IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,
Petitioner-Appellee,

Case No. 17-56324

v.

SEILA LAW, LLC,
Respondent-Appellant,

CONSUMER FINANCIAL PROTECTION BUREAU'S OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Seila Law, LLC seeks a stay of the district court's order directing it to respond to an administrative subpoena (known as a civil investigative demand, or CID) from the Consumer Financial Protection Bureau (Bureau). The Bureau sent Seila Law the CID more than six months ago, seeking information about Seila Law's business as part of an ongoing investigation into a long-running debt relief scheme. Seila Law refused to comply with the CID, and the Bureau filed suit in district court seeking to enforce it. After briefing by the parties, the district court granted the Bureau's petition in part and ordered Seila Law to respond. Seila Law now seeks a stay of that order during the year or more it will take to pursue this appeal, effectively stymieing the Bureau's efforts to investigate the debt relief scheme and to take action where appropriate to protect consumers who continue to be harmed.

The Supreme Court has set out four factors to consider when deciding whether a stay is warranted. Seila Law bears the burden of demonstrating that these factors favor a stay. Here, Seila Law has failed to show that *any* of the factors supports staying the district court's order. First, Seila Law has not shown a likelihood of success on the sole argument it raises: that the CID is unenforceable because, Seila Law contends, the Bureau's structure violates the separation of powers. As the district court correctly held, that argument is foreclosed by

controlling Supreme Court precedent. Second, Seila Law has not shown it will be irreparably harmed by having to comply with the district court's order that it provide information to the Bureau. Third, both the Supreme Court and this Court have made clear that any injury caused by having to turn over documents now can be remedied if Seila Law were to prevail on appeal. Finally, Seila Law cannot show that the last two factors favor a stay because significantly delaying this investigation would undermine law enforcement and not be in the public interest.

This Court should therefore deny Seila Law's emergency motion for a stay and allow this appeal to proceed in the ordinary course.

BACKGROUND

A. Legislative Background

Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act to, among other things, "protect consumers from abusive financial services practices." Pub. L. No. 111-203, 124 Stat. 1376, 1376 (2010). Title X of that Act established the Bureau and charged it with primary responsibility for "regulat[ing] the offering and provision of consumer financial products or services under the Federal consumer financial laws." 12 U.S.C. § 5491(a). To carry out these responsibilities, the Bureau is empowered to "tak[e] appropriate enforcement action to address violations of Federal consumer financial law." *Id.* § 5511(c)(4).

As relevant here, the Bureau has investigative authority to issue CIDs requiring the production of documents, testimony, or other information from "any person" that the Bureau believes may have information "relevant to a violation." *Id.* § 5562(c)(1). If a person fails to comply, the Bureau may petition a district court for an order enforcing compliance, and "[a]ny final order" entered by the district court is "subject to appeal." *Id.* §§ 5562(e)(1), (h)(2).

B. Factual Background

In February 2017, the Bureau issued a CID to Seila Law seeking information about its business via seven interrogatories and four document requests. App. 033-40. Seila Law filed a petition to set aside the CID. After considering Seila Law's arguments, the Bureau denied the petition in a written order by its Director. App. 073-77. Seila Law submitted a production in response to the CID in April. After reviewing the production, the Bureau sent Seila Law a letter describing numerous deficiencies in the production. App. 079-84. Seila Law responded with a letter disputing the enforceability of the CID and stating that it would not provide any further information in response to the CID. App. 086.

The Bureau filed suit in the Central District of California to enforce the CID on June 22, 2017. App. 014. In opposing the Bureau's petition, Seila Law argued, among other things, that the Bureau's structure violates the separation of powers and that the CID requests are unduly burdensome and overbroad. App. 087, 094-

99. In an order granting in part the Bureau's petition to enforce the CID, the district court addressed Seila Law's overbreadth concerns by limiting the definitions of "services" and "other services" in the Bureau's interrogatories. App. 001 ("CID Order"). The district court rejected Seila Law's other arguments. With respect to the constitutional issue, the district court noted that it had twice addressed the same argument, in *CFPB v. Morgan Drexen, Inc.*, 60 F. Supp. 3d 1082 (C.D. Cal. Jan. 10, 2014), and *CFPB v. Future Income Payments, LLC*, --- F. Supp. 3d ---, 2017 WL 2190069 (C.D. Cal. May 17, 2017). *See* CID Order at 4-5. As it had in those cases, the district court found Seila Law's constitutional argument foreclosed by controlling Supreme Court precedent. *Id.* The order gave Seila Law ten days to respond to the CID. *Id.* at 12.

Seila Law did not respond to the CID. It instead filed an *ex parte* application with the district court seeking a stay, which the Bureau opposed. Before the district court could rule, Seila Law noticed an appeal to this Court and filed this motion on an emergency basis. Later that day, the district court issued an order denying Seila Law's request for an indefinite stay pending appeal but granting it a 30-day stay in which to pursue its request in this Court. *See* Order re Ex Parte Application for Stay, *CFPB v. Seila Law*, No. 8:17-cv-1081 (C.D. Cal. Sept. 1, 2017), ECF No. 29 at 5 (attached) ("Stay Order").

In its order, the district court concluded that Seila Law had not shown that

any of the stay factors supported its request. Far from showing a likelihood of success on the merits, Seila Law had failed even to establish "a substantial ground for disagreement" on the only issue in the case. *Id.* at 2. The district court also concluded that Seila Law "has identified no authority" to support its claimed irreparable harm. *Id.* at 3-4.And the court found that both the public interest and the Bureau's interests militated against a stay, especially in light of the Bureau's years-long efforts to bring to a halt the debt relief scheme that is the subject of this investigation. *Id.* at 5. The district court granted Seila Law's request for a temporary stay, however, in order to allow this Court to consider Appellant's stay request on a non-emergency basis. *Id.*

LEGAL STANDARD

A party seeking a stay "bears the burden of showing his entitlement to a stay." *Latta v. Otter*, 771 F.3d 496, 498 (9th Cir. 2014). In deciding whether a stay is warranted, this Court considers four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Because "[a] stay is an intrusion into the ordinary processes of administration and judicial review," a stay "is not a matter of right, even if irreparable injury might otherwise result." *Nken*,

556 U.S. at 427 (internal quotations omitted); *see also Leiva-Perez v. Holder*, 640 F.3d 962, 964-66 (9th Cir. 2011).

ARGUMENT

None of the four stay factors supports granting the stay Seila Law seeks.

I. Seila Law Is Not Likely To Succeed on the Merits.

Seila Law cannot meet its burden of establishing a likelihood of success on the merits. The sole argument it presses in this motion is that the Bureau is unconstitutionally structured because its single Director is removable only "for cause," and because the Bureau is funded outside the annual congressional appropriations process. This argument is not likely to succeed because it is foreclosed by controlling cases of the Supreme Court.

When Congress created the Bureau, it imposed a limited restriction on the President's ability to remove the Bureau's Director: The President may remove the Director only for cause—that is, "inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C. § 5491(c)(3). The Supreme Court long ago upheld the constitutionality of the very same removal provision for FTC commissioners in *Humphrey's Executor v. United States*. 295 U.S. 602, 631-32 (1935). As the Court more recently explained in *Morrison v. Olson*, such removal restrictions are valid so long as they do not "impede the President's ability to perform his constitutional duty" to faithfully execute the laws. 487 U.S. 654, 690-91 (1988). The decision in

Humphrey's Executor reflected the Court's "judgment" that, in light of the FTC's functions, "it was not essential to the President's proper execution of his Article II powers that [the agency] be headed up by individuals who were removable at will." *Id.* at 691.

Those cases dictate the outcome here. First, the for-cause removal provision that applies to the Bureau's Director is identical to the for-cause removal provision in the FTC Act that the Supreme Court upheld in *Humphrey's Executor*. *Compare* 15 U.S.C. § 41 (1934) ("Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office."), *with* 12 U.S.C. § 5491(c)(3) ("The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office."). Second, as the district court correctly stated in a different case, "[t]he CFPB executes essentially the same responsibilities that the FTC did at the time of *Humphrey's Executor*. Like the FTC in 1935, the CFPB has the power to conduct administrative adjudications, bring civil enforcement proceedings, promulgate regulations, conduct public investigations, and issue reports on its findings." *Future Income Payments*, 2017 WL 2190069, at *6 (*citing* 12 U.S.C. §§ 5511-12, 5532, 5534, 5562-64, and Federal Trade Commission Act, H.R. 15613, 63d Cong, 38 Stat. 717 §§ 5-6, 9-10 (1914)); *accord CFPB v. Navient Corp.*, No. 3:17-cv-101, 2017 WL 3380530, at *15 (M.D. Pa. Aug. 4, 2017). Thus the Bureau's functions, like the largely similar functions of the FTC, are not "so

central to the functioning of the Executive Branch as to require as a matter of constitutional law" that the Bureau's Director be terminable at will rather than for cause. *Morrison*, 487 U.S. at 691-92.

Seila Law seeks to distinguish this controlling precedent on the ground that the Bureau is headed by one person while the FTC is headed by more than one person. That distinction makes no constitutional difference. The constitutional analysis in *Humphrey's Executor* did not turn on—or even mention—the fact that that the FTC is headed by a multimember commission.[1] Instead, as the Supreme Court explained in *Morrison*, "the real question" in evaluating agency removal restrictions is "whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty." 487 U.S. at 691.[2] Applying that controlling test to the Bureau, it is clear that "the CFPB's structure is

[1] Citing *Myers v. United States*, 272 U.S. 52, 134 (1926), Seila Law contends that the President must have the authority to remove all executive officials "without delay." Emergency Mot. Under Circuit Rule 27-3 Mot. for Administrative Stay and Mot. for Stay Pending Appeal (Mot.) at 10, ECF No. 2-1. If Seila Law means that *Myers* holds that the President's removal authority is without limit, this "holding" was a dictum and expressly "disapproved" in *Humphrey's Executor*, 295 U.S. at 626.

[2] For this reason, Seila Law cannot distinguish *Humphrey's Executor* based on the Court's characterization of the FTC in that case as a "quasi legislative or quasi judicial agenc[y]." 295 U.S. at 629; *see also* Mot. at 14 n.4. The Court has since clarified that "the powers of the FTC at the time of *Humphrey's Executor* would at the present time be considered 'executive,' at least to some degree." *Morrison*, 487 U.S. at 689 n.28. Moreover, *Morrison* holds that the relevant constitutional inquiry does not depend on such labels. *Id.* at 689-91.

at least as constitutionally sound as the FTC." *Future Income Payments*, 2017 WL 2190069, at *6. If anything, the Bureau's single-Director structure *increases* the President's ability to see that the laws are faithfully executed by making clear where responsibility lies for any problems and enabling the President to change the agency's leadership with a single for-cause removal. *Id.*; *Morgan Drexen*, 60 F. Supp. 3d at 1088. And because the Supreme Court has made clear that the constitutional question depends on the *President's* ability to oversee executive branch officials, *see, e.g., Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 498 (2010) ("[T]he President cannot delegate ultimate responsibility or the active obligation to supervise that goes with it") (quotation marks omitted), Seila Law errs when it focuses instead on whether the Bureau's Director is "checked by … a multi-member commission structure," Mot. at 12. That is not the relevant inquiry.

Nor is Seila Law correct when it claims the Supreme Court has "restricted *Humphrey's Executor* and *Morrison* to their facts." Id. at 10 n.3. The only authority Seila Law provides for that proposition is the Court's observation in *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.* that it was *not* disturbing those precedents. 561 U.S. at 483 ("The parties do not ask us to reexamine any of these

precedents, and we do not do so.").[3] That statement contradicts rather than supports Seila Law's argument. The Court's decision in *Free Enterprise* supports the constitutionality of the Bureau's structure in a different way. The Court held that the Oversight Board was unconstitutional because there were two layers of for-cause removal between the President and Board members, and, as a result, the President could not take care that the laws administered by the Board be faithfully executed. See 561 U.S. at 514. (Members of the Board could be removed only for cause, and only by the Securities and Exchange Commission (SEC), not by the President. And members of the SEC could only be removed by the President for cause.) So the Court remedied this flaw simply by severing one of the layers of for-cause removal protection (the one between the SEC and the Board). Thus, "the President [was] separated from Board members by only a single level of good-cause tenure." *Id*. at 509. This was sufficient to preserve the President's power over the Board, an agency "with expansive powers to govern an entire industry." *Id*. at 485. The President has at least as much control over the Bureau as he does over the (restructured) Board.

[3] The controlling force of these precedents is not lessened by Seila Law's belief that their "ongoing viability has been questioned." Mot. at 10-11 n.3. To the contrary, the Court's decisions "remain binding precedent until [it] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." Bosse v. Okla., --- U.S. ---, 137 S.Ct. 1, 2 (2016).

Seila Law's remaining arguments fare no better. It claims there is a "lack of historical precedent" for the Bureau's structure, Mot. at 13, then undermines its own argument by citing three other agencies with single heads removable only for cause. *See also Future Income Payments*, 2017 WL 2190069, at *7 (citing the Office of the Comptroller of the Currency as a probable fourth example). And even if the Bureau were unique, "[o]ur constitutional principles of separated powers are not violated … by mere anomaly or innovation." *Mistretta v. United States*, 488 U.S. 361, 385 (1989). Seila Law complains that the Bureau can engage in rulemaking and conduct administrative adjudications. Mot. at 12. But so can the FTC and many other independent regulatory agencies. *See, e.g.*, 15 U.S.C. §§ 46(g), 57a (authorizing FTC to engage in rulemaking); 15 U.S.C. § 78w (same for the SEC); 15 U.S.C. § 45(b) (authorizing FTC to conduct administrative adjudications); 15 U.S.C. §§ 78u-2, 78u-3 (same for the SEC). In *Morrison*, the Court recognized that rulemaking and recovery of civil penalties are entirely appropriate functions for independent agencies. 487 U.S. at 692 n.31. And in *Free Enterprise*, the Court held that the Oversight Board—even with its authority to issue rules and seek penalties as "the regulator of first resort and the primary law enforcement authority for a vital sector of our economy"—did not violate the separation of powers so long as the Board was separated from the President "by only a single level of good-cause tenure." 561 U.S. at 508-09.

There was also nothing unconstitutional about Congress's decision to fund the Bureau outside of the annual appropriations process, just as most other financial regulatory agencies are funded outside of that process. *See* 12 U.S.C. § 5497(a) (authorizing the Bureau to draw a capped amount of funding from the earnings of the Federal Reserve System). Seila Law cites the Constitution's Appropriations Clause, U.S. Const. Art. I, § 8, cl. 1, but nothing in that clause, or anywhere else in the Constitution, requires agencies to be funded through annual appropriations. To the contrary, "Congress may … decide not to finance a federal entity with appropriations" but rather through some other funding mechanism. *Am. Fed'n of Gov't Emps., AFL-CIO, Local 1647 v. FLRA*, 388 F.3d 405, 409 (3d Cir. 2004); *accord Morgan Drexen*, 60 F. Supp. 3d at 1089. Further, nothing about the Bureau's funding makes it less accountable to Congress because Congress is free to alter the source or amount of the Bureau's funding at any time.[4]

Having failed to show a likelihood of success on its own argument, Seila Law cannot instead meet its burden on the basis of a handful of non-precedential orders (and a brief) in other cases. That is not the appropriate inquiry when a court is deciding whether to exercise its inherent discretion to stay a particular case. Instead, "the traditional stay factors contemplate *individualized* judgments in each

[4] Seila Law notes that, pursuant to 12 U.S.C. § 5497(a)(2)(C), the House and Senate Appropriations Committees may not review the amounts spent by the Bureau. *See* Mot. at 13. But this provision does not restrict other committees or action by either the full House or the Senate.

case." *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987) (emphasis added); *accord Nken*, 556 U.S. at 433 (A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.") (brackets and quotation marks omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433-34. Seila Law cannot meet that individualized burden solely by relying on non-precedential decisions in other matters. *Cf. Yong v. INS*, 208 F.3d 1116, 1121 (9th Cir. 2000) (stay was not warranted "as a means to prevent a split among decisions" in similar cases).

Even on their own terms, the materials on which Seila Law seeks to rely are unpersuasive here. Seila Law points to an order by a motions panel of this Court granting a stay in a different challenge to the Bureau's structure. *See* Mot. at 1 (citing Order, *CFPB v. Future Income Payments, LLC*, No. 17-55721 (9th Cir. Jun. 1, 2017), App. 367). That order does not help Seila Law meet its burden here. Because the order is unpublished, it has no precedential force. *See* 9th Cir. R. 36-3(a); *Hart v. Massanari*, 266 F.3d 1155, 1177-78 (9th Cir. 2001) (explaining why it would be inappropriate to treat non-precedential decisions as controlling). The unpublished dispositions of a motions panel are not even binding on the merits panel *in the same case*, *see Nunes v. Ashcroft*, 375 F.3d 810, 816-17 (9th Cir.

2004); still less do they dictate the outcome in other cases.[5] And because the two-sentence order does not explain the motions panel's reasoning, its persuasive force is minimal. Its mere existence is also not an argument for a stay in this case. *Cf. Yong*, 208 F.3d at 1121 (stay was not warranted as a means of trying to impose consistency among non-precedential decisions).

Seila Law gets no further relying on the now-vacated decision in *PHH Corp. v. CFPB*, 839 F.3d 1, 39 (D.C. Cir. 2016), *reh'g en banc granted, order vacated* (Feb. 16, 2017), or on *CFPB v. D&D Mktg.*, No. CV 15-9692 PSG, 2016 WL 8849698, at *4 (C.D. Cal. Nov. 17, 2016), a district court decision following the vacated panel decision in *PHH*. *See* Mot. at 5-6. Those decisions held the Bureau's current structure unconstitutional. But neither is controlling on this Court, and both are pending review, *PHH* by the full D.C. Circuit and *D&D Marketing* by a future Ninth Circuit merits panel.[6] Their reasoning is not persuasive because they failed

[5] Were this Court to accept Seila Law's incorrect assertion that a single stay order should control all future requests for stays in cases where the Bureau's constitutionality has been challenged, the result would be to severely undermine for the foreseeable future the Bureau's efforts to investigate and litigate violations of federal consumer financial law across the Ninth Circuit. *Cf.* Stay Order at 5 ("Adopting Seila Law's arguments would essentially mean that stays should be granted in every CFPB case.").

[6] The fact that this Court recently accepted interlocutory appeal of the district court's decision in *D&D Marketing* does not help Seila Law establish a likelihood of success. *Cf.* Mot. at 6 (citing App. 369-76). The orders accepting that appeal do not set forth the reasons for the panel's decision nor given any indication of the appellant's chances of prevailing on the merits. If anything, the fact that this Court

to apply the controlling legal test set out by the Supreme Court. *See* CID Order at 4; *Future Income Payments, LLC*, 2017 WL 2190069, at *7-9. And the position adopted in those cases has been rejected by decisions across the country confirming the Bureau's constitutionality.[7] (Seila Law also highlights the existence of a brief filed by the Department of Justice in *PHH*, Mot. at 6, but a party's demonstration of likelihood of success depends on the merits of its arguments, not on which other parties have, at times, advanced the same position in other cases.)

II. Seila Law Cannot Demonstrate that Irreparable Harm Is Probable.

A party seeking a stay must show "that there is a *probability* of irreparable injury if the stay is not granted." *Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012). In other words, a movant "must show that an irreparable injury is the more probable or likely outcome." *Leiva-Perez*, 640 F.3d at 968. Seila Law falls far short of making that showing.

Seila Law first contends that, without a stay, it will suffer Fourth and Fifth Amendment injury by having to comply with the district court's order. Seila Law claims that enforcement of a CID is "consistent with the Fourth Amendment" only

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accepted interlocutory appeal from a district court decision finding the Bureau unconstitutional may suggest it is likely to reverse the district court.

[7] *See* CID Order at 4-5; *Navient Corp.*, No. 3:17-cv-101, 2017 WL 3380530; *Future Income Payments, LLC*, 2017 WL 2190069, at *5-9; *CFPB v. CashCall, Inc.*, No. 15-cv-7522, 2016 WL 4820635, at *13 (C.D. Cal. Aug. 13, 2016); *CFPB v. ITT Educ. Servs., Inc.*, 219 F. Supp. 3d 878, 890-99 (S.D. Ind. Mar. 6, 2015); *Morgan Drexen, Inc.*, 60 F. Supp. 3d at 1086-92.

if it is issued "for a purpose [that] Congress can order." Mot. at 17. But there is no question that Congress can (and did) authorize administrative subpoenas for the purpose of investigating potential violations of federal consumer protection laws. *See* 12 U.S.C. § 5562(c). Seila Law apparently means to suggest that Congress could not authorize an investigation by an agency with the Bureau's supposedly unconstitutional structure. Seila Law, however, cites no authority for the proposition that a structural constitutional defect means that any administrative subpoena that an agency issues violates the recipient's Fourth Amendment rights. This undeveloped suggestion, moreover, makes little sense. *See* Stay Order at 4-5. The district court reached an independent conclusion, after briefing by the parties, that the disclosure sought by the CID was reasonable and that the Bureau is not unconstitutional. That independent review by a neutral decision maker was enough to safeguard Seila Law from being subjected to an unreasonable search or seizure. *See In re Subpoena Duces Tecum*, 228 F.3d 341, 348-49 (4th Cir. 2000) (explaining that subpoenas comply with Fourth Amendment because "the issuance of a subpoena initiates an adversary process that can command the production of documents and things only after judicial process is afforded").

Seila Law's claimed Fifth Amendment violation fails for similar reasons. The Fifth Amendment protects against deprivations of "liberty … without due process of law." U.S. Const. Amdt. V. But the Bureau sought to compel Seila

Law's compliance with the CID through the process of law provided by the federal court system. Seila Law's opportunity to present its arguments in the district court provided it all the process it was due. Thus, the underdeveloped and unpersuasive Fourth and Fifth Amendment allegations that Seila Law has presented fall far short of establishing that it is likely to suffer constitutional injury. *See generally Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (constitutional claim was "too tenuous" to establish likelihood of irreparable harm) (quoting *Goldie's Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984)).

Seila Law's other grounds of alleged irreparable injury —that its "disclosure of sensitive proprietary information and documents to the CFPB is a 'bell that cannot be unrung,'" Mot. at 18 — is also unavailing. Both the Supreme Court and the Ninth Circuit have squarely rejected Seila Law's suggestion that an improper disclosure cannot later be remedied: "[A] court can effectuate relief by ordering the Government to return the records" and "to destroy or return any and all copies it may have in its possession." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992); *see also EPA v. Alyeska Pipeline Serv. Co.*, 836 F.2d 443, 445 (9th Cir. 1988) (explaining that records can "be returned to [subpoenaed party] if they were wrongfully subpoenaed"), *abrogated on other grounds by McLane Co., Inc. v. EEOC*, 137 S. Ct. 1159 (2017). Indeed, the Supreme Court has found that

appellate courts can remedy even the improper disclosure of privileged material. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009). The two cases Seila Law cites in its motion are not to the contrary. *See* Mot. at 18-19 (citing *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008), and *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 838 (9th Cir. 2014)). Neither case concerned an administrative subpoena. Instead, both considered the possibility of widespread public dissemination of appellants' sensitive information. *See Copley*, 518 F.3d at 1025-26 (considering "the public['s] right to access these documents"); *Protectmarriage.com*, 752 F.3d at 835 n.3 (considering "the widespread disclosure" of donor information to the public). Seila Law faces no such exposure here.

Seila Law also claims it will suffer irreparable injury from having to provide information now rather than later because the Bureau "will be able to use that information regardless of the outcome of the appeal." App. 330. The argument appears to be that, even if Seila Law prevailed on appeal, an unconstitutionally structured Bureau could use the information it had learned to bring an enforcement action against Seila Law. That fear is unfounded. If Seila Law prevails on its argument that the Bureau is unconstitutional, it could raise that same defense should the Bureau seek to bring an enforcement action against it in the future. (That is, unless the Bureau's structure had been modified in some way to remove

the alleged constitutional problem—in which case Seila Law would suffer no constitutional injury.) Furthermore, even in the criminal context, the Ninth Circuit has rejected the notion that a party will suffer irreparable harm if improperly obtained documents "may lead to his prosecution." *Ramsden v. United States*, 2 F.3d 322, 326 (9th Cir. 1993).

III. A Stay Would Harm the Public Interest.

Finally, in deciding whether to grant a stay, a court must "assess[] the harm to the opposing party and weigh[] the public interest." *Nken*, 556 U.S. at 435. "These factors merge when the Government is the opposing party." *Id.* Here, the harm to the Bureau and the public interest weigh strongly against a stay.

This Court has held it "beyond cavil" that "the very backbone of an administrative agency's effectiveness in carrying out the congressionally mandated duties of industry regulation is the rapid exercise of the power to investigate." *Fed. Maritime Comm'n v. Port of Seattle*, 521 F.2d 431, 433 (9th Cir. 1975). That is why administrative-subpoena proceedings like this one are meant to be "summary procedures" that "allow speedy investigation." *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1078 (9th Cir. 2001) (internal quotations omitted). And it cannot be doubted that "the public has a strong interest in vigorous enforcement of consumer protection laws." *John Doe Co. v. CFPB*, 235 F. Supp. 3d 194, 205 (D.D.C. Feb. 17, 2017).

Staying the order enforcing the Bureau's CID would seriously undermine these interests. Seila Law's appeal could take over two years to resolve.[8] That delay would interfere with the public interest in speedy investigations and undercut the Bureau's ability to effectively enforce the laws and protect consumers. In the ordinary case, a stay "inherently increases the risk that witnesses' memories will fade and evidence will become stale." *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) (internal quotations omitted). "This concern carries particular force when a stay would impede a government investigation." *Future Income Payments*, 2017 WL 2190069, at *9. And here, as the district court recognized, those risks are compounded by the fact that the Bureau seeks information Seila Law may possess about a long-running debt relief scheme that has already been the subject of two Bureau enforcement suits, one still ongoing. *See* Stay Order at 1-2, 5. A premature halt to this investigation could thus ripple well beyond this particular litigation.

CONCLUSION

Because Seila Law has failed to carry its burden to show that the four stay factors support its request, its motion for a stay pending appeal should be denied.

[8] U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, Questions 17 & 18, https://www.ca9.uscourts.gov/content/faq.php (explaining that oral argument takes place approximately 12-20 months after a notice of appeal is filed, and that a decision is generally issued 3-12 months after that).

Dated: September 8, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 8, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 8, 2017

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CERTIFICATE OF COMPLIANCE

This opposition to Appellant's emergency motion for stay pending appeal complies with the length requirements of Federal Rule of Appellate Procedure 27(d)(2)(A) and Circuit Rules 27-1(1)(d) and 32-3 in that it contains 5,115 words, excluding the items exempted by Federal Rule of Appellate Procedure 32(f).

This opposition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Dated: September 8, 2017

/s/ Kevin E. Friedl

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