IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No. 9:17-CV-80495- MARRA-MATTHEWMAN

CONSUMER FINANCIAL PROTECTION BUREAU,
Plaintiff,

vs.

OCWEN FINANCIAL CORPORATION,
OCWEN MORTGAGE SERVICING, INC., and
OCWEN LOAN SERVICING, LLC,
Defendants.

_____/

PLAINTIFF CONSUMER FINANCIAL PROTECTION BUREAU'S NOTICE

Plaintiff Consumer Financial Protection Bureau (Bureau) files this Notice to inform the Court that it has changed its position regarding an argument that it presented in this case in its Opposition to Defendants' Motion to Dismiss [DE 35] – whether the provision of the Consumer Financial Protection Act (CFPA) that provides that the President may remove the Bureau's Director only for "inefficiency, neglect of duty, or malfeasance in office," 12 U.S.C. § 5491(c)(3), is constitutional. In its Opposition, the Bureau argued that the provision was constitutional because the provision leaves the President with sufficient authority to control the Director. DE 35 at 3; *see also* DE 299 at 4 (Plaintiff Consumer Financial Protection Bureau's Response to Defendants' Supplemental Memorandum [DE 288]). This Court then held in its Order Granting in Part and Denying in Part Defendants' Motion to Dismiss [DE 452] that the provision was constitutional. DE 452 at 11.

The Bureau's Director has now determined that she agrees with the Department of Justice that the CFPA's for-cause removal provision impermissibly infringes on the President's constitutional obligation to take care that the laws be faithfully executed. Accordingly, the Bureau will no longer defend the constitutionality of that provision. In particular, the Office of the Solicitor General has filed a brief on behalf of the Bureau in support of a petition for a writ of certiorari in *Seila Law LLC v. CFPB*, No. 19-7 (S. Ct.) (filed Sept. 17, 2019) (OSG Br.). That brief urges the Court to grant certiorari to address the constitutionality of the CFPA's removal provision. It further argues that the provision is unconstitutional, but that the constitutional problem does not affect the validity of the other provisions of the CFPA. (A copy of that brief is attached.)

It remains the Bureau's position that this case should proceed, however. Accordingly, if the Court were to revisit its earlier decision that the removal provision is constitutional in light of the Bureau's changed position, it nevertheless should not dismiss this case. As the Bureau explained in its Opposition to Defendants' Motion to Dismiss, the unconstitutionality of the removal provision does not affect the validity of the remainder of the Act because the provision is severable. DE 35 at 8-9 (citing 12 U.S.C. § 5302); *see also* OSG Br. at 16-17. Thus, the only relief that Defendants would be entitled to is severance of that provision – not dismissal of this action. DE 35 at 8-9; *see also* DE 312 (Plaintiff Consumer Financial Protection Bureau's Reply in Further Support of its Notice of Supplemental Authority [DE 53]) at 3, citing *PHH Corp. v. CFPB*, 881 F.3d 75, 198-200 (D.C. Cir. 2018) (en banc) (Kavanaugh, J. dissenting). So while the Bureau submits this Notice to inform the Court of its change in position regarding the constitutionality of the removal provision in the CFPA, the Bureau's position remains that this litigation should proceed.

Dated: September 19, 2019

Respectfully submitted,

Attorney for Plaintiff
CONSUMER FINANCIAL PROTECTION BUREAU

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Plaintiff Consumer Financial Protection Bureau's Notice was served on September 19, 2019, on all counsel or parties of record on the following Service List via CM/ECF.

/s/ Lawrence DeMille-Wagman
Lawrence DeMille-Wagman

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