IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Bureau of Consumer Financial Protection; South Carolina Department of Consumer Affairs; and the State of Arkansas *ex rel.* Leslie Rutledge, Attorney General, Plaintiffs, v. Candy Kern-Fuller, Howard Sutter III, and Upstate Law Group LLC, Defendants.	C/A No.: 6:20-cv-00786-DCC **DEFENDANTS' JOINT MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STAY THE ACTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Candy Kern,[1] Howard Sutter III, and Upstate Law Group, LLC (collectively "Defendants"), by and through their undersigned counsel, hereby move this Court for an Order granting their Joint Motion to Dismiss, or in the Alternative, to Stay the Action ("Motion") against Plaintiffs Bureau of Consumer Financial Protection ("Bureau"), South Carolina Department of Consumer Affairs ("Department"), and the State of Arkansas *ex rel.* Leslie Rutledge, Attorney General ("Arkansas") (collectively "Plaintiffs"). This Motion is made on the grounds that Counts I though V, as alleged by the Bureau, the Department, and Arkansas fail to state claims upon which relief can be granted because: (1) the Bureau's structure violates the separation of powers doctrine, and it therefore may not constitutionally undertake to execute the laws or investigate violations thereof; (2) the Department and Arkansas derive their enforcement power from the same unconstitutional structure as the Bureau, and they therefore may not constitutionally execute the Consumer Financial

[1] Ms. Kern's name is no longer Kern-Fuller. Her name changed November 18, 2019, in connection with her divorce, which was finalized on February 3, 2020.

Protection Act ("CFPA"); and (3) the practice of law exclusion in the CFPA prohibits the Bureau, the Department, and Arkansas from bringing the claims they allege in this action against Defendants, who were at all times alleged in this Complaint, engaged in the performance of legal services for their clients—certain investment companies that distributed or provided services in connection with alternative investment products and/or investor buyers of the same. In addition, Count VI fails to state a claim upon which relief can be granted because: (1) the Complaint fails to allege that the Department administratively exhausted its claim with the administrator of the Department of Consumer Affairs as required by S.C. Code Ann. § 35-7-108(6); (2) the Complaint fails to allege that the Department's claim involves a "consumer loan" as defined under S.C. Code Ann. § 37-3-104; and (3) if Counts I through V are dismissed, then the Court lacks subject matter jurisdiction to hear the Department's state law claim.

Alternatively, the constitutionality of the Bureau under the CPFA is an issue that has been recently presented to and argued before the United States Supreme Court in *Seila Law v. Consumer Financial Protection Bureau*, Dkt. No. 19-7 ("*Seila*").[2] Thus, in the interest of judicial economy and efficiency, this Court should stay this matter and await the forthcoming decision of the United States Supreme Court before deciding this Motion. Moreover, because Defendants are no longer engaged in any activity related to Plaintiffs' Complaint, Plaintiffs would not be prejudiced by a stay. This Motion is supported by the applicable law, the pleadings in this action, and the memorandum filed in support and served herewith, including supporting exhibits and documents.

[SIGNATURE PAGE FOLLOWS]

[2] *Seila* was argued before the United States Supreme Court on March 3, 2020, and the decision is forthcoming.

Respectfully submitted,

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June 1, 2020
Columbia, South Carolina