiners may decide to refer the matter to the Office of Enforcement, but that is not the primary purpose of supervision. Instead, when examiners detect activities that violate Federal consumer financial law or otherwise pose risks to consumers, the CFPB may take a variety of actions other than enforcement. "Most supervisory activities do not result in a referral to Enforcement."[24] For example, responsible companies generally share the CFPB's goals of avoiding violations of law and harm to their customers, so examiners often work informally and collaboratively with supervised institutions to address issues. As another example, supervisory findings may help inform the CFPB's research, market monitoring, and rulemaking functions. For instance, Congress required the CFPB to analyze and report on "developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers."[25] Congress also gave the CFPB rulemaking authorities that it can use to address risks to consumers.[26]

Unlike the enforcement process, the purpose of supervision is not to impose sanctions for legal violations. Similarly, a determination under section 1024(a)(1)(C) that supervision is warranted is not a finding that an entity is guilty of wrongdoing.

B. Factual Background

Google is a wholly owned subsidiary of Google LLC, which is a wholly owned subsidiary of Alphabet, Inc., a publicly traded company.[27] Google operates or has operated two payment products: (1) a peer-to-peer (P2P) payment platform and (2) a stored-value product known as

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[20] 78 Fed. Reg. at 40358.
[21] CFPA § 1052(c) (codified at 12 U.S.C. § 5562(c)); 12 C.F.R. pt. 1080.
[22] CFPA §§ 1053-1054 (codified at 12 U.S.C. §§ 5563-5564).
[23] CFPA § 1054(a) (codified at 12 U.S.C. § 5564(a)); *see also id*. § 1053(a) (codified at 12 U.S.C. § 5563(a)).
[24] CFPB, *An Introduction to CFPB's Exams of Financial Companies* 3 (Jan. 9, 2023), https://files.consumerfinance.gov/f/documents/cfpb_an-introduction-to-cfpbs-exams-of-financial-companies_2023-01.pdf.
[25] CFPA § 1013(b)(1)(A) (codified at 12 U.S.C. § 5493(b)(1)(A)).
[26] *E.g.*, CFPA §§ 1022(b)(1), 1031, 1032 (codified at 12 U.S.C. §§ 5512(b)(1), 5531, 5532).
[27] Google Response to Notice of Reasonable Cause ("Google Resp.") at 2.

Google Pay Balance.[28] Both products were accessible through the Google Pay App, a mobile app available on both Android and iOS devices.[29]

The P2P payment platform allowed users to send and receive funds to and from other users of the Google Pay App.[30] Users could fund transactions on the P2P payment platform with certain debit cards, from certain ACH-enabled checking and savings accounts, or from a Google Pay Balance account.[31] The P2P payment platform also allowed users to transfer funds received from other users to a linked bank account or debit card.[32]

Google Pay Balance was a stored-value product.[33] Users could add funds to a Google Pay Balance account by transferring money from a debit card, a checking account, or a savings account, or by receiving funds through a P2P transaction.[34] A Google Pay Balance account could be used to fund P2P transactions.[35] The funds in a Google Pay Balance account could also be used with a Google Pay Balance Card, a virtual card that allows users to conduct in-store contactless and online payments.[36] The Google Pay Balance Card allowed users to conduct in-store contactless and online payments by utilizing two other Google products: Tap and Pay and the GPay Button.[37] According to Google, "[b]oth Tap and Pay and the GPay Button are not operated by GPC but instead are the responsibility of Google LLC."[38]

In February 2024, Google announced that the U.S. version of the Google Pay App would be discontinued.[39] According to Google, as of early June 2024, the U.S. version of the Google Pay App and the related P2P payment platform were no longer available to consumers.[40] The Google Pay Balance stored-value product remains available for limited purposes following the discontinuation of the Google Pay App and the P2P payment platform.[41] Users can continue to hold funds in an existing Google Pay Balance account and to withdraws funds, but are not able to add funds to an account or to create new accounts.[42] Moreover, Google users can continue to spend funds in an existing Google Pay Balance account with the Google Pay Balance Card.[43]

C. Procedural History

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* at 3.
[39] Google Response to Supplemental Brief of Initiating Official ("Google Supp. Br.") at 1; *see also* Joris van Mens, Google Pay, *Simplifying Our Payment Apps in the U.S.* (Feb. 22, 2024), https://blog.google/products/google-pay/payment-apps-update/; Google Pay Help, *Changes to the Google Pay App in the US* (last visited October 28, 2024), https://support.google.com/googlepay/answer/14555219.
[40] Response to Director's Request for Supplemental Briefing ("Google Sec. Supp. Br.") at 2-4.
[41] *Id.*
[42] *Id.*
[43] *Id.*

The CFPB has issued a procedural rule at 12 C.F.R. part 1091 that governs proceedings under CFPA section 1024(a)(1)(C). On March 20, 2023, the Assistant Director for Supervision, who acted as the "initiating official" under the procedural rule, began this proceeding by issuing what the rule terms a "Notice of Reasonable Cause."[44] Google submitted its written response on May 19, 2023.[45] Google provided a supplemental oral response on July 17, 2023.[46] On July 27, 2023, the Associate Director invited supplemental briefing from the initiating official and Google. On August 31, 2023, the initiating official filed her supplemental brief including copies of certain relevant consumer complaints.

On November 22, 2023, Google requested that this matter be held in abeyance in light of a potential material product change and the Bureau's issuance of a proposed rule that would subject certain digital payment companies to its supervisory authority.[47] Google's request for an abeyance was denied, but Google's deadline to file a response to the initiating official's supplemental brief was extended and Google was directed to include in its response complete information pertaining to the forthcoming product change. On February 2, 2024, Google filed its response. On February 14, the initiating official filed a reply. On February 23, Google provided a second supplemental oral response. The Associate Director then submitted a recommended determination.[48]

On April 23, 2024, the Bureau requested additional supplemental briefing. On May 23, 2024, Google submitted a supplemental brief.

II. Analysis

A. Google Is a Covered Person That Offers or Provides a Consumer Financial Product or Service

To be subject to supervision under section 1024(a)(1)(C), an entity must generally be a "covered person" that offers or provides a "consumer financial product[]or service[]."[49] Consumer financial products or services include issuing stored value or payment instruments and engaging in transmitting or exchanging funds.[50] Google does not dispute that it is a "covered person" under the CFPA.[51]

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[44] *See* 12 C.F.R. § 1091.102 (2023).
[45] *See id.* § 1091.105 (2023).
[46] *See id*. §§ 1091.105(b)(3), 106 (2023).
[47] *See* Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (Nov. 17, 2023). The proposed rule would define a market for general-use digital consumer payment applications. Larger participants in this market would be subject to the Bureau's supervisory authority under CFPA section 1024(a)(1)(B), CFPA § 1024(a)(1)(B) (codified at 12 U.S.C. § 5514(a)(1)(B)).
[48] My decision and order here fully set forth the factual findings and reasoning underlying my decision to designate Google for supervision under CFPA section 1024(a)(1)(C). To the extent the findings and reasoning in this decision and order differ from the recommended determination, I have exercised my authority to modify the recommended determination under 12 C.F.R. § 1091.109 (2023) to the extent that provision may continue to apply. After submission of the recommended determination in this matter, the CFPB amended part 1091 to omit recommended determinations from the process going forward, in light of an organizational change of the CFPB's internal structure. *See* Procedures for Supervisory Designation Proceedings, 89 Fed. Reg. 30259, 30260, 30261 (Apr. 23, 2024).
[49] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).
[50] CFPA § 1002(15)(A)(iv)-(v) (codified at 12 U.S.C. § 5481(15)(A)(iv)-(v).
[51] Google Resp. ("Google Resp.") at 3 n.2.

B. The CFPB Has Reasonable Cause to Determine That Google Has Engaged in Conduct Posing Risks to Consumers

There is reasonable cause to determine that Google has engaged in conduct that poses risks to consumers. Google's conduct presented two such risks.[52] First, the CFPB has reasonable cause to determine that Google's practices in connection with investigating allegedly erroneous transactions have posed risks to consumers. Second, the CFPB has reasonable cause to determine that Google's practices in connection with the prevention of fraudulent and unauthorized transactions have posed risks to consumers. Each of these risks is a sufficient basis to exercise the CFPB's supervisory authority under section 1024(a)(1)(C). Further, Google's discontinuation of the Google Pay App and the P2P payment platform is not a basis to refrain from designating Google for supervision, though it may influence whether the CFPB determines whether to conduct an examination.

1. Risks Related to Error Resolution

The consumer complaints submitted to the CFPB provide reasonable cause to determine that Google's practices in connection with investigating allegedly erroneous transactions have posed risks to consumers. Those complaints indicate: (1) that Google failed to adequately investigate allegedly erroneous transfers made via its P2P payment platform; (2) failed to adequately explain the results of its investigations when it determined that no erroneous transfer had occurred; (3) failed to provide consumers any further recourse or offer to provide supporting documentation after making a determination that no erroneous transfer had occurred; and (4) failed to protect consumers from liability for erroneous transfers.

First, there is reasonable cause to determine that Google failed to adequately investigate allegedly erroneous transfers made via its P2P payment platform. Many consumers submitted complaints to the Bureau after they notified Google that a transfer was unauthorized or otherwise

[52] The Notice of Reasonable Cause discusses other risks related to Google's digital payments products, including risks associated with products that allow consumers to make "purchases from select merchants, including in-store contactless, and online." Notice of Reasonable Cause at 2. The Notice states, "In providing the Google Pay service, Respondent stores payment credentials or stores, encrypts, and authenticates tokenized credentials associated with eligible payment methods, securely transmits these credentials to initiate payment transactions requested by consumers, and communicates the results of the payment transactions back to consumers." Google claims that these "tokenized transactions" are made possible by two Google products known as "Tap and Pay" and the "GPay Button." Google Resp. at 3. Google asserts that "[b]oth Tap and Pay and the GPay Button are not operated by GPC but instead are the responsibility of Google LLC," and, therefore, are "beyond the scope" of this proceeding. *Id.* at 3. This array of features found in Google-branded payment products appears to be interrelated, and Google's efforts to opportunistically invoke the corporate form to disassociate itself from tokenized payment features is not entirely convincing. Nevertheless, it not necessary to consider these features in order to resolve this proceeding and designate Google under section 1024(a)(1)(C). Separate from this proceeding, the Bureau intends to evaluate whether Google LLC or other Google affiliates involved in tokenized transactions should be subject to the Bureau's supervisory oversight, including under other provisions of the CFPA. For instance, the record suggests that "over 3,500 depository institutions in the United States participate in" Google Wallet's Tap and Pay feature which allows contactless instore payments. Notice of Reasonable Cause ("NRC") at 4; *see also id.* at 2 n.8; Google Resp. at 17; Initiating Official's Supplemental Brief ("IO Supp. Br.") at 16. Congress authorized the Bureau to supervise service providers to large insured depository institutions and service providers to a "substantial number" of other insured depository institutions under sections 1025(d) and 1026(e) of the CFPA, respectively. 12 U.S.C. §§ 5515(d), 5516(e). The Bureau will make full use of this service-provider supervisory jurisdiction if warranted.

erroneous and Google refused to issue a refund or take other steps to remediate the error.[53] Numerous consumers expressed a concern that Google did not adequately investigate the allegedly unauthorized or erroneous transfer.[54] Some consumers noted that Google did not provide them a sufficient opportunity to provide relevant information about their dispute or denied the dispute soon after it was submitted.[55] Other complaints indicate that while Google determined a transaction was neither unauthorized nor erroneous, the consumer's account-holding institution reached the opposite conclusion.[56] For example, one consumer "received an overdraft notification from [their] bank" after "a fraudulent charge had been posted from Google in the amount of [redacted]."[57] The consumer's bank "agreed that it was fraudulent and reimbursed" the consumer.[58] However, Google "declared that they didn't believe the transaction to be fraudulent, without [providing] any reason why" and disabled the consumer's Google Pay account.[59] Similarly, another consumer explained that they disputed certain transactions with their bank, which determined them to be fraudulent, but the bank "retracted" that determination "once Google claimed that [the transactions] were legitimate charges."[60] The consumer not only lost the "significant amount" of money which was taken from their account, but also lost access to their Google Pay account.[61]

Second, there is reasonable cause to determine that Google failed to adequately explain the results of its investigation after it determined that no erroneous transfer had occurred. Many consumers complained that Google failed to provide any explanation as to why it determined that no erroneous transfer had occurred.[62] In some complaints, consumers excerpted or attached communications sent to them by Google explaining that their claims had been denied. These communications demonstrate that Google failed to explain why it concluded that no erroneous transfer occurred. The messages sent to consumers generally stated, "After reviewing your claim,

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[53] *See* IO Supp. Br. at 11-14 (citing consumer complaints).

[54] *See, e.g.*, Complaint No. 4052880 ("Purchases were made that were not authorized by me and the company failed to properly investigate."); Complaint No. 3766681 ("[W]ith hardly any investigation, Google Pay informed me that they cannot issue a refund and that my money is no longer available and that the case was not decided in my favor. Just like that, in seconds I had lost $1200."); Complaint No. 3635026 (May 3, 2020) ("I attempted to get them to escalate the case because I didn't make the transaction, don't know who it went to and am shocked that with a fraud report 16 minutes after the transaction that they could do nothing to stop it … I have stated in my communications with Google Pay support that I believe the transaction is fraudulent, that I believe I know how the unauthorized use of my account happened, but they refused to review the case further or provide any details to why.").

[55] *See, e.g.*, Complaint No. 3522067 ("The Google customer service said the investigation team is the only one to give the result, but all they allowed me to do is to fill a form for amount and date with no choice to explain my situation nor attach any files. I really don't know what to do to get my money back."); Complaint No. 3766681 (consumer received a decision "suddenly in minutes" after receiving confirmation of dispute).

[56] *See, e.g.*, Complaint No. 5930030; Complaint No. 3766482; *see also* Complaint No. 3522067 ("My credit card company … said their investigation would be based on Google's result, so I may never get my money back.").

[57] Complaint No. 5930030.

[58] *Id.*

[59] *Id.*

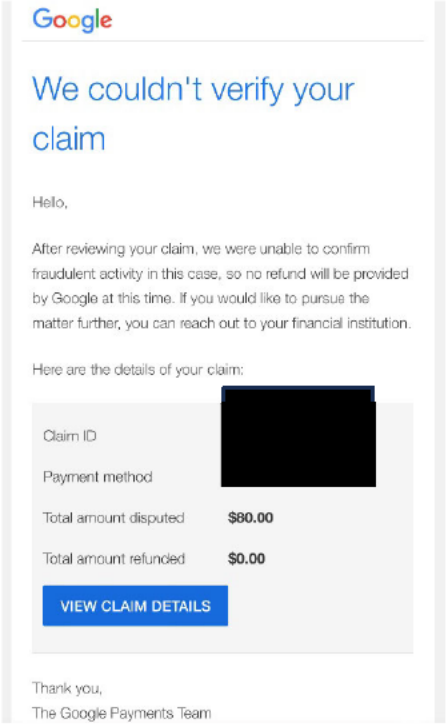
[60] Complaint No. 3766482.

[61] *Id.*

[62] *See, e.g.*, IO Supp. Br. at 11-13 (citing complaints); Complaint No. 4048256 ("I tried to call them and you can't talk to a live person so I made the complaint online later that day they sent me an email saying they weren't refunding the [money]. That's all I got from them. I wanted to know why that was their decision, I didn't get answer."); Complaint No. 5930030 ("They declared that they didn't believe the transaction to be fraudulent, without any reason why.""); Complaint No. 3635026 ("Google Pay support replied back to my support ticket saying 'no fraudulent activity' was found on my account … Over the next few days I continued emailing with Google Pay support, but they refused to give any more details on the case.").

we were unable to confirm fraudulent activity in this case, so no refund will be provided by Google at this time. If you would like to pursue the matter further, you can reach out to your financial institution."[63] Other messages sent to consumers included similar form language that stated, "We were unable to confirm fraudulent activity on the purchases. Often, these purchases were made by a family member or friend."[64] Generally, Google appears to have responded to all claims, disputes and consumer complaints by using language from a template regardless of the facts presented by the consumer.[65]

To illustrate, below are two images that consumers submitted to the CFPB of the messages sent to them by Google conveying that their claims had been denied. These images, which exemplify others submitted to the CFPB, suggest the cursory nature of the communications, the limited information provided to the consumer, and the complete absence of any substantive explanation of Google's reasoning for determining that no erroneous transfer occurred.



Google

We couldn't verify your claim

Hello,

After reviewing your claim, we were unable to confirm fraudulent activity in this case, so no refund will be provided by Google at this time. If you would like to pursue the matter further, you can reach out to your financial institution.

Here are the details of your claim:

Claim ID	[redacted]
Payment method	
Total amount disputed	$80.00
Total amount refunded	$0.00

VIEW CLAIM DETAILS

Thank you,
The Google Payments Team

[63] *See, e.g.*, Complaint No. 5909862; Complaint No. 5604763.
[64] *See, e.g.*, Complaint No. 3766681.
[65] *See, e.g.*, Complaint No. 3741459; Complaint No. 4061770; Complaint No. 3581116; Complaint No. 3437311; Complaint No. 3732041; Complaint No. 3824336; Complaint No. 3529062; Complaint No. 4039850; Complaint No. 3775433; Complaint No. 3616121; Complaint No. 3430260; Complaint No. 3375432; Complaint No. 3766681; Complaint No. 3393075; Complaint No. 3635026; Complaint No. 3373809. See also Complaint No. 4065775; Complaint No. 4429014; Complaint No. 4061770; Complaint No. 4192574; Complaint No. 3393075; Complaint No. 3741459; Complaint No. 3581116; Complaint No. 3437311; Complaint No. 3732041; Complaint No. 3824336; Complaint No. 3529062; Complaint No. 4039850; Complaint No. 3775433; Complaint No. 3616121; Complaint No. 3430260; Complaint No. 3375432.

Google

We couldn't verify your claim

Here are the details of our review. You can view your claim status at any time.

We were unable to confirm fraudulent activity on the purchases. Often, these purchases were made by a family member or friend.

Claim ID	[redacted]
Payment method	
Total amount disputed	$600.00
Total amount refunded	$0.00

View claim status

Third, there is reasonable cause to determine that Google failed to advise consumers whose claims had been denied what additional options or recourse may have been available to them, other than by suggesting that they reach out to their financial institution. Critically, in none of the communications noted above in which Google relayed that it was denying the consumer's claim, did Google advise the consumer they could request any additional information or supporting documentation. In fact, Google's internal policy, which it submitted as part of this proceeding, states that "[i]f the user requests supporting documentation on the decision, do not offer documentation."[66]

Fourth, there is reasonable cause to determine that Google failed to limit consumers' liability for unauthorized transactions. Google's own policy stated that if a consumer informed Google within two business days of an unauthorized transaction then the consumer's losses were capped at $50.[67] However, the consumer complaints submitted to the Bureau indicate that Google may not have followed this policy. For example, one consumer stated, "Following their own EFT Error Resolution Policy they state that if I reported the unauthorized use within 2 days the most I can lose is $50. However Google Pay support says that policy may not apply but will not give me a reason."[68] Numerous other consumer complaints indicate that the consumer promptly reported an unauthorized transaction but was nonetheless required to cover the resultant losses contrary to Google's stated policy.[69]

[66] Google Supp. Br. at App. 22a.
[67] *See* Google Resp. at 43a ("If you inform us within 2 business (or 4 business days for your P2P Payment funded from your checking or savings account or from your debit card) days after you learn of the loss or theft of your Google Pay account username and password or your GPB Card PIN, you can lose no more than $50 if someone used your Google Pay account username and password or GPB Card without your permission.").
[68] Complaint No. 3635026.
[69] *See, e.g.*, supra notes 53-54.

Collectively, these complaints demonstrate that there is reasonable cause to determine that Google's practices in connection with error resolution have posed risks to consumers and that a supervisory designation is therefore warranted.

There is no need to determine whether Google's conduct with regard to error resolution rises to the level of a legal violation because, as discussed above, section 1024(a)(1)(C) does not require an entity to have violated any law in order to be eligible for supervision.[70] Nonetheless, there is reason to believe that Google's practices pertaining to the investigation of allegedly erroneous transactions may violate EFTA and its implementing regulation, Regulation E.[71] Regulation E requires that financial institutions conduct a reasonable investigation of alleged errors.[72] The complaints discussed above provide reasonable cause to determine that Google has failed to conduct a reasonable investigation of alleged errors. Additionally, Regulation E requires that, after determining that no error occurred, a financial institution must, in reporting the results of an error investigation, include a written explanation of the institution's findings.[73] As the CFPB's *Supervisory Highlights* publication has noted, "[f]inancial institutions must go beyond just providing the findings to actually explain or give the reasons for or cause of those findings."[74] The complaints discussed above provide reasonable cause to determine that Google has failed to adhere to this requirement and instead provided users form denials that offer no substantive explanation of the basis for its determination. Moreover, Regulation E requires that, after determining no error occurred, a financial institution must, in reporting the results of an error investigation, explain the consumer's right to request the documents that the institution relied on in making its determination.[75] The complaints discussed above, as well as Google's internal policy pertaining to error resolution, provide reasonable cause to determine that Google has failed to adhere to this requirement and refused to allow consumers to review any underlying documentation. Finally, Regulation E requires financial institutions to limit consumer's liability

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[70] *See supra* at 3-4; *see also Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*, 87 Fed. Reg. 70703, 70704 (Nov. 21, 2022) ("[T]he Bureau notes that Congress authorized the Bureau to make a risk designation when it has reasonable cause to determine there are risks to consumers. Congress did not require the Bureau to make findings that a respondent has violated the law … instead, that is part of the purpose of subsequent examinations of the respondent. . . . Through the supervisory process, CFPB examiners can work with the company in question to fully understand and manage its risks. This preferably would occur before there has been any violation of law … rather than after." (quotation omitted)); IO Supp. Br. at 5-6 (arguing that a violation of law is not necessary for a risk designation under section 1024(a)(1)(C)).

[71] Google concedes that it must comply with Regulation E. *See* Google Resp. at 15 ("GPC agrees that Regulation E applies to the two primary products offered by GPC, including all P2P transactions and all transactions involving GPC's Google Pay Balance.").

[72] 12 C.F.R. § 1005.11(c).

[73] 12 C.F.R. § 1005.11(d)(1).

[74] *Supervisory Highlights, Issue 22 (Summer 2020)*, 85 Fed. Reg. 55828, 55831 (Sept. 10, 2020). Notably, a financial institution's failure to adequately explain its reasoning not only violates 12 C.F.R. § 1005.11(d)(1), which require the institution to provide the consumer "a written explanation of the institution's findings," but is also persuasive evidence that the institution has violated, 12 C.F.R. § 1005.11(c), which imposes the underlying obligation that the institution conduct a reasonable investigation of the alleged error. *See Sparkman v. Comerica Bank*, No. 23-cv-02028-DMR, 2023 WL 5020269, at *10 (N.D. Cal. Aug. 4, 2023) (finding allegation that "Defendants quickly denied [consumer's] claim via a form letter 'lacking individualized information' … support[ed] the inference that Defendants did not conduct a reasonable, adequate investigation"); *In re Bank of Am. Cal. Unemployment Benefits Litig.*, 674 F. Supp. 3d 884, 912 (S.D. Cal. 2023) ("[T]he allegation[] that … [Defendant] issued form letters lacking individualized information support[s] the inference [it] didn't conduct a reasonable review.").

[75] 12 C.F.R. § 1005.11(d)(1).

for unauthorized transactions.[76] The complaints discussed above provide reasonable cause to determine that Google has required some consumers to bear all of the financial losses for unauthorized transactions.

2. Risks Related to Fraud Prevention

Further, there is reasonable cause to determine that Google failed to take adequate steps to prevent fraud on its P2P payment platform. P2P payment platforms, such as Google's P2P payment product, are susceptible to fraud because the transactions conducted through these platforms are typically instantaneous, not easily reversible, and free.[77] P2P payment platforms may have other features that put consumers at risk of fraud, including, for example, making it easy for scammers to hide their identity.[78] The consumer complaints discussed above suggest that Google has not taken adequate steps to monitor, prevent, and detect fraud or to alert consumers to the risk of fraud and steps that can be taken to prevent fraud. Indeed, one-third of all consumers who submitted a complaint about Google alleged that they were a victim of a fraud, scam, or unauthorized transaction perpetrated on Google's P2P payment platform.[79]

For example, one consumer complained that they paid $200 using Google Pay for a pair of shoes that were never delivered.[80] The consumer wrote:

> I purchased a pair of shoes … for $200. The purchase was made through Google Pay … I [eventually] realized [that] there was no update … on my shoes being sent to me and I also noticed that [the seller] didn't send a tracking number and blocked me from contacting them. As soon as I found out I was being scammed, I contacted Google Pay to dispute the payment … Google Pay supposedly did an investigation [but] it got nowhere on my end. It was obvious that I was scammed [but] Google Pay did [not do] anything about it. I was willing to provide adequate evidence to … Google Pay but they wouldn't allow me. I waited patiently and after months, I still have no justice. I was scammed in the middle of the pandemic and Google Pay allowed it.[81]

This consumer later learned that another individual was previously scammed by the same person.[82] That individual was able to get a refund from Google, suggesting that the perpetrator had a history of scamming Google's users.[83] Accordingly, it appears that even when Google made a determination that fraud occurred, it did not take sufficient steps to prevent the perpetrator of the fraud from victimizing other consumers.

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[76] 12 C.F.R. § 1005.6.
[77] *See* IO Supp. Br. at 15.
[78] *See id.*
[79] *See id.*
[80] Complaint No. 4061770.
[81] *Id.*
[82] *Id.*
[83] *Id.*

In another example, [redacted][86]

There is no need to determine whether Google's conduct with regard to fraud prevention rises to the level of a legal violation because, as discussed above, section 1024(a)(1)(C) does not require an entity to have violated any law in order to be eligible for supervision.[87] Nonetheless, there is reason to believe that Google's failure to take reasonable measures to prevent fraud may violate the provisions in the CFPA that make it illegal for any covered person to "engag[e] in an unfair, deceptive, or abusive act or practice."[88]

3. Supervision Is Warranted Even if Google Has Changed Its Business Practices.

Google claims that a supervisory designation is unwarranted given its decision to discontinue the Google Pay App and P2P payment platform. That argument is unpersuasive for the following independent reasons.

First, section 1024(a)(1)(C) expressly contemplates past conduct serving as the basis for a supervisory designation. Pursuant to Section 1024(a)(1)(C), the Bureau has the authority to supervise any covered person who the Bureau has reasonable cause to determine "is engaging, *or has engaged, in* conduct that poses risks to consumers."[89] Because the record establishes reasonable cause that Google has engaged in conduct that poses risks to consumers, Google

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[84] Complaint No. 3775433

[85] *Id.*

[86] *Id.*

[87] *See supra* at 3-4; *see also Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*, 87 Fed. Reg. 70703, 70704 (Nov. 21, 2022) ("[T]he Bureau notes that Congress authorized the Bureau to make a risk designation when it has reasonable cause to determine there are risks to consumers. Congress did not require the Bureau to make findings that a respondent has violated the law … instead, that is part of the purpose of subsequent examinations of the respondent. . . . Through the supervisory process CFPB examiners can work with the company in question to fully understand and manage its risks. This preferably would occur before there has been any violation of law … rather than after." (quotation omitted)); IO Supp. Br. at 5-6 (arguing that a violation of law is not necessary for a risk designation under section 1024(a)(1)(C)).

[88] CFPA §§ 1031(a), 1036(a)(1)(B) (codified at 12 U.S.C. §§ 5531(a), 5536(a)(1)(B)). In *FTC v. Walmart Inc.*, 664 F. Supp. 3d 808 (N.D. Ill. 2023), the court held that Walmart may have committed an unfair practice by failing to protect users of its money transfer service from fraud. The court noted "a series of failings in Walmart's fraud prevention and mitigation systems" including that "Walmart either didn't establish or failed to follow an effective antifraud program, didn't train or adequately supervise its employees, failed to adequately monitor suspicious activity, and didn't adequately report fraud to others." *Id.* at 836. Of particular relevance, "[c]onsumers didn't know that money transfers were riskier than other forms of payment, and Walmart routinely either didn't warn consumers about fraud at all or provided insufficient warnings." *Id.*

[89] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)) (emphasis added).

meets the standard for supervision, regardless of what products it presently offers or its future business plans. Google's contrary argument, that the Bureau may supervise an entity only if there is the "possibility of harm in the future,"[90] overlooks the statute's specific reference to risky conduct that the entity "has engaged in." As the Bureau has previously explained, "past conduct may pose risks to consumers, even if the identical conduct is not likely to recur, to the extent that such conduct indicates weak compliance systems that might lead to other potential … harms to consumers."[91]

Second, the decision to designate Google for supervision is distinct from the decision to conduct an examination.[92] If Google is correct that the discontinuation of the Google Pay App has eliminated some risks to consumers and lessens the need for supervision, then the Bureau may elect not to exercise its authority to examine Google or to exercise that authority in a manner proportional to the magnitude of Google's ongoing operations and the risks to consumers posed by those operations. Under the statute, a supervisory designation is appropriate so long as the respondent "has engaged[] in conduct that poses risks to consumers."[93] Once an entity has been designated for supervision, the decision of whether to conduct an examination is guided by separate factors set forth in the statute including, for example, the volume of relevant transactions and the nature of the risks posed by those transactions.[94] The decision to discontinue the Google Pay App may be relevant to the statutory framework that guides the Bureau's exercise of supervisory authority, but it is not determinative of the threshold inquiry of whether a supervisory designation is appropriate.

Third, Google may reenter the P2P payment market or engage in other conduct that poses similar risks to consumers. Indeed, Google has acknowledged that companies routinely modify their product offerings, including by discontinuing existing products.[95] If a company's decision to discontinue a product or modify its product offerings foreclosed the possibility of a supervisory designation, regulated entities would have a clear roadmap to evade supervision. This is particularly true when, as here, the product change was announced after the entity was named as a respondent in a supervisory designation proceeding. Google cannot evade supervision based on its decision to leave the P2P payment market while remaining free to reinitiate its risky conduct as soon as this proceeding is terminated. Just as a defendant's voluntary cessation of unlawful

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[90] Google Supp. Br. at 4.

[91] Procedural Rule to Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40358 (July 3, 2013).

[92] *See* CFPA § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)) (listing factors that the Bureau should consider when determining whether to "exercise" its supervisory authority).

[93] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)) (emphasis added).

[94] CFPA § 1024(b)(2) (codified at 12 U.S.C. § 5514(b)(2)).

[95] *See* Second Supp. Oral Resp. Tr. at 20:20-21 ("But more importantly companies deprecate products all the time."). Indeed, though not relied upon here, Google's digital payments products have been constantly evolving. *See* Nelson Aguilar, *Google Pay vs. Google Wallet: What's the Difference?*, CNET (July 26, 2022), https://www.cnet.com/tech/mobile/google-pay-vs-google-wallet-whats-the-difference/ (discussing the convoluted history of Google Pay, Google Wallet, and Android Pay). Google's recent announcement that it will discontinue the Google Pay App is only the most recent in a long history of changes to Google's digital payments products, how those products function, and how they are branded. *See*, *e.g.*, Rabab Ahsan, *Say Goodbye to Google Pay*, Tearsheet (March 4, 2024), https://tearsheet.co/payments/say-goodbye-to-google-pay/ ("Google claims the sunsetting of its Google Pay app, which operated separately from Google Wallet, is an attempt at simplification … But this isn't the first time Google has tried to rehome its payments apps. About 6 years ago, Google was trying to do something similar, but this time it was the wallet-based functionalities that were going into Google Pay. The fact that Google plays this type of convoluted Jenga with its payments often mars any argument for simplification.").

conduct does not moot a civil action, a section 1024(a)(1)(C) respondent's voluntary cessation of conduct that poses risks to consumers does not render a supervisory designation unwarranted.[96]

Fourth, the unwinding of Google's P2P payment platform itself poses risks to consumers. In fact, Google itself has acknowledged that there are "risk[s] [to] consumers potentially posed by a winddown," and claims that it is "fully aware that [it] need[s] to be attentive to" those risks.[97] According to Google, consumers are still able to hold funds in Google Pay Balance accounts, although they are no longer to use those funds on the now defunct P2P payment platform. This may lead to confusion as to whether and how consumers can access funds stored in their accounts at the time the P2P platform was shut down. Moreover, consumers may be confused as to how to seek remediation for fraudulent or otherwise erroneous transfers that occurred while the platform was still in operation. Similar issues have arisen in other consumer financial markets during periods of transition, and supervision has allowed the Bureau to ensure that consumers are protected through the transition and uncertainty.[98]

C. Google's Other Arguments

None of the other arguments Google makes in its response or supplemental briefing provide a basis to refrain from designating Google for supervision.

1. Google's Argument that Risk to Consumers Must Be "Material" or "Substantial" Does Not Foreclose a Supervisory Designation.

Google argues that section 1024(a)(1)(C)'s reference to "risks to consumers" is implicitly limited to "material" risks to consumers and that, therefore, a supervisory designation is only warranted if there is a "meaningful possibility of substantial harm to consumers."[99] However, section 1024(a)(1)(C) refers to "conduct that poses risks to consumers" without using the terms "material" or "substantial" or any other qualifier to specify the amount or degree of risk necessary to justify supervision.[100] The absence of a qualifier is notable because other provisions in Dodd-Frank authorize regulatory action only upon a showing of "substantial risk," "significant risk," or some other specified level of risk.[101] This context suggests that Congress knew how to specify a higher level of risk when it so desired. Its failure to do so in section 1024(a)(1)(C) indicates that risks to consumers are sufficient to warrant supervision even if those risks are

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[96] *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) ("It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982))).

[97] Sec. Supp. Oral Resp. Tr. at 54:3-5; *see also id.* at 54:10-12 ("[W]e acknowledge that, of course, in any sort of product change, there is at least a potential for consumer concerns to arise.").

[98] *See id.* at 53:7-16 ("[T]he supervision process looks at those types of transfers and changes in services. It's occurred in the transfer of mortgage servicing. It's occurred with student loan servicing transfers. And it's been noted in a supervisory highlight that these processes create risks for consumers. The supervisory process can be helpful there, particularly here where there is confusion among consumers about their ability and the ways in that they can get funds off of this platform.").

[99] Google Resp. at 6.

[100] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).

[101] *See, e.g.*, 12 U.S.C. § 5467(e)(2)(A)(iv)(II) ("substantial risk"); *id.* § 5467(e)(2)(B)(iii)(II) ("significant … risks"); § 5466(f)(1)(A)(i) ("imminent risk"); § 1844(e)(1) ("serious risk").

neither material nor substantial. In any case, there is reasonable cause to determine that Google has engaged in conduct posing material and substantial risks to consumers, as evidenced by the numerous consumer complaints discussed above, the substance and severity of those complaints, and the fact that the complaints, individually and collectively, suggest systemic violations of important consumer protection laws.

The other provisions in Section 1024(a)(1) giving the Bureau supervisory authority over certain specified markets and the larger participants in other markets (as defined by rulemaking) do not provide any support for Google's argument.[102] Google asserts that these provisions would be pointless if the Bureau could simply designate entities for supervision via section 1024(a)(1)(C). That does not follow. Congress reasonably determined that certain categories of entities should be subject to the Bureau's supervisory authority without the specific findings and procedure set out in section 1024(a)(1)(C). Those provisions in no way conflict with Congress's choice to also authorize the Bureau to designate other entities for supervision after making the requisite finding and providing notice and an opportunity to respond set out in section 1024(a)(1)(C).

2. The Bureau's Reading of Section 1024(a)(1)(C) Does Not Implicate the Major Questions Doctrine.

Google argues that the CFPB's reading of section 1024(a)(1)(C) implicates the major questions doctrine because it would afford the CFPB "unfettered discretion" to supervise any non-bank that offers a consumer financial product or service. But even accepting Google's reading of section 1024(a)(1)(C) as requiring material or substantial risks, a supervisory designation is still appropriate. As discussed above, the Bureau has reasonable cause to determine that Google has engaged in conduct that poses material or substantial risks to consumers. For that reason alone, the major questions doctrine poses no obstacle to designating Google for supervision.

In any event, section 1024(a)(1)(C) does not implicate the major questions doctrine. That doctrine requires agencies to point to "'clear congressional authorization' when they claim the power to make decisions of vast 'economic and political significance.'"[103]

For one, the question of what nonbank entities are eligible for supervision is not a question of vast economic or political significance. Government supervision of financial institutions is nothing new. The CFPB is one of many federal and state agencies that have supervisory authority over various categories of financial service providers.[104] The CFPB alone has supervisory authority over a variety of institutions, including all large depository institutions and certain specified nonbank entities, and it also has rulemaking authority that allows it to supervise other nonbank entities.[105] The interpretive question at issue here pertains only to the precise breadth of one of the many statutory provisions conferring the CFPB with supervisory authority. In the context of the broader national economy, the significance of that question is marginal. Moreover, the answer to that question has limited practical consequence even for the designated

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[102] *See* CFPA § 1024(a)(1)(A), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (D), (E)).
[103] *West Virginia v. EPA*, 597 U.S. 697, 735 (2022) (Gorsuch, J. concurring).
[104] *See generally Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, Congressional Research Service (Oct. 13, 2023), https://sgp.fas.org/crs/misc/R44918.pdf.
[105] *See* CFPA § 1025(b) (codified at 12 U.S.C. § 5515(b)) (supervision of large depository institutions); CFPA § 1024(a)(1)(A), (B), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (B), (D), (E)) (supervision of non-depository institutions).

entity: "Supervision alone does not impose any penalty on a person, does not deprive it of any property, and does not restrict its ability to engage in a viable business."[106] In short, the interpretive question of whether the plain language of section 1024(a)(1)(C) requires only "risks to consumers" or whether that provision impliedly requires "material risks to consumers" is not a major question.

And even if this matter did implicate a major question, it would not matter because Congress spoke clearly in enacting section 1024(a)(1)(C). That provision plainly and unambiguously authorizes the supervision of nonbank entities whose conduct poses risk to consumers. As noted above, if Congress had intended to limit this provision to material or substantial risk, it knew how to say so but remained silent.

3. Section 1024(a)(1)(C) Does Not Implicate the Non-Delegation Doctrine.

Google argues that section 1024(a)(1)(C) would violate the non-delegation doctrine, which prevents Congress from delegating "powers which are strictly and exclusively legislative."[107] As an initial matter, the Bureau's case-by-case decision whether to pursue supervisory examinations of a specific party is a quintessential executive function to which the non-delegation doctrine does not apply. And even where that doctrine does apply, all that is required is that Congress provided "an intelligible principle to guide the delegee's use of discretion."[108] The text of section 1024(a)(1)(C) supplies intelligible limits that guide the Bureau's exercise of discretion. First, the provision applies only to "covered persons," a term defined by the statute.[109] Second, the Bureau "must have reasonable cause to determine … that such covered person is engaging, or has engaged in, conduct that poses risks to consumers." Third, risks to consumers must be "with regard to the offering or provision of consumer financial products or services," which is also a defined term in the statute. Fourth, the CFPB's determination must be "based on complaints collected through the system under [the provision of the CFPA governing the collection of consumer complaints] or information from other sources." Fifth, the Bureau must provide the covered person "notice … and an opportunity to respond." In other words, the statute limits the type of entities that are eligible for a supervisory designation, articulates a risk-based standard to guide the determination, and dictates the process that must precede the determination. In addition, a designation under section 1024(a)(1)(C) is a threshold step: before the Bureau actually examines an entity, it has to make additional decisions guided by Congress under section 1024(b)(1), which governs the nature and purposes of examinations, and section 1024(b)(2), which requires the Bureau to assess specified factors in deciding whether to conduct an examination. These guardrails are more than sufficient to pass constitutional muster.

4. Consumer Complaints Are Sufficient to Establish Reasonable Cause That Google's Conduct Poses Risks to Consumers.

Consumer complaints are an adequate basis for a supervisory designation, and Google's arguments to the contrary are unpersuasive. For one, Google mischaracterizes the record when it

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[106] 78 Fed. Reg. at 40359.
[107] *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (plurality opinion) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42-43 (1825)).
[108] *E.g.*, *id.*
[109] CFPA § 1002(6) (codified at 12 U.S.C. § 5481(6)).

asserts that the initiating official relies on "33 cherry-picked complaints."[110] In fact, the initiating official relied on 267 relevant consumer complaints pertaining to Google's conduct. The specific complaints discussed in the initiating official's supplemental brief (as well as those relied on in this order) are emblematic of the larger universe of consumer complaints. All of those complaints support a finding that Google's conduct poses risks to consumers. [111] As the initiating official explained, "[m]ost complaints raised Regulation E concerns, and a third pertained to fraud, scams, and unauthorized transactions."[112] In any event, nothing in the statute requires a unique volume of complaints to support a risk determination. Consumer complaints often exemplify wider problems experienced by a number of other consumers who lacked the time, knowledge, or inclination to file their own complaint with the CFPB. As explained above, the determination that Google's conduct poses risks to consumers is based not only the quantity of complaints the Bureau has received about Google but also on the substance and seriousness of those complaints.

Nor does the fact that these consumer complaints are "unverified" mean that supervision is unwarranted.[113] Section 1024(a)(1)(C) expressly states that a risk designation may be "based on complaints."[114] The absence of any reference to "verified complaints" or the use of any similar qualifier confirms that Congress did not intend to limit the types of complaints that can serve as the basis for a risk determination. The CFPB is only required to establish reasonable cause that Google's conduct poses risks to consumers. Consumer complaints, even if unverified, are sufficient to satisfy that burden, particularly where, as here, Google generally does not dispute the veracity of the relevant complaints.

Relatedly, Google's reliance on the report of a consulting firm examining some of the relevant consumer complaints is misplaced. That cursory report, while styled an "independent review," was in fact drafted at the request of Google's counsel for use in this proceeding.[115] It provides no meaningful analysis to support its findings "that Google was responsive to complaints and meaningfully engaged with consumers to resolve their concerns" and "that the complaints do not indicate a material risk to consumers."[116] The evidence in the record, discussed throughout this order, shows that those conclusory findings are wrong. Further, the report's primary conclusion appears to be that the number of consumer complaints submitted to the Bureau that pertain to Google "is a relatively low amount compared to financial institutions of similar size," but the report does not explain how it reached that conclusion.[117] Instead, the report's description of its methodology indicates its findings are based solely on a review of complaints about Google.[118] There is no discussion of how the volume of complaints about Google was compared to the volume of complaints about other financial institutions, nor is there any indication of which other financial institutions were used as comparators. In any event, as discussed above, nothing in the statute requires a particular volume of complaints to support a risk determination, nor does

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[110] Google Supp. Br. at 7.
[111] IO Reply Br. at 2.
[112] *Id.*
[113] Google Supp. Br. at 3. While the CFPB does not independently verify the accuracy of consumers' complaints, consumers must affirm that the information they provide is true to the best of their knowledge and belief. *See* Disclosure of Consumer Complaint Data, 78 Fed. Reg. 21218, 21222 (Apr. 10, 2013).
[114] CFPA § 1024(a)(1)(C) (codified at 12 U.S.C. § 5514(a)(1)(C)).
[115] Google Resp. at 88a.
[116] *See* Google Supp. Br. at 13 (citing Google Resp. at 86a-91a).
[117] *See* Google Resp. at 89a.
[118] *See* Google Resp. at 90a-91a.

anything in the statute require a unique volume of complaints relative to other companies operating in the same industry.

5. Neither the Existence of a Compliance Program nor Past State Supervision Inoculate Google from Supervision.

Google points to its purportedly "comprehensive compliance program" and the fact that it is "supervised by state regulators" to suggest that its conduct does not pose risks to consumers.[119] However, the mere existence of a compliance program does not mean that supervision is unwarranted. The Bureau routinely supervises entities with existing compliance programs, and one of the statutory purposes of supervision is to assess the adequacy of those programs.[120] Moreover, if the fact of a compliance program inoculated an entity from supervision, section 1024(a)(1)(C) would be rendered meaningless as even superficial or ineffective efforts at compliance would be sufficient to prevent a supervisory designation. Moreover, Google is misguided in asserting that "[t]he Bureau has previously suggested that it would focus its supervisory authority on companies with 'weak compliance systems.'"[121] The Bureau has not stated that it would defer to an entity's self-serving descriptions of the strength of its compliance program. Rather, the Bureau has stated that conduct posing risks to consumers (including, notably, past conduct) may "indicate[] weak compliance systems."[122] That is the case here. The evidence in this proceeding indicates that Google's conduct poses risks to consumers. That evidence undercuts Google's self-serving assertions pertaining to the adequacy of its compliance program and is, under section 1024(a)(1)(C), a sufficient basis for a supervisory designation.

Similarly, the fact that Google has been examined by state regulators does not mean that its conduct does not pose risks to consumers. Google asserts that state regulators have not identified "any deficiencies in complaint handling or other consumer-protection areas in the past five years."[123] However, Google notably withholds the scope of the examinations conducted by state regulators and provided no basis to conclude that those examinations adequately covered the risks identified in this order. Moreover, the evidence in this proceeding indicates that existing state supervisory efforts have not obviated the need for Federal supervision to address the risks to consumers posed by Google's conduct.

6. The Bureau Adhered to the Appropriate Process.

Before issuing a supervisory designation, section 1024(a)(1)(C) requires that the CFPB provide "notice to the covered person and a reasonable opportunity for such covered person to respond." The CFPB has adopted informal procedures designed to ensure an "efficient" and "expeditious"

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[119] Google Supp. Br. at 2, 12.
[120] *See* CFPA § 1024(a)(1)(A), (D), (E) (codified at 12 U.S.C. § 5514(a)(1)(A), (D), (E)).
[121] Google Supp. Br. at 13 n.4 (quoting Procedural Rule to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination, 78 Fed. Reg. 40352, 40358 (July 3, 2013)).
[122] 78 Fed. Reg. at 40358
[123] Google Supp. Br. at 12-13.

process for determining whether to issue a supervisory designation under section 1024(a)(1)(C).[124] The Bureau followed those procedures here.

Google nonetheless contends that it was not afforded the appropriate process for four reasons. First, Google argues that the Associate Director's decision to allow the initiating official to file a supplemental brief denied it notice of the Bureau's basis for the supervisory designation and that the decision to allow supplemental briefing deviated from the Bureau's procedural rule.[125] That is not the case because the Notice adequately described the initiating official's bases for asserting that there is reasonable cause to designate Google for supervision, provided a summary of the documents relied on, and included all of the other contents required by the Bureau's procedural rule. Google was afforded an opportunity to respond to the Notice, and it provided both a written and supplemental oral response. Nothing more is required by either the statute or the procedural rule.

Moreover, while the initiating official was allowed to file a supplemental brief expounding on the risks identified in the notice, Google was provided an ample opportunity to respond to the supplemental brief. It filed a lengthy supplemental brief of its own, as well as accompanying declarations, and later provided a second supplemental oral response. In fact, Google has used supplemental briefing to present new arguments, submit new evidence, and to advise the Bureau of changes in circumstances that it believes counsel against a supervisory designation. Put simply, no credible argument can be made that Google was denied a meaningful opportunity to contest the initiating official's arguments or to advance its own.

Moreover, nothing in the Bureau's procedural rule precludes supplemental briefing.[126] While Google has a statutory right to notice and a reasonable opportunity to respond,[127] it does not have a substantial interest in precisely when or how it is provided such notice and opportunity to respond. And Google's contention that it has faced "uncertainty, burden, and expense" as a result of having been afforded *additional* process is not persuasive.[128] Google cannot have it both ways by arguing that it was afforded insufficient process and that it was prejudiced by the burden accordant to the process it was afforded.

Second, Google argues that, even if it was afforded an adequate opportunity to respond to the initiating official, that opportunity was "meaningless" because "the Bureau's interpretation of the statute is so amorphous and so open-ended."[129] However, as explained above, the Bureau's statutory authority is guided by appropriate limiting principles.[130] Moreover, Google's argument

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[124] *See* 78 Fed. Reg. at 40360.
[125] *See* Google Supp. Br. at 14, 19 n.9.
[126] After the supplemental briefing requested by the Associate Director in this matter, the Bureau finalized amendments to the procedural rule. One of the miscellaneous provisions in the amendments "codifies the fact that the Director may sometimes request supplemental briefing before making a final determination, which is consistent with the 2013 rule but was not expressly discussed in the 2013 rule." Procedures for Supervisory Designation Proceedings, 89 Fed. Reg. 30259, 30260 (Apr. 23, 2024) (discussing current 12 CFR 1091.206(b)). The amendments do not address specifically supplemental briefing by the Associate Director, given that the amendments remove the Associate Director's adjudicative role under the procedural rule going forward, due to an organizational change in the CFPB's internal structure. *See id.*
[127] 12 U.S.C. § 5514(a)(1)(C).
[128] Google Supp. Br. at 14.
[129] Google Supp. Br. at 19.
[130] *See supra* at 2-3.

confuses a disagreement on the merits with a process deficiency. In this proceeding, the Bureau has, as Google contends is required, articulated a standard for supervision and put forward specific evidence to satisfy that standard. The fact that Google disagrees with the standard articulated by the initiating official and believes the evidence submitted falls short of satisfying the standard does not compel the conclusion that Google has been denied notice or an opportunity to respond. Regardless, even assuming the statute could be characterized as vague, "in fleshing out the contours of vague statutory terms" the Bureau is "entitled to proceed case by case" and is not required to expound at once on the precise contours of its authority.[131]

Third, Google argues that the Bureau prejudged this proceeding in light of prior statements by the Bureau's Director pertaining to Google.[132] An analysis of this claim "must start, however, from the presumption that [administrative adjudicators] … are unbiased."[133] "Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not … disqualify" an agency adjudicator.[134] "Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.'"[135] The statements cited by Google take no position on the current proceeding (which was not even underway at the time) and say nothing specific about whether Google's products pose risks to consumers.[136] Those statement fall far short of the high burden necessary to disqualify an agency adjudicator.[137]

III. Conclusion

For the reasons discussed above, the CFPB has reasonable cause to determine that the Respondent, Google Payment Corporation, is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of one or more consumer financial products or services.

IT IS ORDERED, that:

As of the date of this Order, the Consumer Financial Protection Bureau has supervisory authority over Respondent pursuant to section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010. The Bureau shall have authority over Respondent until such time as this Order is terminated consistent with 12 C.F.R. § 1091.301. Respondent may petition for termination of the Bureau's supervisory authority no sooner than two years from the date of this Order, and no more than annually thereafter.

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[131] *PDK Lab'ys Inc. v. DEA*, 438 F.3d 1184, 1194 (D.C. Cir. 2006).
[132] *See* Google Resp. at 23.
[133] *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).
[134] *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976).
[135] *Id.* (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)).
[136] *See* Google Resp. 23.
[137] Google argues in a footnote that the proceeding is "unfairly coercive" because a final decision designating Google for supervision could be publicly released. Google Resp. at 23 n.11. Specifically, Google asserts that it was informed that if it consented to supervision "staff would recommend that the designation not be made public." *Id.* at 24. Google's footnote does not identify what law it is relying on in making this objection, or point to any evidence in the record to support the footnote's cursory characterization, so it is waived. Moreover, there simply is no consent agreement that is the product of purported coercion—Google has vigorously contested designation—and so it is unclear what prejudice Google claims to have suffered.

While this Order establishes that the Bureau has supervisory authority over the Respondent, it does not require any immediate action on the part of Respondent. The Bureau will notify Respondent if it determines that it is appropriate to require reports from, or conduct an examination of, Respondent pursuant to CFPA section 1024(b).

This Order has no bearing on, and does not preclude, the Bureau's exercise of any of its other authorities, including other supervisory authority, over Respondent. Within ten days after service of this Order, Respondent may file a submission regarding the publication of this order, pursuant to 12 C.F.R. § 1091.405(b). In that submission, Respondent should state whether it objects to publication of any portion of this Order on the basis that it is exempt from disclosure under 5 U.S.C. 552(b)(4) or (b)(6) or there is other good cause for the Director to withhold it from publication.

Dated: November 8, 2024

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS
GOOGLE PAYMENT CORPORATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
CONSUMER FINANCIAL PROTECTION BUREAU; ROHIT CHOPRA, in his official capacity as Director of the Consumer Financial Protection Bureau

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Kannon Shanmugam, Roberto Gonzalez
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, DC 20006

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

◉ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act (TCPA)
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

G. *Habeas Corpus/ 2255*	H. *Employment Discrimination*	I. *FOIA/Privacy Act*	J. *Student Loan*
☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
K. *Labor/ERISA (non-employment)*	**L. *Other Civil Rights (non-employment)***	**M. *Contract***	**N. *Three-Judge Court***
☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding	○ 2 Removed from State Court	○ 3 Remanded from Appellate Court	○ 4 Reinstated or Reopened	○ 5 Transferred from another district (specify)	○ 6 Multi-district Litigation	○ 7 Appeal to District Judge from Mag. Judge	○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
5 U.S.C. 702; judicial review under Administrative Procedure Act.

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint **YES** ☐ **NO** ☒

VIII. RELATED CASE(S) IF ANY (See instruction) **YES** ☐ **NO** ☒ If yes, please complete related case form

DATE: 12/6/24 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Kannon K. Shanmugam

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

GOOGLE PAYMENT CORPORATION *Plaintiff(s)* v. CONSUMER FINANCIAL PROTECTION BUREAU, et al., *Defendant(s)*	)))))))))))))	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Merrick Garland, in his official capacity
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kannon Shanmugam, Roberto Gonzalez
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

GOOGLE PAYMENT CORPORATION *Plaintiff(s)* v. CONSUMER FINANCIAL PROTECTION BUREAU, et al., *Defendant(s)*	))))))))))))	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kannon Shanmugam, Roberto Gonzalez
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

GOOGLE PAYMENT CORPORATION *Plaintiff(s)* v. CONSUMER FINANCIAL PROTECTION BUREAU, et al., *Defendant(s)*	))))))))))))	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Rohit Chopra, in his official capacity
Director of the Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kannon Shanmugam, Roberto Gonzalez
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

GOOGLE PAYMENT CORPORATION *Plaintiff(s)* v. CONSUMER FINANCIAL PROTECTION BUREAU, et al., *Defendant(s)*	))))))))))))	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Matthew M. Graves, U.S. Attorney
c/o Civil Process Clerk
601 D Street NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kannon Shanmugam, Roberto Gonzalez
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, N.W.
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: