

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



IN RE EQUITABLE
ACCEPTANCE CORP.,

2019-MISC-Equitable
Acceptance Corp.-0001

**DECISION AND ORDER ON PETITION BY EQUITABLE ACCEPTANCE CORP.
TO SET ASIDE OR MODIFY CIVIL INVESTIGATIVE DEMAND**

Equitable Acceptance Corp. (EAC) has petitioned the Consumer Financial Protection Bureau for an order to set aside or modify a civil investigative demand (CID) issued to it by the Bureau. For the reasons set forth below, the Petition is denied.

FACTUAL BACKGROUND

On October 23, 2019, the Bureau issued a CID to EAC seeking documents, responses to interrogatories, and oral testimony relating to an investigation into potential violations of federal consumer financial law by debt-relief service providers or associated persons. Pursuant to the Bureau's rules governing investigations, staff from the Bureau's Office of Enforcement and counsel for EAC met and conferred about the CID on October 31, 2019. *See* 12 C.F.R. § 1080.6(c). EAC timely filed this Petition on November 7, 2019. *See* 12 U.S.C. § 5562(f); 12 C.F.R. § 1080.6(e).

LEGAL DETERMINATION

EAC's primary argument concerns the provision in the Consumer Financial Protection Act that purports to limit the grounds on which the President can remove the Bureau's Director to "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). EAC contends that because this provision violates the constitutional separation of powers, and because the Supreme Court has granted certiorari in a case that raises that issue, *see Seila Law LLC v. CFPB*, No. 19-7 (U.S.), the CID should be set aside, or at least modified so that the response deadlines are stayed pending the Supreme Court's decision. EAC also asserts generally, in the background section of its Petition, that responding to the CID would be burdensome.

Because the administrative CID petition process is not the proper forum for raising and deciding constitutional challenges to provisions of the Bureau's statute, and because EAC has not shown that it satisfied its obligation to engage with Bureau staff about how to alleviate any undue burden—such as by proposing specific modifications to the substance of the requests in the CID—the Petition is denied.

1. EAC contends that I should set aside the CID because the removal restriction in Section 5491(c)(3) is unconstitutional and thus renders the CID invalid. In the alternative, EAC asks that I defer the deadlines in the CID until after the Supreme Court has decided the constitutionality of the removal restriction in *Seila Law*. The Bureau, however, has consistently taken the position that the administrative process set out in the Bureau's statute and regulations for petitioning to modify or set aside a CID is not the proper forum for raising and adjudicating challenges to the constitutionality of the Bureau's statute. *See, e.g., In re Kern-Fuller and Sutter*, 2019-MISC_Candy Kern-Fuller and Howard E. Sutter III-0001 (Apr. 25, 2019)¹, at 2; *In re Fair Collections and Outsourcing, Inc.*, 2018-MISC-Fair Collections and Outsourcing, Inc. and Fair Collections and Outsourcing of New England, Inc.-0001 (Apr. 25, 2019)², at 2; *In re Nexus Servs., Inc.*, 2017-MISC-Nexus Services, Inc. and Libre by Nexus, Inc.-0001 (Oct. 11, 2017)³, at 2. In the event that the Bureau determines at a later date that it is necessary to seek a court order compelling EAC's compliance with this CID, *see* 12 U.S.C. § 5562(e), the company can raise its constitutional objection as a defense to that proceeding in district court.⁴

2. EAC also complains that the CID is overly burdensome, although it does not actually cite burden in the argument section of its Petition as a reason that the CID should be set aside or modified. *See* Pet. at 3–4. To the extent that EAC intended to challenge the CID on burden grounds, I reject that argument because EAC has not established that it meaningfully pursued such an objection with Enforcement staff during the meet-and-confer process.

Bureau regulations require the recipient of a CID to confer with Bureau investigators “to discuss and attempt to resolve all issues regarding compliance with the [CID].” 12 C.F.R. § 1080.6(c). They further provide that, in resolving a petition to modify or set aside a CID, the Bureau will “consider only issues raised during the meet and confer process.” *Id.* § 1080.6(c)(3). CID petitions thus must be accompanied by a signed statement that the petitioner took part in a

¹ Available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_candy-kern-fuller-and-howard-e-sutter_decision-and-order.pdf.

² Available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_fair-collections-and-outsourcing-inc-et-al_decision-and-order.pdf.

³ Available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_nexus_decision-and-order.pdf.

⁴ At my direction, the Bureau has in its ongoing litigation adopted the view that the removal restriction is unconstitutional but that its invalidity does not affect the remainder of the Bureau's statute, including the provisions authorizing the Bureau to issue and enforce CIDs. *See* Br. of Resp't, *Seila Law*, 2019 WL 4528136 (U.S.).

good-faith effort with Bureau staff “to resolve by agreement the issues raised by the petition.” *Id.* § 1080.6(e)(1). These requirements serve “to improve the efficiency of investigations” for all parties involved by providing an opportunity to negotiate mutually agreeable modifications to a CID and to narrow any areas of actual disagreement. CFPB, Rules Relating to Investigations, 77 Fed. Reg. 39,101, 39,104 (June 29, 2012). Such considerations taken on a heightened importance when CID recipients seek to raise fact-bound arguments about the practical burdens imposed by CID requests, claims that are better negotiated initially with Bureau investigators rather than being brought in the first instance to the Bureau’s Director.

EAC has not established here that it engaged meaningfully with Enforcement staff in an effort to resolve any disagreements about the burden imposed by the CID. The company’s description of the meet-and-confer relates only that it described to Enforcement staff that it had been the subject of investigations by the Federal Trade Commission and state attorneys general, Pet. at 3, and that it raised its constitutional objection to the removal provision in the Bureau’s statute, Pet., App. A. The Petition also states that Enforcement staff proposed to extend the deadline for responding to the CID but that EAC “has not sought such an extension.” Pet. at 1–2. EAC has not shown that it satisfied its obligation to confer reasonably with Bureau staff on ways to alleviate any burden imposed by the CID, and thus I decline to modify or set aside the CID on these grounds.⁵

CONCLUSION

For the foregoing reasons, the petition to set aside the CID is denied. EAC is directed to comply in full with the CID within 10 days of this Order. EAC is welcome to engage in discussions with Bureau staff about any specific suggestions for modifying the CID (including the company’s proposal to provide certain documents it previously gave another regulator, Pet. at 4), which may be adopted by the Assistant Director for Enforcement or Deputy Enforcement Director, as appropriate.


Kathleen L. Kraninger, Director

December 26, 2019

⁵ Even if EAC had properly preserved this argument during the meet-and-confer process, its Petition does not identify any particular requests in the CID that EAC believes impose an undue burden or any ways those requests could be modified to lessen that burden. Any burden argument the company meant to raise could be rejected on these grounds as well.