IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

EASTERN DIVISION

Consumer Financial Protection Bureau, Plaintiff, v. Intercept Corporation, *et al.*, Defendants.	CIVIL ACTION No. 3:16-cv-144

RESPONSE TO DEFENDANTS' SUPPLEMENT TO MOTION TO DISMISS

In response to Defendants' letter dated January 27, 2017, "Supplement to document [18] Motion to Dismiss Complaint," [Docket Number 42] the Consumer Financial Protection Bureau (the "Bureau") responds as follows:

On February 16, 2017, the D.C. Circuit issued an order vacating the judgment in *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir. Oct. 11, 2016) ("*PHH*"), the case cited by Defendants in their Notice of Supplemental Authority [Docket Number 34] and their letter to Judge Erickson [Docket Number 42]. The order granted the Bureau's petition for *en banc* rehearing of the Circuit Court's split panel opinion. A copy of the order is attached as Exhibit A.

In *CFPB v. CashCall*, No. 15-cv-7522 (C.D. Cal.), cited by Defendants in their letter, the court affirmed the constitutionality of the Bureau's structure. The court's recent certification of four questions of law, including the constitutional issue, does not undermine the court's conclusion that the Bureau is constitutionally structured. Further, the Ninth Circuit has yet to decide whether to take the appeal. Counsel for the Bureau would be happy to address these issues and any further questions of the Court during the scheduled hearing.

Dated: February 22, 2017

Respectfully submitted,

CONSUMER FINANCIAL PROTECTION BUREAU

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